Ramco Cements Ltd. Vs Deputy Commissioner of Income Tax

Court: MADRAS HIGH COURT

Date of Decision: Sept. 17, 2014

Acts Referred: Income Tax Act, 1922 - Section 33(4) â€" Income Tax Act, 1961 - Section 250, 250(5), 254, 37(1)

Citation: (2015) 373 ITR 146

Hon'ble Judges: R. Sudhakar, J; G.M. Akbar Ali, J.

Bench: Division Bench

Advocate: P.J. Rishikesh, for the Appellant; M. Swaminathan, Standing Counsel, for the Respondent

Judgement

R. Sudhakar, J.Ã¯Â¿Â½This tax case (appeal), filed by the assessee as against the order of the Income-tax Appellate Tribunal for the assessment year

1987-88, was admitted by this court on the following substantial question of law:

Whether the honourable Income-tax Appellate Tribunal is right in rejecting the additional grounds of appeal filed by the appellant with regard to

market development expenses of Rs. 19,36,427?

The appellant-assessee, which is a company carrying on the business in manufacture of cement, filed a return of income on June 29, 1987, before

the Assessing Officer declaring a loss of Rs. 11,04,25,696. The Assessing Officer re-determined the loss at Rs. 10,54,03,475. Aggrieved by the

order of the Assessing Officer, the assessee filed an appeal before the Commissioner of Income-tax (Appeals). After filing the appeal, the assessee

raised additional ground by letter dated December 11, 1992, stating that in the balance-sheet printed in the annual report of the company, the

assessee showed the expenditure of Rs. 19,36,427 attributed to market development (advertisement) expenses and in the return of income filed,

the assessee omitted to claim the said expenditure as deduction under section 37(1) of the Income-tax Act. The additional statement of fact and

ground are as follows:

Additional statement of facts

The company, M/s. Madras Cements Ltd., has incurred a sum of Rs. 19,36,427 towards market development expenditure during the year ending

December 31, 1986, relevant for the assessment year 1987-88. This expenditure has not been charged into the profit and loss account for the year

ended December 31, 1986, which has been treated as "miscellaneous expenditure to the extent not written off for adjusted" in the balance-sheet.

This expenditure has not been allowed in the assessment year 1987-88. Hence, the assessee prefers this appeal as additional ground, since this

point has not been included in the appeal originally filed before the Commissioner of Income-tax (Appeals-I), Madurai, for the assessment year

1987-88.

Additional grounds of appeal

The company, M/s. Madras Cements Ltd., has incurred a sum of Rs. 19,36,427 towards market development expenditure for the assessment

year 1987-88. This fact has been stated, vide balance-sheet of the company, which has been filed along with the return of income. This market

development expenditure is revenue expenditure incurred wholly and exclusively for the purpose of business and is allowable revenue expenditure.

Since it has been omitted to be claimed in the memo of the total income even though the details of expenditure shown in the printed annual report

filed along with the return of income, the learned Deputy Commissioner of Income-tax has not allowed this revenue expenditure for the assessment

year 1987-88.

Therefore, it is prayed that the Commissioner of Income-tax (Appeals) may direct the Deputy Commissioner of Income-tax to allow the above

expenditure and justice rendered.

2. The Commissioner of Income-tax (Appeals) refused to entertain the additional grounds of appeal and proceeded to decide the appeal on the

merits on the other issues raised holding that the assessee has to explain that the omission to file the grounds originally was not willful and

unreasonable. Aggrieved by the order of the Commissioner of Income-tax (Appeals), the assessee pursued the matter by filing an appeal before

the Income-tax Appellate Tribunal contending that the Commissioner of Income-tax (Appeals) had erroneously rejected the plea of the assessee to

raise additional grounds in the appeal. The Tribunal did not accept the assessee"s plea and dismissed the appeal holding as follows:

10. The assessee had stated that it had raised additional grounds of appeal before the Commissioner of Income-tax but it was not considered by

him. The Commissioner of Income-tax in paragraph 3.12.0 had considered this. The Commissioner of Income-tax apparently was of the opinion

that the additional ground raised was in fact belated raising of ground and not purely a question of law. In our opinion this ground of the assessee

fails.

3. Aggrieved by the order of the Tribunal the assessee is before this court raising the above substantial question of law.

4. Learned counsel appearing for the appellant contends that the proceedings before the Commissioner of Income-tax (Appeals) is a continuation

of the assessment proceedings and, therefore, the Commissioner of Income-tax (Appeals) ought to have considered the additional ground raised in

exercise of sub-section (5) of section 250 of the Income-tax Act. He also pleaded that the reasoning of the Commissioner of Income-tax

(Appeals) that the fact is raised belatedly and it is not a question of law, is not correct, as the issue canvassed by the assessee is in relation to the

determination of the total income and the tax liability thereon, based on the details furnished by the assessee in the balance-sheet. However, in the

return of income, the assessee failed to make this claim for deduction under section 37(1) of the Income-tax Act. But for the purpose of

determining the total income and tax liability thereon, as the details relevant for determination was available in the balance-sheet, the omission to

make such a claim in the return of income should not be held against the assessee and frustrate the claim, which is lawfully due and allowable

expenditure.

5. To support this plea, learned counsel appearing for the assessee placed reliance on the decisions reported in National Thermal Power Co. Ltd.

Vs. Commissioner of Income Tax, , Commissioner of Income Tax, Central-I, Room No. 1001, Old CGO Building Annexure, Maharshi Karve

Marg, Mumbai - 400 020 Vs. M/s. Pruthvi Brokers and Shareholders Pvt. Ltd., PS/19, Rotunda Building, B.S. Marg, Fort, Mumbai - 400 023,

and contended that the expenditure in this case was revealed in the printed annual report, which contains the balance-sheet of the company. Since

the material evidence relatable to the claim for deduction as expenditure under section 37(1) of the Income-tax Act was very much available and

due to inadvertence it was not claimed, additional ground was raised before the first appellate authority contending that the appeal is a continuation

of the original assessment proceedings and, therefore, relief should have been granted by the Commissioner of Income-tax (Appeals).

6. Per contra, learned standing counsel appearing for the Revenue submits that it is the assessee''s duty to claim deduction of expenditure under

section 37(1) at the time of filing of return of income but he failed to do and that cannot be made good at the appellate stage. If a deduction is not

claimed before the assessing authority and there was no consideration by the Assessing Officer on such deduction, the same cannot be urged

before the Commissioner of Income-tax (Appeals) without filing a revised return. In support of his plea, he relied on the decision reported in

Goetze (India) Ltd. v. CIT [2006] 284 ETR 323 (SC).

7. We have heard the rival submissions of the learned counsel appearing for the assessee and the learned standing counsel appearing for the

Revenue and perused the materials placed before this court.

8. It is not in dispute that the assessee in this case has failed to claim an expenditure expended on account of market development (advertisement)

expenses in the return of income. It is also not in dispute that this fact is reflected in the printed annual report, which contains the balance-sheet of

the company. The assessee filed a letter before the Commissioner of Income-tax (Appeals) seeking indulgence in the matter to raise additional

grounds and to determine the total income on the basis of the deduction as allowable under section 37(1) of the Income-tax Act and pleaded that

the appeal is a continuation of the assessment proceedings and is entitled to raise such a plea stating that the said omission is neither willful nor

unreasonable. The Commissioner of Income-tax (Appeals), however, was of the view that the appellant has not explained that the omission was

not willful or unreasonable.

9. Section 250 of the Income-tax Act deals with the procedure in appeal. Sub-section (5) of section 250 provides that if the appellate authority is

satisfied, the appellant may be allowed to raise additional grounds. Section 250(5) of the Income-tax Act reads as follows:

250. Procedure in appeal.--(1) The Deputy Commissioner (Appeals) or, as the case may be, the Commissioner (Appeals) shall fix a day and

place for the hearing of the appeal, and shall give notice of the same to the appellant and to the Assessing Officer against whose order the appeal is

preferred . . .

(5) The Deputy Commissioner (Appeals) or, as the case may be, the Commissioner (Appeals) may, at the hearing of an appeal, allow the

appellant to go into any ground of appeal not specified in the grounds of appeal, if the Deputy Commissioner (Appeals) or, as the case may be, the

Commissioner (Appeals) is satisfied that the omission of that ground from the form of appeal was not willful or unreasonable.

10. A reading of the above provision makes it clear that the finding of the Commissioner of Income-tax (Appeals) appears to be not in consonance

with section 250(5) of the Income-tax Act. In terms of section 250(5), the duty is cast on the Commissioner of Income-tax (Appeals) to satisfy

himself as to whether the omission to raise additional grounds in the appeal is not willful or unreasonable. If the assessee gives an explanation and

supports that explanation with relevant material to state as to why it was not raised at the first instance, the Commissioner should go into the issue

as to whether such a omission was willful or unreasonable.

11. The purport behind this provision can be culled out from the decisions of the Supreme Court and that of this court as to how the courts have

viewed the assessment proceedings and the proceedings in appeal vis-a-vis the provisions of the Income-tax Act.

12. The Supreme Court had an occasion to consider the power of the Tribunal in the decision reported in National Thermal Power Co. Ltd. Vs.

Commissioner of Income Tax, . The facts therein are the assessee had made short-term deposits with banks. The interest received on such

deposits during the previous year relevant to the assessment year 1978-79, amounted to Rs. 22,84,994, was offered by the assessee for tax

assessment and the same was completed. Before the Commissioner of Income-tax (Appeals), several issues were raised by the assessee but the

said amount of Rs. 22,84,994 was not challenged by the assessee nor considered by the Commissioner of Income-tax (Appeals). The assessee

went before the Tribunal and even before the Tribunal, the assessee failed to raise a ground at the time of filing of the appeal originally. However,

by letter dated July 16, 1983, additional grounds were raised based on two decisions of the Tribunal and pleaded that interest earned before

setting up of business was not taxable as income and, therefore, new grounds were raised. On a reference, the honourable apex court framed the

following question of law (page 386 of 229 ITR):

Where on the facts found by the authorities below a question of law arises (though not raised before the authorities) which bears on the tax liability

of the assessee, whether the Tribunal has jurisdiction to examine the same?

13. By interpreting section 254 of the Income-tax Act, the Supreme Court held that nothing prevented the Tribunal to consider the questions of

law arising in the assessment proceedings, although not raised earlier. The Supreme Court relying upon the decision in the case of Jute of

Corporation of India Ltd. Vs. Commissioner of Income Tax and another, , held that the appellate authority is vested with all the plenary powers

which the subordinate authority may have in the matter. For better clarity, we extract the relevant portion, which is as follows (page 386 of 229

ITR):

In the case of Jute of Corporation of India Ltd. Vs. Commissioner of Income Tax and another, , this court, while dealing with the powers of the

Appellate Assistant Commissioner observed that an appellate authority has all the powers which the original authority may have in deciding the

question before it subject to the restrictions or limitations, if any, prescribed by the statutory provisions. In the absence of any statutory provision,

the appellate authority is vested with all the plenary powers which the subordinate authority may have in the matter. There is no good reason to

justify curtailment of the power of the Appellate Assistant Commissioner in entertaining an additional ground raised by the assessee in seeking

modification of the order of assessment passed by the Income-tax Officer. This court further observed that there may be several factors justifying

the raising of a new plea in an appeal and each case has to be considered on its own facts. The Appellate Assistant Commissioner must be

satisfied that the ground raised was bona fide and that the same could not have been raised earlier for good reasons. The Appellate Assistant

Commissioner should exercise his discretion in permitting or not permitting the assessee to raise an additional ground in accordance with law and

reason. The same observations would apply to appeals before the Tribunal also.

14. A reading of the above decision makes it clear that if there are bona fide and good reasons in not preferring the additional grounds, the first

appellate authority should exercise discretion in permitting the assessee to raise additional grounds. We find that the proceedings before the

Commissioner of Income-tax (Appeals) and before the Tribunal on the issue of raising additional grounds appears to be analogous. The Supreme

Court has clearly viewed that the proceedings before the Tribunal should not be confined only to the issues arising out of the order by the

Commissioner of Income-tax (Appeals), as it would amount to taking a narrow view as to the powers of the Tribunal. If there are facts, which are

on record from the assessment proceedings, there is no bar in allowing the additional grounds to be raised for the purpose of correctly assessing

the tax liability of the assessee. The Supreme Court in the above-stated decision answered the question of law in the following manner (page 387

of 229 ITR):

The reframed question, therefore, is answered in the affirmative, i.e., the Tribunal has jurisdiction to examine a question of law which arises from

the facts as found by the authorities below and having a bearing on the tax liability of the assessee. We remand the proceedings to the Tribunal for

consideration of the new grounds raised by the assessee on the merits.

15. In effect, the bottom line in such a proceedings before the Commissioner of Income-tax (Appeals) or before the Tribunal is that any question

that is raised even after the appeal was filed, if the same has a bearing on the tax liability of the assesses, can be considered subject to the

provisions of section 250(5) of the Income-tax Act.

16. Similar view has been taken by the Bombay High Court in the decision reported in Commissioner of Income Tax, Central-I, Room No. 1001,

Old CGO Building Annexure, Maharshi Karve Marg, Mumbai - 400 020 Vs. M/s. Pruthvi Brokers and Shareholders Pvt. Ltd., PS/19, Rotunda

Building, B.S. Marg, Fort, Mumbai - 400 023, , where the assessee omitted to claim deduction inadvertently and such a claim was made before

the Commissioner of Income-tax (Appeals). The Bombay High Court relied upon the decision reported in National Thermal Power Co. Ltd. Vs.

Commissioner of Income Tax, and held as follows (page 348 of 349 ITR):

The orders of the Commissioner of Income-tax (Appeals) and the Tribunal clearly indicate that both the appellate authorities had exercised their

jurisdiction to consider the additional claim as they were entitled to in view of the various judgments on the issue, including the judgment of the

Supreme Court in National Thermal Power Co. Ltd. Vs. Commissioner of Income Tax, . This is clear from the fact that these judgments have been

expressly referred to in detail by the Commissioner of Income-tax (Appeals) and by the Tribunal.

17. The Bombay High Court distinguished the decision reported in Goetze (India) Ltd. Vs. Commissioner of Income Tax, and we do not find any

reason why the said decision will in any way limit the claim of the appellant-assessee in the present case.

18. The powers of the appellate authority is prescribed in section 250 of the Income-tax Act to allow the appellant to raise additional grounds. The

cardinal principle in taxing matters has been highlighted by the Madras High Court in the decision reported in Commissioner of Income Tax

(Central), Madras Vs. Indian Express (Madurai) Pvt. Ltd., , where additional grounds relating to omission of deduction were raised in the grounds

of appeal before the Tribunal and the objection of the Department was overruled placing reliance on the decision reported in Commissioner of

Income Tax, Madras Vs. Mahalakshmi Textile Mills Ltd., . While considering this issue, this court, by relying upon several rulings of the English

courts, discussed about the purpose and intention of the taxing statute and the manner in which the assessing authority, appellate authority and the

Tribunal should deal with the claim of the tax paying assessee.

19. For better clarity, we are inclined to extract the relevant portion as under, as we find that the Department is trying to take a hypertechnical plea

that since such a claim for deduction of expenditure was not made at the first instance before the assessing authority, the assessee is not entitled to

claim before the appellate authority (pages 722 to 725 of 140 ITR):

The primary purpose of the statute is to levy and collect the income-tax. This is based on the cardinal principle, which has been incorporated as a

veritable constitutional provision, that no tax can be levied or collected save under authority of law. The task of an appellate authority under the

taxing statute, especially a non-departmental authority like the Tribunal, is to address its mind to the factual and legal basis of an assessment for the

purpose of properly adjusting the taxpayer''s liability to make it accord with the legal provisions governing his assessment. Since the be all and end

all of the statutory provisions, especially those relating to the administration and management of income-tax, is to ascertain the taxpayer''s liability

correctly, to the last pie, if it were possible, the various provisions relating to appeal, second appeal, reference and the like can hardly be equated

to a lis or dispute as arises between the two parties in a civil litigation. Although the income-tax statute makes the Department or its officers figure

as parties in appeal proceedings, they are not in the strict sense what are called by American writers as parties to adversary proceedings. This is

so, because the very object of the appeal is not to decide a point raised as a dispute, but any point which goes into the adjustment of the

taxpayer''s liability. In that sense, a view prevails, even in England, that the authorities sitting in appeal in a tax case, cannot be regarded as deciding

a lis, but they are only engaged in an administrative act of adjusting the taxpayer''s liability. Under our fiscal jurisprudence, we may regard the

appellate authorities as exercising quasi-judicial functions in the same sense as a taxing officer does. But, even so, the proceedings before them lack

the basic elements of adversary proceedings. It, therefore, follows that the discussion and the scope of the appellate jurisdiction of the Tribunal and

other authorities under the tax code cannot be pursued by drawing a parallel to civil litigation with particular reference to appeals from decrees, and

the like. The insistence on one party to the appeal being entitled to the fruits of finality, as it is called, and the appellate authority being confined to

the subject-matter of the appeal are all ideas which might have relevance if the discussion centres on purely civil litigation and such like adversary

proceedings as in an industrial dispute. But in a case where the Revenue is all the while a party, in a manner of speaking, and is also at the same

time, an authority vested with the responsibilities of drawing up the assessment and laying down the correct liability, it would not be in accord with

the scheme of the Act to impose restrictions on the ambit and the power of the Tribunal by such like notions as finality, subject-matter of the

appeal, and the like. The statutory provision in section 33(4) of the 1922 Act and section 254 of the 1961 Act which confers appellate jurisdiction

on the Tribunal clearly lays down that the Tribunal, in disposing of an appeal, may pass such orders thereon as it thinks fit. Excepting that the

expression "subject-matter" has taken the fancy of many learned and eminent judges, that is an expression which is not employed by the provision

conferring the jurisdiction in the Tribunal. Indeed, in the Commissioner of Income Tax, Madras Vs. Mahalakshmi Textile Mills Ltd., in one of the

passages to which we have made reference, the Supreme Court has understood the Tribunal''s appellate jurisdiction as a jurisdiction to pass ''such

orders on the appeal as it thinks fit'', without adding any gloss of their own to the expression. In the Commissioner of Income Tax, Madras Vs. S.

Nelliappan, as well as the Mahalakshmi Textile Mills'' case, the Supreme Court had even used phrases which are reminiscent of the language which

English judges have used while describing a tax appeal. The Supreme Court observed that the Tribunal is not precluded from ''adjusting'' the tax

liabilities of the assessee in the light of its findings merely because the findings are inconsistent with the case pleaded by the assessee. English judges

have regarded a tax appeal, not as a lis, but as a process of further adjustment of taxpayer liability--vide Lord Hewart in Rex v. Special

Commissioners of Income Tax [1935] 20 TC 381 (CA); Greer L.J. in IRC v. Sneath [1932] 17 TC 149 (CA); Romer L.J. in the same case, IRC

v. Sneath, and Lord Wright M.R. in Rex v. Special Commissioners of Income Tax.

In Rex v. Special Commissioners of Income Tax, Lord Hewart C.J. laid down the nature of an appeal in tax matters as under (page 382):

''In my opinion, the argument of the learned Attorney-General is absolutely correct, and the argument upon the other side is manifestly based, as he

said, upon a misapprehension that an appeal under the Income-tax Act, 1918, is the same in substance as an appeal where two private persons

are engaged in litigation. It is, of course, totally different''.

In IRC v. Sneath [1932] 17 TC 149, Greer L.J. gave a similar description of the true position of a tax appeal in the following words, (page 164):

''I think, the estimating authorities, even when an appeal is made to them, are not acting as judges deciding litigation between the subject and the

Crown. They are merely in the position of valuers whose proceedings are regulated by statute to enable them to make an estimate of the income of

the taxpayer for the particular year in question.''

Romer L.J., in the same case, held as under (page 168):

''The appeal is merely another step taken by the Commissioners, at the instance of the taxpayer, in the course of the discharge by them of their

administrative duty of collecting the surtax.''

Rex v. Special Commissioners of Income Tax [1935] 20 TC 381, went to the Court of Appeal land there Lord Wright M.R. reiterated the

position in the following passage in his judgment (page 387):

''I may note here at once that in making the assessment and in dealing with the appeals the Commissioners are exercising their statutory authority

and their statutory duty which they are bound to carry out, not as judges deciding an issue between two particular parties: their obligation is wider

than that. It is to exercise their judgment on such material as comes before them, and, as we shall see later, to obtain any material which they think

is necessary and which they think they ought to have, and on that to make the assessment or the estimate which the law requires them to make.

They are not deciding the case inter partes; they are assessing or estimating the amount which in the interests of the country at large the taxpayer

ought to have to deal with as the basis on which he is to be taxed.''

In a recent Full Bench decision of this court dated November 2, 1982, in T.C. (R) Nos. 78 of 1980 and 195 of 1980 (State of Tamil Nadu v.

Arulmurugan and Co. [1982] 51 STC 381 (Mad) [FB]), it was held that the appellate authorities perform precisely the same functions as the

assessing authority. The Full Bench expressed the view that a tax appeal, is a rehearing of the entire assessment and it cannot be equated to

adversary proceedings in appeal in civil cases. The following passage (at page 392), from the judgment of the Full Bench would be relevant to the

discussion in the present case.

''An appellate authority under the taxing enactments sits in appeal, only in a manner of speaking. What it does, functionally, is only to adjust the

assessment of the appellant in accordance with the facts on the record and in accordance with the law laid down by the Legislature. An appeal is a

continuation of the process of assessment, and an assessment is but another name for adjustment of the tax liability to accord with the taxable event

in the particular taxpayer''s case. There can be no analogy or parallel between a tax appeal and an appeal, say, in civil cases. A civil appeal, like a

law suit in the court of first instance out of which it arises, is really and truly an adversary proceeding, that is to say, a controversy or tussle over

mutual rights and obligations between contesting litigants ranged against each other as opponents. A tax appeal is quite different. Even as the

assessing authority is not the taxpayer''s ""opponent"", in the strictly procedural sense of the term, so too the appellate authority sitting in appeal over

the assessing authority''s order of assessment is not strictly an arbitral tribunal deciding a contested issue between two litigants ranged on opposite

sides. In a tax appeal, the appellate authority is very much committed to the assessment process. The appellate authority can itself enter the arena

of assessment, either by pursuing further investigation or causing further investigation to be done. It can do so on its own initiative, without being

prodded by any of the parties. It can enhance the assessment, taking advantage of the opportunity afforded by the taxpayer''s appeal, even though

the appeal itself has been mooted only with a view to a reduction in the assessment. These are special and exceptional attributes of the jurisdiction

of a tax appellate authority. These attributes underline the truth that the appellate authority is no different, functionally and substantially, from the

assessing authority itself."

20. Taking note of the above principles, while we consider the facts of the present case, we noticed that the assessee in this case has bona fide

shown all the expenditure in the balance-sheet of the company as stated in the annual printed report but the claim was not made in the returns.

Noticing the omission, which was due to inadvertence, additional ground was raised in the appeal stage by the assessee.

21. Section 250(5) of the Income-tax Act provides for allowing the appellant to raise such an additional ground and it is for the Commissioner of

Income-tax (Appeals) to state that the omission to raise additional ground was not willful or unreasonable. We find that the Commissioner of

Income-tax (Appeals) in this case has erroneously thrown the onus on the assessee to explain the omission as not willful or unreasonable. The

assessee in this case has given certain reasons with records to show that it was a bona fide claim but out of inadvertence it was not stated in the

return of income. We find that this claim of the assessee is not willful and the additional ground raised by the assessee cannot be termed as

unreasonable.

22. The Commissioner of Income-tax (Appeals) relied on the decision reported in Jute of Corporation of India Ltd. Vs. Commissioner of Income

Tax and another, , in which the decision in the case of Rai Kumar Srimal Vs. Commissioner of Income Tax, , was referred to. The Commissioner

of Income-tax (Appeals) followed the decision in the case of Rai Kumar Srimal v. CIT, wherein the Calcutta High Court held (headnote): ""the

Appellate Assistant Commissioner is entitled to admit new grounds or evidence either suo motu or at the invitation of the parties. If he is acting on

being invited by the assessee, then there must be some ground for admitting new evidence in the sense that there must be some explanation to

show that the failure to adduce earlier the evidence sought to be adduced before the Appellate Assistant Commissioner was not willful and not

unreasonable"". This is not the case in the present appeal. The appellant had given a reasonable explanation and supported it with a plea of bona

fide error which, if not allowed or accepted, will have the effect of denying the correct tax liability. The decision of the apex court reported in

National Thermal Power Co. Ltd. Vs. Commissioner of Income Tax, relying upon the decision reported in Jute of Corporation of India Ltd. Vs.

Commissioner of Income Tax and another, has cast an obligation on the authority to consider the bona fide of the additional grounds and the

reason for not raising it earlier. The Appellate Assistant Commissioner, by exercising his discretion as per law and reason, should record his

satisfaction:

The Appellate Assistant Commissioner must be satisfied that the ground raised was bona fide and that the same could not have been raised earlier

for good reasons. The Appellate Assistant Commissioner should exercise his discretion in permitting or not permitting the assessee to raise an

additional ground in accordance with law and reason. The same observations would apply to appeals before the Tribunal also.

23. It is to be noted herein that the Act does not contain any express provision preventing the assessee from raising additional grounds in appeal

and there is also no provision in the Act restricting the appellate authority to entertain such additional ground in the appeal. In the absence of

statutory bar, the appellate authority is vested with the power, which is co-terminus with that of the original authority, to allow the assessee to raise

additional ground, if the same is bona fide and not willful or unreasonable. In the present case, we find that the plea of bona fide omission is

acceptable. The additional grounds were raised before the first appellate authority with reasons. We find that such a reason is tenable. The

Commissioner of Income-tax (Appeals), however, failed to exercise the discretion vested in him in accordance with law and reason.

24. We, therefore, answer the question of law in favour of the assessee and against the Revenue. The matter is remanded back to the

Commissioner of Income-tax (Appeals) to consider the additional grounds on the merits.

25. In view of the foregoing discussions, we pass the following order:

(i) the substantial question of law is answered in favour of the assessee and against the Revenue;

(ii) consequently, the order of the Tribunal stands set aside; and

(iii) the matter is remanded back to the Commissioner of Income-tax (Appeals) to consider the additional ground on the merits.

In the result, this tax case (appeal) stands allowed. No costs.