

**(1989) 12 CAL CK 0026**

**Calcutta High Court**

**Case No:** IT Ref. No. 220 of 1982

STEEL ROLLING MILLS OF  
HINDUSTHAN PVT. LTD.

APPELLANT

Vs

COMMISSIONER OF INCOME  
TAX.

RESPONDENT

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**Date of Decision:** Dec. 5, 1989

**Citation:** (1992) 107 CTR 65

**Hon'ble Judges:** Suhas Chandra Sen, J; Bhagabati Prasad Banerjee, J

**Bench:** Full Bench

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### **Judgement**

BHAGABATI PRASAD BANERJEE, J. :

The Tribunal has referred the following questions raised at the instance of the assessee :

"(i) Whether, on the facts and in the circumstances of the case the Tribunal was right in law in declining to admit the additional grounds;

(ii) Whether, on the facts and in the circumstances of the case Tribunal was justified in holding that it would not be proper to admit the additional grounds in question at this stage and whether in concluding so it has relied on irrelevant facts;

(iii) Whether, on the facts and in the circumstances of the case, the Tribunal has exercised its discretion judicially in refusing to entertain the additional grounds after having found precisely that all the necessary materials in support of the assessee's case was already on record and no further investigation would be required;

(iv) Whether, on the facts and in the circumstances of the case, the Tribunal misdirected itself by applying the ratio and in finding support of its conclusion in the case of [Commissioner of Income Tax, Gujarat I Vs. Karamchand Premchand Private Ltd.,](#)

(v) Whether, on the facts and in the circumstances of the case, the Tribunal has misdirected itself in holding that once the assessee offered the amount of Rs. 125.00 (Rupees One hundred twenty five only) (vide Receipt No. V 270517 dt. 22nd October, 1979) for assessment by filing a revised return it could not agitate the question and, hence, additional grounds could not be allowed."

The questions of law referred at the instance of the Revenue are as follows :

"(1) Whether, on the facts and in the circumstances of the case, the Tribunal was right in holding that the income from hiring out of LPG cylinders is income from business and not income from other sources ?

(2) Whether, on the facts and in the circumstances of the case, the Tribunal was right in law in holding that income from letting out of LPG cylinders by assessee should be treated as business income and development rebate in respect of cylinders and should be allowed ?"

2. In this proceeding the assessment year involved is 1972-73 for which the relevant year of account is the year ended on 31st March, 1972.

3. With regard to the question Nos. 1 and 2 raised by the Department the same are concluded by the decision of this Court in the assessee's own case in the asst. yr. 1971-72, viz., IT Ref. No. 16 of 1980. The judgment was delivered on 24th April, 1989. Following the aforesaid judgment the question of law referred in this case are answered in the affirmative and in favour of the assessee.

4. So far as the questions referred at the instance of the assessee are concerned they relate to disallowance or admission of the additional grounds before the Tribunal. The said additional grounds are as follows :

"(1) The ITO erred in law inasmuch as he included in the appellants income a sum of Rs. 4,55,192 representing notional rental income receivable from the godowns sold to M/s. Surendra Overseas Ltd.

(2) Rental income, which was assessed to tax under the head business, could not be assessed on notional basis, which is only applicable, where such income is assessed under the head property."

Before the ITO the assessee filed a revised return showing the income from the godowns as the income from the house property. The ITO made assessment on the basis of that return filed, accepting the contention of the assessee. No grievance was made before the AAC. In the memorandum of appeal filed before the Tribunal no challenge was made to this aspect of the matter and at the time of hearing the additional grounds were sought to be taken for the first time for challenging this aspect of the matter dealt with by the ITO wherein the ITO had accepted the assessee's contention. The matter of admitting or declining to admit the additional grounds is the matter, which fell within the discretion of the Tribunal. In the facts

and circumstances of this case, it cannot be said that the Tribunal was wrong when the Tribunal had exercised its discretion or the Tribunal fell in error. It was entirely within the jurisdiction of the Tribunal to allow or not to allow the additional grounds at the time of hearing. Accordingly, we are of the view that the Tribunal correctly decided this matter and we do not find any reason to interfere with the discretion of the Tribunal in not admitting the additional grounds, inasmuch as in this matter the Tribunal has exercised its discretion after applying its mind. In the facts and circumstances of this case it is not proper to interfere with such discretion by exercising power of the High Court under s. 256(1) of the IT Act, 1961.

5. Therefore, the questions Nos. 1, 2 and 3 are answered in the affirmative and in favour of the Revenue. Questions Nos. 4 and 5 are answered in the negative and in favour of the Revenue.

There will be no order as to costs.

SUHAS CHANDRA SEN, J. :

I agree.