

Additional grounds raised after completion of hearing to be admitted if no new facts emerged

Summary – The High Court of Gujarat in a recent case of Brodweld (P.) Ltd., (the Assessee) held that where in block assessment Commissioner (Appeals) deleted additions for few assessment years, revenue having omitted to raise similar grounds in appeal before Tribunal for two assessment years, could have been permitted to raise additional grounds for said two years even when hearing was over as this ground was common for all assessment years and no new facts were to be investigated

Facts

- The assessee was subjected to search operation which led to framing of block assessment for Assessment years 1996-97 to 2001-02 by Assessing Officer which gave rise to orders of assessment in which Assessing Officer had made certain additions on basis of seized material on ground of alleged suppression of net profit.
- On appeal, the Commissioner (Appeals) deleted additions for all assessment years.
- On appeal by revenue to the Tribunal, this ground was taken in all years except in assessment years 1998-99 and 2000-01. During course of hearing, revenue realized that due to inadvertent error, this ground had been omitted in said two assessment years. Immediately steps were taken for making amends and additional ground was raised for both these years which was also entertained by Tribunal. The assessee submitted that during course of oral hearing Tribunal had orally refused permission to raise these additional grounds at such a belated stage and hence they could not have been raised. Tribunal, however, by order, disposed of all appeals of revenue and this ground was taken into consideration for both disputed assessment years and, in fact, allowed also.
- The assessee filed miscellaneous application against such order which was rejected.
- On petition to High Court, the assessee submitted that no new ground could have been taken as Tribunal had not given permission to raise additional ground and such grounds were allowed to be taken in without opposition of assessee. Department however opposed petition contending that official record could not be doubted or disputed. The members of the Tribunal, who had disposed of the appeals, had recorded that such grounds were allowed to be raised and thus in absence of any contrary material, this averment could not be doubted.

Held

- There is a strong presumption that the official records of the subordinate Courts and Tribunals are true and faithful to the actual facts and events. Disturbing such official recordings must necessarily be rare in exceptional circumstances and when clinching evidence suggests to the contrary. Having been taken through the documents and records contemporaneous with the evidence which unfolded later, it does appear that the additional ground for the said two assessment years was allowed to be raised by the Tribunal once the hearing was over. In fact, the Tribunal in its order while disposing of the Tax Appeals of the revenue in the context of this additional ground for the

assessment years 1998-99 and 2000-01 had observed that as no new facts were to be investigated, therefore, the additional grounds taken by the revenue, after hearing the rival submissions stood admitted.

- These observations of the Tribunal are significant and would suggest that the revenue was allowed to raise this ground after the submissions were over. This appears to have been done by the Tribunal on the premise that this ground was common for assessment years and there was a common factual thread running through all assessment years concerning this ground. This feeling of the Tribunal is respected. Nevertheless, there is always a method of achieving the ultimate just conclusion through proper procedure. The Tribunal seems to be carrying an overwhelming impression that the facts were common, the ground was common and probably the ultimate conclusion that the Tribunal may arrive at for all assessment years was not possible to be divested in separate assessment years. This may justify the Tribunal being lenient in allowing an additional ground to be raised at the last moment. This however, by no means would permit allowing such a ground *(i)* without putting it to the notice of the assessee; *(ii)* without inviting and considering objection, if raised and; *(iii)* at any rate, even after entertaining such a ground, deciding the same on merits without hearing the assessee. No matter how futile it may appear to follow such a sequence, it must be done. The Tribunal's impression that no difference would be made even if the assessee were to be heard, must at best be the Tribunal's unilateral opinion and, in a given case, may even be proved to be erroneous, if the assessee is allowed full participation at every crucial stage.
- The ultimate conclusion that would therefore be reached is that this is not a case where the Tribunal has decided a ground which was never raised by the revenue, a suggestion which is otherwise made by the assessee but cannot be accepted. The fact that the revenue moved with great speed need not be conclusive. How long that the arguments last, merely because it was the group of appeals which was listed at serial Nos. 1 to 18 arguments were heard ahead of other appeals, whether the Commissioner's decision was conveyed to the revenue's representative who was present before the Tribunal telephonically allowing him to proceed to raise the ground without written communication are issues not possible perhaps not necessary to be finally commented upon. No conclusive evidence is found to hold that the Tribunal entertained a ground which was not raised.
- The second important conclusion is that the Tribunal did act somewhat informally in the process. The assessee was not given an opportunity to oppose this additional ground being raised by the revenue in these two years and more importantly, oppose the ground on merits.
- The inevitable result of these conclusions would be that the revenue's appeals for the said two assessment years 1998-99 and 2000-01 would have to be placed back before the Tribunal on this limited issue. Ordinarily, the matter would have been placed back before the Tribunal at a stage where the revenue would be allowed to press its application for adding this ground for the said two assessment years and the assessee would be allowed to oppose even this request. However, the assessee agreed that the matter be remanded to the Tribunal for considering afresh the revenue's ground for the said two assessment years 1998-99 and 2000-01 allowing the assessee full

opportunity to oppose the additions pressed by the revenue on this ground. In other words, the assessee would not object the revenue's request for raising this additional ground for the said two assessment years.

- Under the circumstances, the petitions are allowed in part. The impugned judgment of the Tribunal is set aside to the limited extent where the Tribunal has allowed the revenue's appeals for the assessment years 1998-99 and 2000-01 on the additional ground of deletion of suppression of net profit by the Commissioner (Appeals) on the basis of diary called black diary seized during the search. For such purpose Tribunal's findings on this issue are set aside for fresh independent disposal in accordance with law.
- Order passed by the Tribunal in the miscellaneous application does not survive. Petitions are disposed of accordingly.