



IN THE HIGH COURT OF DELHI

CWP No. 1884/2000 & CM 3069/2000

Date of Decision: 15th May, 2000

M/s Maruti Udyog Ltd.,
New Delhi

..... Petitioner

Through: Mr. O.P. Vaish, Senior
Advocate with Mr. Santosh
K. Aggarwal, Advocate.

VERSUS

The Income-tax Appellate Tribunal Respondents
New Delhi & Others

Through: Mr. Sanjeev Khanna, Senior
Standing Counsel with
Mrs. Prem Lata Bansal,
Junior Standing Counsel.

CORAM:

THE HON'BLE MR. JUSTICE ARIJIT PASAYAT, CHIEF JUSTICE
THE HON'BLE MR. JUSTICE D.K. JAIN

1. Whether reporters of local papers may be allowed to see the judgment? *Yes*
2. To be referred to the Reporter or not? *Yes*

Arijit Pasayat, C.J. (Oral)

1. A short but interesting question which arises for adjudication in this writ petition is whether the Income-tax Appellate Tribunal (in short the 'Tribunal') was required to record reasons while admitting additional grounds of appeal.

2. Factual position is almost undisputed. A request was made for admission of additional grounds in the appeal filed by the Revenue in ITA Nos. 5858/98, 7583/97, 7042/99, 5331/98 and 5382/97 relating to the assessment years 1991-92 to 1995-96. The assessments



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in question were made under Section 143(3) of the Income-tax Act, 1961(in short the 'Act'). Tribunal passed the following order:

"After going through the request for admission of additional grounds of appeal filed by the Department hearing both the sides, going through case laws as well as written submissions made in this regard, we admit the additional grounds of appeal sought to be admitted by department and treat these appeals as part-heard to come up for hearing on 28th April, 2000. However, reasons for admitting the additional grounds shall be incorporated in the order to be passed in appeals."

3. According to learned counsel for the petitioner, course adopted by the Tribunal does not have sanction of law. It was required to first record reasons for admitting the additional grounds instead of observing that the same shall be incorporated in the order to be passed in the appeals. According to learned counsel for the revenue, there is nothing illicit in the order to warrant interference.

4. Rule 11 of the Income-tax(Appellate ~~Tribunal~~) Rules, 1963(for short the rules) deals with power of Tribunal to permit additional grounds to be urged. The same reads as follows:

"11. The appellant shall not, except by leave of the Tribunal, urge or be heard in support of any ground not set forth in the memorandum of appeal, but the Tribunal, in deciding the appeal, shall not be confined to the grounds set forth in the memorandum of appeal or taken by leave of the Tribunal under this rule:

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Provided that the Tribunal shall not rest its decision on any other ground unless the party who may be affected thereby has had a sufficient opportunity of being heard on that ground."

5. The requirement to record reasons is inherent in the provision itself because of the proviso. It has been clearly indicated that the Tribunal shall not rest its decision on any other ground unless the party who may be affected thereby has had a sufficient opportunity of being heard on that ground. The appellant is not permitted to urge a point not set forth in the memorandum of appeal, without the leave of the Tribunal. Even otherwise, the Tribunal has to exercise such discretion judiciously and not arbitrarily. It has discretion in appropriate cases to allow any party to the appeal to raise a new ground before it. Powers of the Tribunal referable to Rule 11 are judicial in nature and cannot be exercised in an arbitrary manner at the pleasure of the Tribunal. Whether permission should be given or not would depend basically on the facts of each case. That is why reasons are necessary to be recorded. Reason is the soul of law. Principles of natural justice have assumed a wider horizon these days. Right to reason is, therefore, an indispensable part of sound system of judicial review. Without reason an order becomes soulless, lifeless. Reasons are the links between the materials on which certain conclusions are based and



the actual conclusions. Reason pre-supposes logic. The various stages of reasoning should be properly inter-linked. Jumping to a particular conclusion overlooking any intermediate fact or event is a process opposed to reason. The giving of reasons is one of the fundamentals of good administration as observed by Lord Denning in Breen v. Amalgamated Engineering Union (1971) 1 All ER 1148. The requirement of furnishing reasons is a shackle on acting arbitrarily and whimsically. It is the only visible safeguard against possible injustice and arbitrariness. They disclose how the mind is applied to the subject matter of a decision, whether it is considered in the set up of purely administrative or quasi-judicial order. They should reveal a rational nexus between the facts and the conclusions reached. Only in this way opinions or decisions recorded be shown manifestly just and reasonable. The failure to give reasons can lead to a very justifiable complaint that there has been a breach of natural justice. Reasons if given substitute objectivity for subjectivity. An order has to be reasoned or speaking order. A speaking order means an order speaking for itself. To put it simply, every order must contain reasons in support of it. Giving of reasons in support of an order is considered to be the third principle of natural justice; the other two being (a)



no man shall be a judge in his own cause, and (b) hear the other side, or both sides must be heard, or no man should be condemned unheard. A party has a right to know not only the decision, but also the reasons in support of the decision. Reasoned orders are necessary if judicial review is to be effective. The condition to record reasons introduces clarity and excludes arbitrariness. The principle requiring reasons to be given in support of an order is a basic principle of natural justice which must inform every quasi-judicial process and it must be observed in its proper spirit and mere pretence of compliance with it would not satisfy the requirement of law.

6. The Tribunal itself was conscious of the position because it observed that the reasons for admitting the additional grounds shall be incorporated in the order to be passed in the appeals. What the Tribunal was required to do was to indicate the reasons first and then take up the appeal for final disposal. The reverse order seems to have been adopted by the Tribunal which is not proper. If aggrieved by the order permitting new grounds to be urged, a party can challenge the same in the appropriate forum. At the stage, Tribunal permits it to be done, reasons are to be indicated.

7. Learned counsel for the Revenue brought to our notice decision of the Apex Court in National Thermal



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Power Co. Ltd v. C.I.L., (1998) 229 ITR 383 to contend that Tribunal is within its jurisdiction to permit urging of additional grounds. The said decision dealt with the scope and ambit of Section 254 of the Act. It was observed, inter alia, that the Tribunal will not be prevented from considering questions of law arising in assessment proceedings although not raised earlier. It goes without saying that additional grounds can be raised. But, what is important to be noted is the methodology to be adopted while granting permission to the applicant to urge additional grounds of appeal. Though it was contended before us by learned counsel for the petitioner that even going by the parameters laid down by the Apex Court in National Thermal Power Company Ltd's case (supra) the Tribunal could not have permitted the additional grounds of appeal to be admitted, we do not think it necessary to go into that question because the Tribunal shall record reasons pursuant to our order. It is open to the parties to take such pleas as are available to be taken before the Tribunal on the question whether additional grounds of appeal shall be permitted to be urged or not. The parties shall appear before the Tribunal without any further notice on 4th July, 2000 and if the parties want to place any further material in respect to the application for admission of additional grounds, or in

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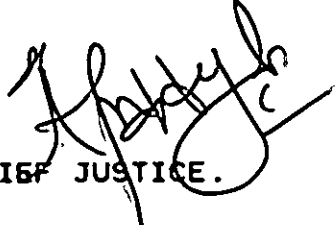
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opposition to it, the Tribunal shall permit that to be taken.

8. The writ petition stands disposed of in these terms.

A copy of the order be given Dasti to counsel for the respondent.



CHIEF JUSTICE.



D.K.JAIN, J.

15th May, 2000
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