IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION

INCOME TAX APPEAL NO. 3908 OF 2010

Commissioner of Income Tax, Central-I,]
Room No.1001, Old CGO Building]
Annexure, Maharshi Karve Marg,]
Mumbai – 400 020] ... Appellant

Vs

M/s. Pruthvi Brokers & Shareholders]
Pvt. Ltd., PS/19, Rotunda Building,]
B.S. Marg, Fort, Mumbai – 400 023.] ... Respondent

Mr. Vimal Gupta with Ms. Padma Divakar for the Appellant.

Mr. J.D. Mistri, senior counsel - amicus curiae, for the Respondent.

CORAM : S.J. VAZIFDAR, &
M.S. SANKLECHA, JJ.

THURSDAY, 21ST JUNE, 2012

ORAL JUDGMENT. : [Per S.J. Vazifdar, J.]

1. This is an appeal under section 260-A of the Income Tax Act, 1961, against the order of the Income Tax Appellate Tribunal (hereinafter referred to as “the Tribunal”), dismissing the appellant's appeal against the order of the Commissioner of Income Tax

(Appeals) [CIT(A)], upholding the respondent/assessee's claim for deduction under section 43B relating to the assessment year 2004-05.

The appellant seeks to raise the following questions of law :

(A) Whether, an assessee can amend a return filed by him for making additional claim for deduction other than filing a Revised Return?

(B) Whether, on the facts and circumstances of the case, the Hon'ble Income Tax Appellate Tribunal, in law, was right in holding that a claim of deduction not made in the original return and not supported by a revised return, is admissible?

(C) Whether, on the facts and in the circumstances of the case, the Hon'ble Tribunal, in law, was right in not appreciating the fact that the AO has no power to entertain a claim made by

an assessee after filing a original return otherwise than by filing a Revised Return?

2. As the respondent remained absent, Mr. J.D. Mistri, the learned senior counsel was requested to appear as amicus curiae. We would, at the outset, like to express our appreciation for his assistance. He took us through the material part of the record and invited our attention to the relevant judgments to enable us to deal with this appeal.

3. It is important to note two things. Firstly, the respondent is entitled to the deduction claimed. Secondly, the respondent made the claim not only before the Assessing Officer, but also independently before the CIT (Appeals) and the Tribunal. The question that arises in this appeal is whether the CIT (Appeals) and/or the ITAT had the jurisdiction to consider a new/additional claim/deduction subsequently raised before the Assessing Officer which, through inadvertence, was not claimed in the return of income filed by the respondent.

The question is answered in the affirmative by several judgments. We intend revisting them to deal with two residual aspects raised on behalf of the appellant.

4(A). On 18th October, 2004, the respondent filed its return for the assessment year 2004-05. The same was processed under section 143(1) on 31st March, 2005. A notice under section 143(2) was issued on 10th August, 2005. The respondent was also served with a letter dated 24th June, 2006, calling for certain information.

(B). During the proceedings, it was noticed that the respondent had claimed a deduction under section 43B in respect of payment of SEBI fees of Rs.10,00,000/- each paid on 16th July, 2004 and 29th April, 2004 i.e. during the financial year 2004-05, relevant to assessment year 2005-06. Thus, admittedly, for the relevant assessment year viz. 2004-05, the respondent was not entitled to a deduction in respect of the said payments.

5. The respondent, in the course of the proceedings before the

Assessing Officer, stated that the claim was made through inadvertence. The respondent, however, made a claim of Rs.40,00,000/- under section 43-B also being payment of the SEBI fees but made on 9th May, 2003 i.e. in the assessment year in question. The respondent, in its response to the AO, stated *inter-alia*, as under :

> *"Further the assessee company had made another payment of SEBI fees of Rs.40,00,000/- on 09.5.2003 which pertains to provisions made for the F.Y. 2001-02 and should be allowed on payment basis. However, during the assessment year 2004-05, by inadvertence the assessee company claimed a deduction of Rs.20,00,000/- only as against the correct claim of Rs.40,00,000/-. Therefore, in A.Y. 2004-05 the assessee company is entitled to a total deduction of Rs.40,00,000/- as against Rs.20,00,000/- claimed by the assessee in its return of income filed for the assessment year in question. We are enclosing herewith copies of proof of payments of SEBI fees for Rs.40,00,000/-, Rs.10,00,000/- & Rs.10,00,000/-."*

6. The Assessing Officer rejected the claim on the ground that he had no authority to allow any relief or deduction which had not been claimed in the return.

7. We will, for the purpose of this appeal, presume that the Assessing Officer was not entitled to and had no authority to allow the deduction of Rs.40,00,000/-. Mr. Mistri submitted that there is no bar

to an assessee making a claim by a letter without filing a revised return in a case under section 143(3). Mr. Mistri also submitted that the impugned order of the Tribunal can be upheld on the basis of a circular issued by the CBDT. It is not necessary to decide these submissions as the matter is concluded in the respondent's favour on the basis of his next submission.

We find well founded, Mr. Mistri's submission that even assuming that the Assessing Officer is not entitled to grant a deduction on the basis of a letter requesting an amendment to the return filed, the appellate authorities are entitled to consider the claim and to adjudicate the same.

8. That the respondent raised the claim before the Commissioner of Income-tax (Appeals) [CIT(A)] and the ITAT is clear.

(A) The respondent filed an appeal before the CIT(A) against the assessment order which was allowed by an order dated 1st August, 2008.

The order clearly indicates that the respondent had made an application for deduction under section 43-B in respect of the said

sum of Rs.40,00,000/- before the CIT(A). For instance, paragraph 2.2 refers to the respondent's submissions before the CIT(A). The submissions referred to the various judgments which support Mr. Mistri's proposition. It is of vital importance to note that it was stated before the CIT(A) that in view of the judgments, the CIT(A) "*can certainly entertain the claim of the applicant and allow the deduction U.s. 43B of the I.T. Act*". Thus, the respondent had expressly contended that apart from everything else, the CIT(A) can entertain the said claim. It is also important to note that paragraph 3.1 of the order records the details of and refers to the material evidencing the payment of Rs.40,00,000/- towards SEBI fees on 9th May, 2003. The order records that the evidence was produced in the paper book filed in the appeal. This meets Mr. Gupta's contention on behalf of the appellant that in any event, the fact of payment of Rs.40,00,000/- had neither been stated by the respondent nor considered in the impugned order. The operative part of the order of the CIT(A) reads as under :-

> *"3.8 As the amount of Rs.40 lacs has been paid as Fee to SEBI during F.Y. 03-04 and the provisions of sec.43B clearly states that such payments are to be allowed only on actual payment, the sum of Rs.40 lacs, is, therefore, allowable. The A.O. is directed to allow the deduction of Rs.40 lakhs u/s.43B of the*

I.T.Act.

*4. The appeal is **allowed.**"*

It is also important to note that in the appeal filed by the appellant before the Tribunal, there is no challenge to the CIT(A) having entertained the respondent's claim for deduction on the ground that the appellate authority had no jurisdiction to do so. Even if such a contention had been raised, it would make no difference.

(B) The Tribunal disposed of the appellant's appeal by the impugned order dated 24th November, 2009.

9. The order of the CIT(A) and the order of the Tribunal impugned in this appeal have held in favour of the respondent by granting the said deduction on various grounds. As we mentioned earlier, it is sufficient to dispose of this appeal on just one of the grounds.

10. A long line of authorities establish clearly that an assessee is entitled to raise additional grounds not merely in terms of legal submissions, but also additional claims to wit claims not made in the

return filed by it. It is necessary for us to refer to some of these decisions only to deal with two submissions on behalf of the department. The first is with respect to an observation of the Supreme Court in *Jute Corporation of India Limited v. Commissioner of Income Tax, 1991 Supp (2) SCC 744 = (1991) 187 ITR 688.* The second submission is based on a judgment of the Supreme Court in *Goetze (India) Limited v. Commissioner of Income Tax, (2006) 157 Taxman 1*.

11(A). In *Jute Corporation of India Limited v. CIT*, for the assessment year 1974-75 the appellant did not claim any deduction of its liability towards purchase tax under the provisions of the Bengal Raw Jute Taxation Act, 1941, as it entertained a belief that it was not liable to pay purchase tax under that Act. Subsequently, the appellant was assessed to purchase tax and the order of assessment was received by it on 23rd November, 1973. The appellant challenged the same and obtained a stay order. The appellant also filed an appeal from the assessment order under the Income Tax Act. It was only during the hearing of the appeal that the assessee claimed an additional deduction

in respect of its liability to purchase tax. The Appellate Assistant Commissioner (AAC) permitted it to raise the claim and allowed the deduction. The Tribunal held that the AAC had no jurisdiction to entertain the additional ground or to grant relief on a ground which had not been raised before the Income Tax Officer. The Tribunal also refused the appellant's application for making a reference to the High Court. The High Court upheld the decision of the Tribunal and refused to call for a statement of case. It is in these circumstances that the appellant filed the appeal before the Supreme Court.

The Supreme Court held as under :-

> "5. In CIT v. Kanpur Coal Syndicate, a three Judge bench of this Court discussed the scope of Section 31(3)(a) of the Income Tax Act, 1922 which is almost identical to Section 251(1)(a). The court held as under: (ITR p. 229)
>
> > *"If an appeal lies, Section 31 of the Act describes the powers of the Appellate Assistant Commissioner in such an appeal. Under Section 31(3)(a) in disposing of such an appeal the Appellate Assistant Commissioner may, in the case of an order of assessment, confirm, reduce, enhance or annul the assessment; under clause (b) thereof he may set aside the assessment and direct the Income Tax Officer to make a fresh assessment. The Appellate Assistant Commissioner has, therefore, plenary powers in disposing of an appeal. The scope of his power is co-terminus with that of the Income-tax*

> *Officer. He can do what the Income-tax Officer can do and also direct him to do what he has failed to do." (emphasis supplied)*
>
> ***6.*** *The above observations are squarely applicable to the interpretation of Section 251(1)(a) of the Act. The declaration of law is clear that the power of the Appellate Assistant Commissioner is co-terminus with that of the Income Tax Officer, if that be so, there appears to be no reason as to why the appellate authority cannot modify the assessment order on an additional ground even if not raised before the Income Tax Officer. No exception could be taken to this view as the Act does not place any restriction or limitation on the exercise of appellate power. Even otherwise an Appellate Authority while hearing appeal against the order of a subordinate 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 appears to be no good reason and none was placed before us 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."* [emphasis supplied]

(B) It is clear, therefore, that an assessee is entitled to raise not merely additional legal submissions before the appellate authorities, but is also entitled to raise additional claims before them. The appellate authorities have the discretion whether or not to permit such

additional claims to be raised. It cannot, however, be said that they have no jurisdiction to consider the same. They have the jurisdiction to entertain the new claim. That they may choose not to exercise their jurisdiction in a given case is another matter. The exercise of discretion is entirely different from the existence of jurisdiction.

12. At page 694, after referring to certain observations of the Supreme Court in *Additional Commissioner of Income-tax v. Gurjargravures P. Ltd., (1978) 111 ITR 1*, the Supreme Court observed at Page 694 as under :-

> *"The above observations do not rule out a case for raising an additional ground before the Appellate Assistant Commissioner if the ground so raised could not have been raised at that particular stage when the return was filed or when the assessment order was made, or that the ground became available on account of change of circumstances or law. There may be several factors justifying raising of such new plea in appeal, and each case has to be considered on its own facts. If the Appellate Assistant Commissioner is satisfied he would be acting within his jurisdiction in considering the question so raised in all its aspects. Of course, while permitting the assessee to raise an additional ground, the Appellate Assistant Commissioner should exercise his discretion in accordance with law and reason. He must be satisfied that the ground raised was bona fide and that the same could not have been raised earlier for good reasons. The satisfaction of the Appellate Assistant*

> *Commissioner depends upon the facts and circumstances of each case and no rigid principles or any hard and fast rule can be laid down for this purpose."* [emphasis supplied]

13. The underlined observations in the above passage do not curtail the ambit of the jurisdiction of the appellate authorities stipulated earlier. They do not restrict the new/additional grounds that may be taken by the assessee before the the appellate authorities to those that were not available when the return was filed or even when the assessment order was made. The sentence read as a whole entitles an assessee to raise new grounds/make additional claims :-

> "*if the ground so raised could not have been raised at that particular stage when the return was filed or when the assessment order was made....*"
>
> "*or*"
>
> if "*the ground became available on account of change of circumstances or law*"

The appellate authorities, therefore, have jurisdiction to deal not merely with additional grounds, which became available on account of change of circumstances or law, but with additional grounds which

were available when the return was filed. The first part viz. "*if the ground so raised could not have been raised at that particular stage when the return was filed or when the assessment order was made...*" clearly relate to cases where the ground was available when the return was filed and the assessment order was made but "*could not have been raised*" at that stage. The words are "*could not have been raised*" and not "*were not in existence*". Grounds which were not in existence when the return was filed or when the assessment order was made fall within the second category viz. where "the ground became available on account of change of circumstances or law."

14. The facts in *Jute Corporation of India Ltd.*, various judgments referred to therein as well as in subsequent cases, which we will refer to, establishes this beyond doubt. In many of the cases, the grounds were, in fact, available when the return was filed and/or the assessment order was made. In *Jute Corporation of India Ltd.*, the ground was available when the return was filed. The assessee did not claim any deduction of its liability to pay purchase tax as "*it entertained a belief that it was not liable to pay purchase tax under*

the Bengal Raw Jute Taxation Act, 1941". Thus, the ground existed when the return was filed. The assessment order was even made and received by the assessee. It is only after the appeal was filed that the assessee claimed a deduction in respect of the amount paid towards the purchase tax under the said Act. It is also significant to note that the assessee's entitlement to claim deduction had been held to be valid in view of an earlier judgment of the Supreme Court in *Kedarnath Jute Manufacturing Company Limited v. Commissioner of Income-tax, (1971) 82 ITR 363*. This was, therefore, a case of error in perception/judgment. Despite the same, the Supreme Court upheld the decision of the Appellate Assistant Commissioner in allowing the deduction. The words "*could not have been raised*" must, therefore, be construed liberally and not strictly.

15. It is indeed a question of exercise of discretion whether or not to allow an assessee to raise a claim which was not raised when the return was filed or the assessment order was made. As held by the Supreme Court there may be several factors justifying the raising of a new plea in appeal and each case must be considered on its own facts.

However, such cases include those, where the ground though available when the return was filed or the assessment order was made, was not taken or raised for reasons which the appellate authorities may consider valid. In other words, the jurisdiction of the appellate authorities to consider a fresh or new ground or claim is not restricted to cases where such a ground did not exist when the return was filed and the assessment order was made.

16(A). A Full Bench of this Court in *Ahmedabad Electricity Limited v. Commissioner of Income-tax, (1993) 199 ITR 351* considered a similar situation. In that case, the appellant/assessee did not claim a deduction in respect of the amounts it was required to transfer to contingencies reserve and dividend and tariff reserve either before the Income Tax Officer or before the Appellate Assistant Commissioner in appeal. Subsequently, this Court had, in *Amalgamated Electricity Company Limited v. Commissioner of Income-tax, (1974) 97 ITR 334,* held that such amounts represented allowable deductions on revenue account. The appellant, therefore, raised a new claim and additional grounds before the Tribunal in that

connection. The Tribunal rejected the same. The second question which was raised in the reference before the Division Bench was as under :-

> *"(2) Whether, on the facts and in the circumstances of the case, the Tribunal erred in not allowing the assessee leave to raise in its own appeals additional grounds and in the departmental appeals cross objections regarding the deductibility of the sums transferred to contingency reserve and tariff and dividend control reserve?"*

(B) The Division Bench which heard the reference, finding that there was a conflict of decisions, placed the papers before the Hon'ble Chief Justice for constituting a larger bench to resolve the controversy. The Full Bench answered the reference in the affirmative and in favour of the assessee. The Full Bench held :-

> *"Thus, the Appellate Assistant Commissioner has very wide powers while considering an appeal which may be filed by the assessee. He may confirm, reduce, enhance or annul the assessment or remand the case to the Assessing Officer. This is because, unlike an ordinary appeal, the basic purpose of a tax appeal is to ascertain the correct tax liability of an assessee in accordance with law. Hence an Appellate Assistant Commissioner also has the power to enhance the tax liability of the assessee although the Department does not have a right of appeal before the Appellate Assistant Commissioner. The Explanation to sub-section (2), however, makes it clear that for the purpose of enhancement, the Appellate Assistant Commissioner cannot travel beyond the proceedings*

> *which were originally before the Income-tax Officer or refer to new sources of income which were not before the Income-tax Officer at all. For this purpose, there are other separate remedies provided under the Income-tax Act."*

(C) It is unnecessary to refer to all the judgments that the Full Bench referred to while answering the reference. The Full Bench referred to the observations of the Supreme Court in *Jute Corporation of India Limited v. Commissioner of Income-tax* (supra) set out above. It is important to note that even in this case, therefore, the ground existed when the return was filed. The mere fact that a decision of a court is rendered subsequently does not indicate that the ground did not exist when the law was enacted. Judgments are only a declaration of the law. The assessee could have raised the ground in its return itself. It did not have to await a decision of a court in that regard. Indeed, even if a judgment is against an assessee, it is always open to the assessee to claim the deduction and carry the matter higher. The words "*could not have been raised*", therefore, cannot be read strictly. Neither the Supreme Court nor the Full Bench of this Court meant them to be read strictly. They include cases where the assessee did not raise the claim for a reason found to be reasonable or valid by the

appellate authorities in the facts and circumstances of a case.

17. The next judgment to which our attention was invited by Mr. Mistri is the judgment of a Bench of three learned Judges of the Supreme Court in *National Thermal Power Company Limited v. Commissioner of Income-tax, (1997) 7 SCC 489 = (1998) 229 ITR 383*. In that case, the assessee had deposited its funds not immediately required by it on short term deposits with banks. The interest received on such deposits was offered by the assessee itself for tax and the assessment was completed on that basis. Even before the Commissioner of Income-tax (Appeals), the inclusion of this amount was neither challenged by the assessee nor considered by the Commissioner of Income-tax (Appeals). The assessee filed an appeal before the Tribunal. The inclusion of the amount was not objected to even in the grounds of appeal as originally filed before the Tribunal.

Subsequently, the assessee by a letter, raised additional grounds to the effect that the said sum could not be included in the total income. The assessee contended that on a erroneous admission, no income can be included in the total income. It was further contended

that the ITO and the Commissioner of Income-tax (Appeals) had erred and failed in their duty in adjudicating the matter correctly and by mechanically including the amount in the total income. It is pertinent to note that the assessee contended that it was entitled to the deduction in view of two orders of the Special Benches of the Tribunal and the assessee further stated that it had raised these additional grounds on learning about the legal position subsequently.

The Tribunal declined to entertain these additional grounds. The Supreme Court did not answer the question on merits, but framed the following question and held as under :-

> ***"4.*** *The Tribunal has framed as many as five questions while making a reference to us. Since the Tribunal has not examined the additional grounds raised by the assessee on merit, we do not propose to answer the questions relating to the merit of those contentions. We reframe the question which arises for our consideration in order to bring out the point which requires determination more clearly. It is as follows:*
>
> > *"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."*
>
> *Under Section 254 of the Income Tax Act the Appellate Tribunal may, after giving both the parties to the appeal an opportunity of being heard, pass such orders thereon as it thinks fit. The power of the*

> *Tribunal in dealing with the appeals is thus expressed in the widest possible terms. The purpose of the assessment proceedings before the taxing authorities is to assess correctly the tax liability of an assessee in accordance with law. If, for example, as a result of a judicial decision given while the appeal is pending before the Tribunal, it is found that a non-taxable item is taxed or a permissible deduction is denied, we do not see any reason why the assessee should be prevented from raising that question before the Tribunal for the first time, so long as the relevant facts are on record in respect of that item. We do not see any reason to restrict the power of the Tribunal under Section 254 only to decide the grounds which arise from the order of the Commissioner of Income Tax (Appeals). Both the assessee as well as the Department have a right to file an appea1/cross-objections before the Tribunal. We fail to see why the Tribunal should be prevented from considering questions of law arising in assessment proceedings although not raised earlier."*

18. In the case before us, the CIT(A) and the Tribunal have held the omission to claim the deduction of Rs.40,00,000/- to be inadvertent. Both the appellate authorities held, after considering all the facts, that the assessee had inadvertently claimed a deduction of Rs.20,00,000/- paid after the end of the year in question. We see no reason to interfere with this finding. We see less reason to interfere with the exercise of discretion by the appellate authorities in permitting the respondent to raise this claim. That the respondent is entitled to the

deduction in law is admitted and, in any event, clearly established. In the circumstances, the respondent ought not be prejudiced.

19. The orders of the CIT(A) 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 Corporation Limited. This is clear from the fact that these judgments have been expressly referred to in detail by the CIT(A) and by the Tribunal.

20. We wish to clarify that both the appellate authorities have themselves considered the additional claim and allowed it. They have not remanded the matter to the Assessing Officer to consider the same. Both the orders expressly direct the Assessing Officer to allow the deduction of Rs.40,00,000/- under section 43B of the Act. The Assessing Officer is, therefore, now only to compute the respondent's tax liability which he must do in accordance with the orders allowing the respondent a deduction of Rs.40,00,000/- under section 43B of the

Act.

21. The conclusion that the error in not claiming the deduction in the return of income was inadvertent cannot be faulted for more than one reason. It is a finding of fact which cannot be termed perverse. There is nothing on record that militates against the finding. The appellant has not suggested, much less established that the omission was deliberate, mala-fide or even otherwise. The inference that the omission was inadvertent is, therefore, irresistible.

22. It was then submitted by Mr. Gupta that the Supreme Court had taken a different view in *Goetze (India) Limited v. Commissioner of Income-tax, (2006) 157 Taxman 1*. We are unable to agree. The decision was rendered by a Bench of two learned Judges and expressly refers to the judgment of the Bench of three learned Judges in *National Thermal Power Company Limited vs. Commissioner of Income-tax* (supra). The question before the Court was whether the appellant-assessee could make a claim for deduction, other than by filing a revised return. After the return was filed, the appellant sought

to claim a deduction by way of a letter before the Assessing Officer. The claim, therefore, was not before the appellate authorities. The deduction was disallowed by the Assessing Officer on the ground that there was no provision under the Act to make an amendment in the return of income by modifying an application at the assessment stage without revising the return. The Commissioner of Income-tax (Appeals) allowed the assessee's appeal. The Tribunal, however, allowed the department's appeal. In the Supreme Court, the assessee relied upon the judgment in *National Thermal Power Company Limited* contending that it was open to the assessee to raise the points of law even before the Tribunal. The Supreme Court held :-

> *"4. The decision in question is that the power of the Tribunal under section 254 of the Income-tax Act, 1961, is to entertain for the first time a point of law provided the fact on the basis of which the issue of law can be raised before the Tribunal. The decision does not in any way relate to the power of the Assessing Officer to entertain a claim for deduction otherwise than by filing a revised return. In the circumstances of the case, we dismiss the civil appeal. However, we make it clear that the issue in this case is limited to the power of the assessing authority and does not impinge on the power of the Income-tax Appellate Tribunal under section 254 of the Income-tax Act, 1961. There shall be no order as to costs."*
> [emphasis supplied]

23. It is clear to us that the Supreme Court did not hold anything contrary to what was held in the previous judgments to the effect that even if a claim is not made before the assessing officer, it can be made before the appellate authorities. The jurisdiction of the appellate authorities to entertain such a claim has not been negated by the Supreme Court in this judgment. In fact, the Supreme Court made it clear that the issue in the case was limited to the power of the assessing authority and that the judgment does not impinge on the power of the Tribunal under section 254.

24. A Division Bench of the Delhi High Court dealt with a similar submission in *Commissioner of Income-tax v. Jai Parabolic Springs Limited, (2008) 306 ITR 42*. The Division Bench, in paragraph 17 of the judgment held that the Supreme Court dismissed the appeal making it clear that the decision was limited to the power of the assessing authority to entertain a claim for deduction otherwise than by a revised return and did not impinge on the powers of the Tribunal. In paragraph 19, the Division Bench held that there was no prohibition on the powers of the Tribunal to entertain an additional ground which,

according to the Tribunal, arises in the matter and for the just decision of the case.

25. In the circumstances, it is not necessary to decide the other questions raised by Mr. Mistri.

26. The appeal is, therefore, dismissed.

M.S. SANKLECHA, J. ***S.J. VAZIFDAR, J.***