IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No.27735 of 2007

With

TAX APPEAL No.26 of 2007

To

TAX APPEAL No.29 of 2007

For Approval and Signature:

HONOURABLE MR.JUSTICE D.A.MEHTA Sd/-

HONOURABLE MR.JUSTICE S.R.BRAHMBHATT Sd/-

1	Whether Reporters of Local Papers may be allowed to see the judgment ?	**YES**
2	To be referred to the Reporter or not ?	**YES**
3	Whether their Lordships wish to see the fair copy of the judgment ?	**NO**
4	Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?	**NO**
5	Whether it is to be circulated to the civil judge ?	**NO**

GUJ. MINERAL DEVELOPMENT CORPN. LTD-Petitioner(s)

Versus

INCOME TAX APPELLATE TRIBUNAL

THRO' DEPUTY REGISTRAR & 1 - Respondent(s)

Appearance :

MS NITI P. SHETH for MRS SWATI SOPARKAR for the Petitioner

MR M R BHATT, SENIOR ADVOCATE, with MRS MAUNA M BHATT for Respondent(s) : 1 - 2.

CORAM : HONOURABLE MR.JUSTICE D.A.MEHTA
and
HONOURABLE MR.JUSTICE S.R.BRAHMBHATT

Date : 19/02/2009

COMMON CAV JUDGMENT

(Per : HONOURABLE MR.JUSTICE D.A.MEHTA)

1. In light of the view that the Court is inclined to adopt, the petition is taken up for final hearing and disposal today. RULE. Learned counsel for the respondent-department is directed to waive service. Tax Appeals have

already been admitted vide order dated 20.09.2007 by formulating the following substantial question of law:

Whether the Appellate Tribunal is right in law and on facts in dismissing the Appeal of the revenue on the ground that approval of Committee of Dispute was not obtained ?

2. The petitioner of Special Civil Application is a ***Public Sector Undertaking of Government of Gujarat established in 1963.*** The appellant, in all the four appeals, is the Commissioner of Income-tax. The petition and the tax-appeals are taken up for hearing together as the controversy involved in all the matters is one and the same and arises out of a common order of the Income-tax Appellate Tribunal, Ahmedabad Bench 'A' (the Tribunal) dated 31.01.2006 in appeals filed both by revenue and the assessee before the Tribunal. The Assessment Years in question are 1988-89, 1994-95, 1996-97 and 1997-98. It is not necessary to set out the dispute between Income-tax Department and the assessee as the Tribunal has without going into merits of the matter non-suited the parties by refusing to admit the appeals filed before the Tribunal without approval of committee of disputes, referred to by the Tribunal as COD.

3. Both on behalf of the petitioner-assessee and the Income-tax Department a grievance was made against the impugned order made by the Tribunal contending that the Tribunal has committed a serious error in law in not admitting the appeals by misunderstanding the Apex Court decision in

the case of Oil and Natural Gas Commission & Anr. Vs. Collector of Central Excise, 1992 Supp (2) SCC 432. It was further submitted that the reliance by the Tribunal on the decision of Rajasthan High Court in the case of State of Rajasthan Vs. Income Tax Appellate Tribunal, [2003] 259 ITR 686 (Raj.) is also unwarranted and the view expressed by High Court of Rajasthan has since been not agreed with by the Andhra Pradesh High Court in the case of Andhra Pradesh Power Generation Corporation Ltd. Vs. Assistant Commissioner of Income-tax and Anr., [2006] 280 ITR 388 (AP). The learned counsel submitted that reliance by the Tribunal on the order of Hyderabad Bench of ITAT in the case of Singareni Collieries Limited as well as Hyderabad Bench order in case of Transmission Corporation of Andhra Pradesh Limited Vs. ACIT (2005) 97-ITD-171 (Hyd) is erroneous in as much as in the said orders the Benches of Tribunal, as well as in the impugned order, the Apex Court decisions have been wrongly applied without appreciating the context in which the orders have been made by the Apex Court.

4. This is a classic case where the impugned order of the Tribunal has forced both the sides to approach the High Court and that too only in relation to approach of the Tribunal. The dispute is not in relation to the merits of the controversy between the parties. **The question that is therefore, required to be posed and answered, both in the petition and the appeals is : *Whether***

Income-tax Appellate Tribunal has the powers to make an order as regards admissibility or otherwise of an appeal filed in the Tribunal?

5. Before taking up this issue one may consider the case law, more particularly, the orders made by the Supreme Court of India from time to time to appreciate the reading of the said orders by the Tribunal, the understanding thereof by the Tribunal, and the consequential approach of the Tribunal.

6. The first in point of time is an order made by the Apex Court in the case of Oil and Natural Gas Commission & Anr. Vs. Collector of Central Excise, 1992 Supp (2) SCC 432 whereby the order made as Record of Proceedings has been reproduced. On a dispute between ONGC, a Public Sector Undertaking of Central Government, and Central Excise Department of the Central Government, as to whether excise duty on lean gas supplied to consumers was leviable or not, the Apex Court made the following interim order:

> *3. This Court has on more than one occasion pointed out that Public Sector Undertakings of Central Government and the Union of India should not fight their litigations in Court by spending money on fees of counsel, court fees, procedural expenses and wasting public time. Courts are maintained for appropriate litigations. Court's time is not to be consumed by litigations which are carried on either side at public expenses from the source.*
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> *Notwithstanding these observations repeated on a number of occasions, the present cases appear to be an instance of total*

callousness. The letter of October 3, 1988, indicated that the Cabinet Secretary was looking into the matter. That has not obviously been followed up. As an instance of wasting public time and energy this matter involves a principle to be examined at the highest level.

4. The Cabinet Secretary is called upon to handle this matter personally and report to this Court within four weeks as to why this litigation is being conducted when the two sides are a public sector undertaking and the Union of India. The report of the Cabinet Secretary should be supported by an affidavit of a responsible officer. The matter be placed again before us on October 11, 1991.

7. Therefore, this order was merely an order calling upon the Cabinet Secretary to handle the matter personally as regards litigation between a Public Sector Undertaking of the Central Government and a Department of Union of India.

8. The next decision in line is between the same two parties viz. Oil and Natural Gas Commission & Anr. Vs. Collector of Central Excise, 1995 Supp (4) SCC 541 whereby the following order came to be made by the Court after recording the report of the Cabinet Secretary in Paragraph No.2 of the order:

    1. We are happy to find that the Cabinet Secretary has taken the appropriate initiative as indicated in our order dated 11-9-1991 and has reported to us that the dispute between the Government Department and the public sector undertaking of

the Union of India has been settled. In that view of the matter no further action is necessary on the petition.

2. xxx

3. We direct that the Government of India shall set up a Committee considering of representatives from the Ministry of Industry, the Bureau of Public Enterprises and the Ministry of Law, to monitor disputes between Ministry and Ministry of Government of India, Ministry and public sector undertakings of the Government of India and public sector undertakings in between themselves, to ensure that no litigation comes to Court or to a Tribunal without the matter having been first examined by the Committee and its clearance for litigation. Government may include a representative of the Ministry concerned in a specific case and one from the Ministry of Finance in the Committee. Senior officers only should be nominated so that the Committee would function with status, control and discipline.

4. It shall be the obligation of every Court and every Tribunal where such a dispute is raised hereafter to demand a clearance from the Committee in case it has not been so pleaded and in the absence of the clearance, the proceedings would not be proceeded with.

5. The Committee shall function under the ultimate control of the Cabinet Secretary but his delegate may look after the matters. This Court would expect a quarterly report about the functioning of this system to be furnished to the Registry beginning from 1-1-1992.

6. Our direction may be communicated to every High Court for information of all the courts subordinate to them.

1. The aforesaid directions in Paragraph No.3 make it clear that the directions were only to Government of India to set up a High Powered Committee (the Committee) to monitor disputes between Ministry and

Ministry of Government of India, Ministry and Public Sector Undertakings of Government of India, and Public Sector Undertakings in between themselves.

2. Paragraph No.4 of the judgment cannot be read to mean that every Court and every Tribunal shall demand a clearance from the Committee even if the litigating parties are not answering the description of the litigants who are to go before the Committee, or when the Committee would have no jurisdiction and powers where one of the litigants would not be amenable to the jurisdiction of the Committee, which has been constituted in compliance of the aforesaid two orders made by the Apex Court.

3. The third order in line is again between the same two parties viz. Oil and Natural Gas Commission & Anr. Vs. Collector of Central Excise, 2004 (6) SCC 437 whereby the Apex Court, after referring to its earlier two orders, has sought to set at rest certain doubts and problems that arose in the working of the arrangement by observing as under:

> 4. There are some doubts and problems that have arisen in the working out of these arrangements which require to be clarified and some creases ironed out. Some doubts persist as to the precise import and implications of the words and recourse to litigation should be avoided . It is clear that the order of this Court is not to the effect that nor can that be done so far as the Union of India and its statutory corporations are concerned, their

statutory remedies are effaced. Indeed, the purpose of the constitution of the High-Powered Committee was not to take away those remedies.

It is abundantly clear that the machinery contemplated is only to ensure that no litigation comes to court without the parties having had an opportunity of conciliation before an in-house committee.

4. ***Once again the aforesaid observations make it clear that the scope of powers of the Committee only relates to a dispute between Union of India and its statutory corporations and at no stage is either the State Government or a State Government Undertaking contemplated in the aforesaid arrangement. In fact the observations made in Paragraph No.6 of the aforesaid order make it clear that there should be no bar to the lodgment of an appeal or petition either by the Union of India or the Public Sector Undertakings before any Court or Tribunal so as to save limitation. But, before such an appeal or petition is filed every endeavor should be made to have the clearance from the Committee. Once again indicating that the observations in all the three orders made, referred to hereinbefore, relate to disputes between different Departments of Union of India, or a Department and Public Sector Undertaking of Union of India, or Public Sector Undertakings of Central Government amongst themselves.***

5. The fourth decision in line is in the case of Chief Conservator of Forests, Govt. of A.P. Vs. Collector & Ors., (2003) 3 SCC 472 where a dispute arose as to certain lands, the State of Andhra Pradesh, through Chief

Conservator of Forests, Government of Andhra Pradesh, claiming to be in possession of those lands, and legal representatives of one Shri Raja S.V. Jagannadha Rao claiming to the owners of the lands as pattedars. The Revenue Department, through the Collector, Mahboob nagar district, accepted the claim made by pattedars on the basis of a report by the Commissioner of Survey, Settlement and Land Records, and the said decision was accepted by the Government of Andhra Pradesh, but the Chief Conservator of Forests was of the view that the opinion expressed by Commissioner of Survey, Settlement and Land Records was not correct and thus filed a writ petition in the High Court of Andhra Pradesh challenging the said decision. The pattedars had also carried the matter through the Civil Court by seeking a declaration in their favour and the said litigation also landed before the Apex Court by way of a Civil Appeal filed by the Chief Conservator of Forests. In the back drop of the aforesaid facts the Apex Court observed as under:

14. Under the scheme of Constitution, Article 131 confers original jurisdiction on the Supreme Court in regard to a dispute between two States of the Union of India or between one or more States and the Union of India. It was not contemplated by the framers of the Constitution or CPC that two departments of a State or the Union of India will fight a litigation in a court of law. It is neither appropriate nor permissible for two departments of a State or the Union of India

to fight litigation in a court of law. Indeed, such a course cannot but be detrimental to the public interest as it also entails avoidable wastage of public money and time. Various departments of the Government are its limbs and, therefore, they must act in coordination and not in confrontation. Filing of a writ petition by one department against the other by invoking the extraordinary jurisdiction of the High Court is not only against the propriety and polity as it smacks of indiscipline but is also contrary to the basic concept of law which requires that for suing or being sued, there must be either a natural or a juristic person. The States/Union of India must evolve a mechanism to set at rest all interdepartmental controversies at the level of the Government and such matters should not be carried to a court of law for resolution of the controversy. In the case of disputes between public sector undertakings and the Union of India, this Court in *Oil and Natural Gas Commission v. CCE* called upon the Cabinet Secretary to handle such matters. In *Oil and Natural Gas Commission vs. CCE* this Court directed the Central Government to set up a committee consisting of representatives from the Ministry of Industry, the Bureau of Public Enterprises and the Ministry of Law, to monitor disputes between Ministry and Ministry of Government of India, Ministry and public sector undertakings of the Government of India and public

sector undertakings in between themselves, to ensure that no litigation comes to Court or to a Tribunal without the matter having been first examined by the Committee and its clearance for litigation. Government may include a representative of the Ministry concerned in a specific case and one from the Ministry of Finance in the Committee. Senior officers only should be nominated so that the Committee would function with status, control and discipline.

15. The facts of this appeal, noticed above, make out a strong case that there is a felt need of setting up of similar committees by the State Government also to resolve the controversy arising between various departments of the State or the State and any of its undertakings. It would be appropriate for the State Governments to set up a committee consisting of the Chief Secretary of the State, the Secretaries of the departments concerned, the Secretary of Law and where financial commitments are involved, the Secretary of Finance. The decision taken by such a committee shall be binding on all the departments concerned and shall be the stand of the Government.

14. Thereafter, the Apex Court held that the Chief Conservator of Forests, independent of State of Andhra Pradesh, had no authority or locus to approach the Court by initiating legal proceedings in his own name. In so far as the dispute emanating from the suit proceedings is concerned, the Apex Court upheld the judgment of the trial Court and refused to take a

view contrary to the statutory order made by Commissioner of Survey, Settlement and Land Records.

15. Thus, this judgment of the Apex Court clearly indicates in the first instance that the earlier three orders in the case of *ONGC Vs. Collector of Central Excise*, referred to hereinabove, do not at any stage envisage a dispute between two Departments of the State Government, nor was a dispute between a Department of Union of India and a Public Sector Undertaking of the State Government envisage or covered by the directions made in the aforesaid three orders. Hence, the aforesaid directions in Paragraph No.15, as reproduced herein a before in case of *Chief Conservator of Forests, Govt. of A.P. Vs. Collector & Ors.* (supra) directing various State Governments to set up similar committees to resolve controversy arising between various Departments of the State, or the State and any of its undertakings. In fact, in compliance with such directions the Government of Gujarat has already set up such a High Powered Committee for settlement of disputes between one Government Department and Public Sector Undertaking or between two Public Sector Undertakings or between a Government Department and a Grant-in-Aid Institution, etc. vide G.R. No.AIS-10-2005-CSR-66-G dated 06.02.2006. Despite the attention of the Tribunal having been invited to this Resolution the Tribunal failed to grasp the import of the same.

16. Thereafter, comes the order made by the Apex Court in the case of Mahanagar Telephone Nigam Ltd. Vs. Chairman, Central Board, Direct Taxes, & Anr., [2004] 267 ITR 647 (S.C.) whereby the dispute was again between a Central Government Undertaking and a Department of Union of India. The Apex Court has referred to all the three orders made in case of ONGC Vs. Collector of Central Excise as well as judgment in case of Chief Conservator of Forest Vs. Collector (supra). The Apex Court once again reiterated the object for which the aforesaid orders were made but has not stated that the Committee set up in compliance with the earlier three orders would have powers to deal with disputes between Department or Public Sector Undertaking of Union of India and a State Government, or a State Government Undertaking on the other hand.

17. Thus, the position as obtaining on a reading of all the five cases wherein the Apex Court has made orders or delivered judgment, makes it clear that in four matters the dispute was relatable to a Public Sector Undertaking of the Central Government and a Department of the Central Government, while in the fifth matter the dispute was between two Departments of the State Government of Andhra Pradesh. ***The directions made by the Apex Court and the observations in the four orders and the judgment have to be read in context and in backdrop of the controversy before the Apex Court, including the litigants who were before the Apex Court. There is not a single order made by the Apex Court which relates to***

a dispute between Union of India and a State, or a Department of Union of India and a State, or a Public Sector Undertaking of Union of India and a State, or between two States inter se, the term 'State' here to mean and include the State Government, a Department of the State Government or an Undertaking of the State Government.

18. Hence, it is not possible to expand the scope of directions made by the Apex Court so as to include a dispute between a Department of the Central Government and a State Government Undertaking. Therefore, the impugned order of Tribunal suffers from an error apparent in law and cannot be sustained. It is also necessary to take note of the fact that none of the aforesaid five cases even remotely suggest that the Committee set up by the Central Government would have jurisdiction to consider resolution of such disputes between a State and the Union, respective Departments and Undertakings included.

19. The contrary view expressed by Rajasthan High Court in the case of State of Rajasthan Vs. Income Tax Appellate Tribunal (supra) and Delhi High Court in the case of Commissioner of Income-tax, Delhi Tourism and Transportation Development Corporation Ltd., [2005] 274 ITR 35 (Delhi) does not appear to be a correct exposition of law and this Court is in respectful disagreement with the observations made therein. The Andhra Pradesh High Court has also in the case of Andhra Pradesh Power Generation Corporation Ltd. Vs. Assistant Commissioner of Income-tax

and Anr., [2006] 280 ITR 388 (A.P.) expressed a similar view and disagreed with Rajasthan and Delhi High Courts.

20. Furthermore, in so far as the judgment in case of State of *Rajasthan Vs. Income Tax Appellate Tribunal* (supra) is concerned, Rajasthan High Court has, after summarizing the case of *ONGC Vs. Collector of Central Excise,* gone on to refer to provisions of Sections 273A and 273B of the Income-tax Act, 1961 (the Act) to state that the Income Tax Department ought to have invited attention of the assessee to the said provisions. Then ultimately disposed of the appeal before it by holding that interest of justice will be served if recovery of amount of penalty imposed is stayed for six months or till the date of waiver application being decided by the Chief Commissioner of Income-tax Rajasthan. It is further stated that for the future Income-tax Department may impose penalty but no recovery should be made and the State Government or its Undertaking should be pointed out provisions of Section 273A of the Act for making necessary application for waiver. Thus, in effect, the said decision has not held that the tax appeal was not maintainable. Therefore, the impugned order of the Tribunal, when it relies on the aforesaid decision of Rajasthan High Court and goes on to hold that the appeal is not admitted, is an order which is not even in consonance with the view finally taken by Rajasthan High Court. The Court has already recorded hereinbefore that the Court does not agree with the view expressed by Rajasthan High Court.

21. However, apart from the aforestated position in law emerging on a reading of various orders and judgment of the Apex Court, there is one more fundamental aspect of the matter which requires to be stated. The Tribunal is a creature of statute as can be sen from provisions of Section 252(1) of the Act. The said provision mandates that the Central Government shall constitute an Appellate Tribunal comprising of as many judicial and accountant members as the Central Government may think fit for the purpose of exercising the powers and discharge the functions conferred on the Appellate Tribunal by the Act. In other words, the Tribunal is constituted under the provisions of Section 252(1) of the Act by the Central Government. Such a constituted Tribunal is required to exercise powers and discharge the functions conferred on the Tribunal by the Act. The Tribunal, therefore, cannot exercise powers or discharge functions which are not conferred on the Tribunal by the Act.

22. Section 253 of the Act lays down under sub-Section (1) thereof as to which orders can an aggrieved assessee challenge by way of filing an appeal before the Tribunal. Section 253(2) of the Act permits the Commissioner to file an appeal as stipulated therein. Sub-section (3) of Section 253 of the Act provides the period of limitation within which the appeal can be filed. Sub-section (4) of Section 253 of the Act permits filing of cross-objections by the non-appellant, namely, the respondent. Sub-section (5) of of Section 253 of the Act assumes importance in as much as it invests the

Tribunal with discretionary powers to admit an appeal or permit the filing of cross-objections after the expiry of the relevant period of limitation prescribed under sub-section (3) or (4), if the Tribunal is satisfied that there is sufficient cause for not presenting the appeal or the cross-objections within that period.

23. Section 254 of the Act lays down as to what orders can be made by the Tribunal. The said provision stipulates that after hearing both the parties to the appeal the Tribunal may pass such orders thereon as it thinks fit. Meaning thereby, on the appeal filed before the Tribunal.

24. Thus, on a conjoint reading of provisions of Sections 253 and 254 of the Act it becomes clear that the powers available to the Tribunal are governed by the said provisions. Sub-section (5) of Section 253 of the Act is an inherent indicator pointing to the fact that the Tribunal does not have powers to determine as to whether an appeal should be admitted or not, except to the extent provided by sub-section (5) in a case where the appeal or the cross-objections are presented beyond the prescribed period of limitation. Only then the Tribunal has discretion whether to admit an appeal or permit the filing of cross-objections. There is no other provision which stipulates that the Tribunal has any right of holding that an appeal cannot be admitted. Similarly, Section 254(1) of the Act stipulates that the Tribunal may pass order on an appeal filed by a party as it thinks fit, namely, after hearing the appeal. From the said provision it is not

possible to come to the conclusion that the Tribunal possesses any powers to determine whether an appeal, which is otherwise validly filed, deserves to be admitted or not. The use of the term thereon in the said provision has come up for consideration number of times before the Apex Court and various High Courts. To put it simply, the law on the subject is to the effect that the term thereon denotes the subject matter of appeal and circumscribes powers and jurisdiction of the Tribunal to deal with the subject matter of appeal. The Tribunal does not have powers to record any finding / direction in case of any other person not before the Tribunal, nor does the Tribunal have powers to lay down anything in relation to an assessment year which is not before the Tribunal. The Tribunal cannot issue any directions to any party beyond the subject matter of appeal. Therefore, this provision cannot be read to mean that the Tribunal has powers to hold that an appeal is not admitted.

25. Section 255 of the Act deals with the Procedure of the Tribunal and under sub-section (1) thereof it is provided that the powers and functions of the Tribunal may be exercised and discharged by Benches constituted by the President of the Tribunal. Namely, it is the President of the Tribunal, who has the prerogative to constitute a Bench and such a Bench is required to exercise the powers and discharge functions conferred on the Tribunal by the Act as laid down in Section 252(1) of the Act. Sub-section (5) of Section 255 of the Act provides that, subject to the provisions of the Act,

the Tribunal shall have the power to regulate its own procedure in all matters arising out of the exercise of its powers or in course of discharge of its functions, including the places at which the Benches may hold sittings.

26. Hence, to regulate the procedure Income-tax (Appellate Tribunal), Rules, 1963 (the ITAT Rules) have been framed. Under Rule 4 of the ITAT Rules, it is provided that a Bench shall hear and determine such appeals and applications made under the Act as per directions issued by the President vide general or special order. This Rule denotes the assignment of work to a Bench constituted under the Act. The Rule does not enlarge the scope of powers available to a Bench.

27. Rule 7 of the ITAT Rules provides that the Registrar, or, the authorized officer shall endorse the date of presentation of the appeal and shall sign the endorsement. Vide Order No.1 of 1973 dated 01.10.1973 various Assistant Registrars of different Benches at various stations have been authorized to endorse on Memorandum of Appeal the date of presentation, with a further permission that if the appellant apprehends that the appeal is to be presented on the last date of limitation, the appeal may be presented at the residence of the Assistant Registrar, or even to a member of the Tribunal, at his residence or wherever the Assistant Registrar or the Tribunal may be. Thus, this Rule and the Office Order indicate that for the purposes of determining the period of limitation an endorsement on Memorandum of appeal is a must. Thus, the Rule has,

in given set of circumstances, direct nexus with the powers available to the Tribunal under sub-section (5) of Section 253 of the Act, namely, the powers of condonation in case of a belated appeal.

28. Rule 12 of the ITAT Rules permits the Tribunal in its discretion to reject a Memorandum of Appeal, if it is not in the prescribed form or return the Memorandum for being amended within such time as the Tribunal may grant. This provision is one more pointer to the fact that the Tribunal otherwise does not possess any power to hold that an appeal is not to be admitted.

29. Rule Nos.23, 24 and 25 of the ITAT Rules deal with hearing of the appeal and when one reads all the three Rules together it becomes clear that the Tribunal has to hear the appeal on merits and only in stipulated circumstances can the Tribunal dispose of the appeal ex-parte.

30. At the end of the ITAT Rules vide Circular bearing F.No.114-AD(AT)/69 dated 13.04.1970 various guidelines titled as NOTES are laid down. Even the said guidelines do not indicate anywhere that there are any powers available with the Tribunal to dismiss an appeal by holding that it is not admitted. To the contrary on reading of the said guidelines it becomes clear that filing of an appeal is automatic once the statutory requirements are complied with.

31. A conjoint reading of the provisions of the Act noted hereinbefore and the ITAT Rules referred to hereinabove, it becomes clear that the Tribunal

being a creature of the Statute, having been constituted under the provisions of the Act cannot exercise any powers beyond the powers available under the Act, and cannot discharge functions not provided under the Act, as well as the ITAT Rules which deal with the procedural part of filing and hearing an appeal. The Tribunal, therefore, cannot arrogate to itself the powers and jurisdiction which the Tribunal does not possess.

32. In the present case the impugned order reveals that the Tribunal has assumed powers which it does not have, for determining whether the appeal is to be admitted or not. The Tribunal has lost sight of the fact that, both the assessee and the revenue, are statutorily vested with a right under the Act by virtue of Section 253(1), 253(2) and 253(4) of the Act to file an appeal or cross-objections. Such right granted by the Statute cannot be divested by the Tribunal on an erroneous assumption of powers arrogated to itself under a mistaken belief of law.

33. There is therefore, no such requirement in the facts of the case to approach the Committee as the assessee herein and the Income Tax Department cannot be asked to go and obtain clearance from a Committee which has no jurisdiction over them. Even the provisions of the Act and the ITAT Rules do not permit exercise of such powers by the Tribunal.

34. The impugned order therefore cannot be sustained and is hereby quashed and set aside and both, the petition filed by the assessee, and the tax appeals filed by the revenue, are required to be allowed. The petition stands allowed in the aforesaid terms. Rule made absolute to the aforesaid extent. Tax Appeals filed by Revenue are also allowed. There shall be no order as to costs.

35. The appeals filed by the assessee and the revenue before the Tribunal being ITA Nos.2726, 2727 & 2728/Ahd/2000 and ITA No.1031/Ahd/1999, ITA Nos.89, 90 & 91/Ahd/2001 and ITA No.908/Ahd/1999 stand restored to file of the Tribunal for being heard and decided afresh on merits in accordance with law.

36. Registry to place a copy of this order in connected matters.

Sd/-

[D. A. MEHTA, J]

Sd/-

[S.R.BRAHMBHATT, J]

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