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**(1970) 04 MAD CK 0019**  
**In the Madras High Court**  
**Case No : Writ Petition No. 427 of 1970**

Easun Engineering Company Ltd.

APPELLANT

Vs

The Joint Commercial Tax Officer, Esplanade Division I and  
Another

RESPONDENT

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**Date of Decision :** 02-04-1970

**Acts Referred:**

**Citation :** (1971) 84 LW 414 : (1971) 2 MLJ 67 : (1970) 26 STC 486

**Hon'ble Judges :** Ramaprasada Rao, J;Ramanujam, J

**Bench :** Division Bench

**Advocate :** V. Ramachandran, for the Appellant;

**Final Decision :** Dismissed

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## Judgement

Ramaprasada Rao, J.—This writ petition arises in proceedings under the Madras General Sales Tax Act. The petitioner who did not

canvass the propriety of the assessing authority in respect of a portion of its turnover and did not file any ground of appeal to that effect before the

appellate authority appears to have argued that position before the appellate authority and claimed relief. The appellate authority not being seized

of the matter was obliged to consider only the subject-matter of the appeal. As against the order of the appellate authority the petitioner took up

the same to the Appellate Tribunal and it appears from the record that even there in the first instance, its dispute was about the subject-matter

which was agitated before the appellate authority. But some time later it filed an application for reception of additional grounds of appeal, which,

according to the petitioner, was necessitated because of the pronouncement of this court in *Larsen and Toubro Ltd. v. Joint Commercial Tax*

Officer [1967] 20 S.T.C. 150. The tribunal curiously enough considered this application in extenso and finally allowed the same by stating that the additional grounds may be received and consequentially the petitioner was directed amend the memorandum of appeal. When the main appeal came up for hearing, an objection was taken by the State Representative and in our view rightly, that the scope of the appeal before the Appellate Tribunal was very much limited and it could only relate to the subject matter of the appeal before the Appellate Assistant Commissioner and could not be extended any further, merely because the application for reception of additional grounds of appeal was allowed. It is not in dispute before us that the additional grounds of appeal, the facts relating thereto and the materials in support thereof were not formally and in the prescribed manner agitated before the revenue at any time before. In fact Mr. Ramachandran concedes that this was only casually argued before the Appellate Assistant Commissioner, though it was not the subject-matter of appeal before him. It is in this situation that the appeal, in so far as it related to the additional grounds and the matters connected thereto, was not maintainable. The Appellate Tribunal, after considering the contentions of the parties, came to the conclusion that the appeal was not maintainable not only for the reason that the additional grounds could not be agitated before it, but also because the petitioner was not an aggrieved person in the sense that it did obtain the relief asked for by it before the appellate authority. Even this fact is not in dispute. Mr. Ramachandran says that the appeal of the petitioner was allowed by the Appellate Assistant Commissioner and it got the necessary relief asked for before him. Apparently, the only reason why the petitioner filed a further appeal to the Appellate Tribunal was that it wanted to agitate for the first time the question which it thought fit not to raise and contend before the Appellate Assistant Commissioner. A mere argument by a counsel at or about the time when an appeal is taken up for hearing before the Appellate Assistant Commissioner but which argument does not deal with by him. Such arguments might have been addressed for reasons known to the petitioner, but in so far as they have no impact upon the controversy raised in the appeal, they should be deemed to be non est in the eye of law. Any further appeal on the ground that the appellate authority did not advert itself to such contentions, which could not be raised in the further appeal is,

therefore, not maintainable. The Tribunal came to the correct conclusion. A fortiori, this is so in so far as the appeal relates to the additional

grounds. It cannot be said that merely because the Tribunal allowed the application to amend the grounds of appeal, it is bound to consider it at the

time when the main appeal comes up for hearing. No question of estoppel or election arises in such circumstances. When an amendment of the

grounds of appeal is allowed, one cannot easily expect the Tribunal to advert itself to the main appeal and there is no occasion at all to do so.

Therefore, when the main appeal was set for hearing, it had jurisdiction to say that the appeal before it was not maintainable in the eye of law. The

Tribunal exercised its jurisdiction which it has. There is no other error apparent on the face of the record.

2. The writ petition is dismissed.