

**IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH 'E', NEW DELHI**

Before Sh. N. K. Saini, AM And Sh. Kuldip Singh, JM

ITA Nos. 5549 to 5551/Del/2013 : Asstt. Years : 2008-09 to 2010-11

M/s Mahaveer Audhogik Asthan (Sansthan), C/o-M/s RRA Tax India, D-28, South Extension, Part-I, New Delhi-110049	Vs	Income Tax Officer, Haldwani
(APPELLANT)		(RESPONDENT)
PAN No. AABAM2111Q		

Assessee by : Sh. Rakesh Gupta, Adv.

Revenue by : Sh. P. Dam Kanunjna, Sr. DR

Date of Hearing : 17.05.2016

Date of Pronouncement : 19.05.2016

ORDER

Per N. K. Saini, AM:

These three appeals by the assessee are directed against the separate orders each dated 23.07.2013 of the ld. CIT(A)-II, Dehradun.

2. In all these appeals the assessee has moved applications for admission of the additional grounds by stating therein that these additional grounds are purely legal grounds, did not require fresh facts to be investigated and go to the root of the matter, therefore, these grounds to be admitted. The reliance has been placed on the judgment of

the Honøble Supreme Court in the case of National Thermal Power Company Ltd. Vs CIT (1998) 229 ITR 383.

3. The additional grounds raised by the assessee in the different assessment year i.e. assessment years 2008-09 to 2010-11 are reproduced as under:

Assessment Year 2008-09

“1. That having regard to the facts and circumstances of the case, Ld. CIT(A) has erred in law and on facts in not quashing the impugned assessment order framed by Ld. AO and that too without assuming jurisdiction as per law and without complying with mandatory conditions as envisaged u/s 147 to 151 of the Income Tax Act, 1961.

2. That in any case and in any view of the matter, income which has been assessed is wrong in as much as the cost of acquisition of the land ought to have been taken at the price adopted while calculating capital gain in the hands of the member of the AOP.

Assessment Year 2009-10

“1. That in any case and in any view of the matter, income which has been assessed is wrong in as much as the cost of acquisition of the land ought to have been taken at the price adopted while calculating capital gain in the hands of the member of the AOP.”

Assessment Year 2010-11

“1. That in any case and in any view of the matter, income which has been assessed is wrong in as much as the cost of acquisition of the land ought to have been taken at the price adopted while calculating capital gain in the hands of the member of the AOP.”

4. During the course of hearing the Id. Counsel for the assessee reiterated the contents of the aforesaid applications moved by the assessee for admission of the additional grounds. It was further stated that these grounds go to the root of the matter and all the relevant material is already available on the record which do not require any verification or investigation at the level of the ITAT, therefore, these grounds may be admitted. He also submitted that as grounds now raised were not earlier raised before the Id. CIT(A), therefore, the matter may be restored to the file of the Id. CIT(A) for adjudication of these grounds. The Id. DR although supported the impugned orders passed by the Id. CIT(A) but did not object if the matter to be restored to the Id. CIT(A) for adjudication of these additional grounds.

5. We have considered the submissions of both the parties and carefully gone through the material available on the record. In the present case, it is an admitted fact that the additional grounds now raised by the assessee were not

earlier raised before the Id. CIT(A). However, these grounds are very much relevant and go to the root of the matter, so these legal grounds deserve to be admitted as per the ratio laid down by the Honorable Supreme Court in the case of National Thermal Power Company Ltd. Vs CIT (1998) 229 ITR 383 (supra) wherein it has been held as under:

“The power of the Tribunal in dealing with appeals is thus expressed in the widest possible terms. The purpose of the assessment proceedings before the taxing authorities is to assessee 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, there is no 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 the item. There is no reason to restrict the power of the Tribunal under section 254 only to decide the grounds which arise from the order of the Commission of Income-tax (Appeals). Both the assessee as well as the Department have a right to file an appeal/cross-objections before the Tribunal. The Tribunal should not be prevented from considering questions of law arising in assessment proceedings, although not raised earlier. The view that the Tribunal is confined only to issues arising out of the appeal before the Commissioner (Appeals) is too narrow a view to take of the powers of the Tribunal.”

It has further been held that:

“Undoubtedly, the Tribunal has the discretion to allow or not to allow a new ground to be raised. But where the Tribunal is only required to consider the question of law arising from facts which are on record in the assessment proceedings, there is no reason why such a question should not be allowed to be raised when it is necessary to consider that question in order to correctly assess the tax liability of an assessee.”

6. In view of the ratio laid down by the Honøble Apex Court, the additional grounds moved by the assessee are admitted and as both the parties agreed for restoration of these grounds to the Id. CIT(A) for adjudication. Therefore, these grounds are restored to the file of the Id. CIT(A) to be adjudicated in accordance with law after providing due and reasonable opportunity of being heard to the assessee.

7. In the result, appeals of the assessee are allowed for statistical purposes.

(Order Pronounced in the Court on 19/05/2016)

Sd/-
(Kuldip Singh)
JUDICIAL MEMBER

Sd/-
(N. K. Saini)
ACCOUNTANT MEMBER

Dated: 19/05/2016

Subodh

Copy forwarded to:

1. Appellant
2. Respondent
3. CIT
4. CIT(Appeals)
5. DR: ITAT

ASSISTANT REGISTRAR