

**IN THE INCOME TAX APPELLATE TRIBUNAL
"E" Bench, Mumbai**

**Before Shri P K Bansal, Vice President
and Shri Pawan Singh, Judicial Member**

ITA No.2937 /Mum/2013
(Assessment Year: 2008-09)

Shri Sunilkumar O. Kochhar Assistant Commissioner of
601, 6th Floor, Amore Income Tax - 19(3)
2nd & 4th Road, Near Khar Vs. Mumbai
Kabutar Khan, Khar (W)
Mumbai 400052

PAN – AAOPK8359A

Appellant

Respondent

Appellant by: Shri Subramaniam
Respondent by: Shri V. Justine

Date of Hearing: 30.10.2017
Date of Pronouncement: 31.10.2017

ORDER

Per P.K. Bansal, Vice President

This appeal has been filed by the assessee against the order of the CIT(A)-30, Mumbai dated 04.02.2013 for A.Y. 2008-09.

2. The assessee in this appeal has taken as many as 12 grounds of appeal. All these grounds mainly relate to the issue regarding addition made under Section 2(22)(e) of the Income Tax Act.

3. At the outset we noted that the assessee has taken ground No. 8 before us which reads as under: -

“8) On the facts and circumstances of the case, the C.I.T.(A) erred in not giving any finding to the additional ground of appeal which was submitted to the C.I.T.(A) on 09/01/2013 in the course of hearing and which runs as follows: -

1) On the facts and circumstances of the case, the appellant was not given opportunity of being heard to submit his reply

on the various reasoning as relied upon by the Assessing Officer in making addition of Rs.2,15,96,360/- being income from deemed dividend U/s. 2(22)(e) is made.”

4. After hearing rival submissions on this ground in our opinion, will have bearing on the decision of other grounds. We found that the assessee had taken this ground as an additional ground before the CIT(A) on 09.01.2013. The CIT(A) while adjudicating the appeal of the assessee has not decided the ground. Neither he has admitted nor rejected the said ground. If the assessee had taken a ground as additional ground, the CIT(A) is bound to give a finding whether he is admitting the ground or not. If the ground is admitted he is bound to decide the ground on merit treating this ground to be part of the main ground. In our view this additional ground taken by the assessee before the CIT(A) will have a bearing on the other grounds taken by the assessee before the CIT(A) and it will affect the decision of the CIT(A). We, therefore, in the interest of justice and fair play to both the parties set aside the order of the CIT(A) and restore the additional ground as well other grounds to the file of the CIT(A) with the direction that the CIT(A) should first decide the additional ground on merits in case he admits the additional ground. Once the additional ground is decided the other ground are also be decided afresh in accordance with law as this additional ground, in our opinion, will have a bearing on the other grounds taken by the assessee.

5. In the result, the appeal filed by the assessee is allowed for statistical purposes.

Order pronounced in the open court on 31st October, 2017.

Sd/-
(Pawan Singh)
Judicial Member

Sd/-
(P.K. Bansal)
Vice President

Mumbai, Dated: 31st October, 2017

Copy to:

1. *The Appellant*
2. *The Respondent*
3. *The CIT(A) -30, Mumbai*
4. *The CIT - 19, Mumbai*
5. *The DR, "E" Bench, ITAT, Mumbai*

By Order

//True Copy//

*Assistant Registrar
ITAT, Mumbai Benches, Mumbai*

n.p.