

**IN THE INCOME TAX APPELLATE TRIBUNAL
“SMC” BENCH, MUMBAI**

**BEFORE SHRI R. C. SHARMA, AM &
SHRI SANDEEP GOSAIN, JM**

आयकरअपीलसं./ I.T.A. No. 4859/Mum/2017
(निर्धारणवर्ष / Assessment Year: 2010-11)

Deepak L. Kulpe 16/A, MayaramPandyChawl, KhotwadiBasant Road, Santacruz (west), Mumbai- 400054	बनाम/ Vs.	ITO-26(2)(2) C-12, BandraKurla Complex, Bandra (west) Mumbai – 400054.
स्थायीलेखासं ./जीआइआरसं ./PAN/GIR No. AFUPK9907P		
(अपीलार्थी/Appellant)	:	(प्रत्यर्थी / Respondent)

अपीलार्थीकीओरसे/ Appellant by	:	Shri Mayur R. Makadia, AR
प्रत्यर्थीकीओरसे/Respondentby	:	Ms. N. Hemlatha, DR

सुनवाईकीतारीख/ Date of Hearing	:	18/04/2018
घोषणाकीतारीख / Date of Pronouncement	:	20/04/2018

आदेश / ORDER

Per Sandeep Gosain, Judicial Member:

The present Appeal filed by the assesseeis against the order of Commissioner of Income Tax (Appeals)-46, Mumbai, dated 24.04.17 for AY 2010-11.

2. At the very outset, our attention was drawn towards application dated 10/1/18 wherein the assessee want for seeking permission for raising additional ground of appeal.

3. We have heard the counsels for both the parties and we have also gone through the contents of the letter dated 10 /1/18 wherein the assessee has submitted that the assessment was reopened vide issue of notice u/s 148 dated 10/5/13.It was further contended that neither the notice under section 148 was served upon nor the reasons for reopening the assessment were communicated to him during the assessment proceedings. Therefore, now before us the assessee wants to file additional ground of appeal thereby challenging the reopening u/s 147 of the income tax act on the ground that mandatory notice under section 148 was not served on the assessee and the reasons for reopening the assessment have also not been communicated to the assessee.

After hearing the counsels of both the parties and after going through the contents contained in the application dated 10/1/18 and by keeping in view the principles laid down by the Hon'ble Supreme Court in the case of **NTPC versus CIT 229**

ITR 383 and also other judgements such as **Jute Corporation of India Ltd versus CIT 187 ITR 688 Supreme Court and Ahmedabad electricity company Ltd versus CIT 199 ITR 351 (Bombay)**, we are of the considered view that the ground which the assessee now wants to raise before us by way of additional ground is legal in nature and hence it can be raised at any point of time therefore ,we allow the assessee to raise this ground by way of additional ground of appeal and consequently, allow the application dated 10/1/18 and admit the additional ground raised by the assessee for adjudication.

4. We further noticed that through additional ground the assessee wants to challenge the order of AO in making assessment u/s 143 r.w.s 147 of the I.T.Act, without jurisdiction as the same was passed without serving notice u/s 148 of the I.T. Act which is mandatory requirement of law.

5. On perusal of the order passed by Ld. CIT(A), we noticed that this ground was not raised by the assessee before Ld CIT(A). In our considered view for adjudicating this ground, assessment records of the revenue are required to be analysed as it is categorically mentioned in the order of assessment dated

30.06.14 u/s 148 of the I.T. Act dated 10/5/13 was issued and served on the assessee. Therefore, in order to adjudicate the controversy, it is necessary to restore this ground back to the file of Ld CIT(A) while setting aside the order of Ld CIT(A) with a directions to adjudicate the additional ground raised by the assessee by passing a speaking order.

Before parting, we may make it clear that our decision to restore the matter back to the file of Ld. CIT(A) shall in no way be construed as having any reflection or expression on the merits of the dispute, which shall be adjudicated by the Ld. CIT(A) independently in accordance with law.

6. In the net result, the appeal filed by the assessee stands **allowed for statistical purposes.**

Order pronounced in the open court on 20th April, 2018.

Sd/-

Sd/-

(R.C. Sharma)

(Sandeep Gosain)

लेखासदस्य / Accountant Member न्यायिकसदस्य / Judicial Member

मुंबई Mumbai; दिनांक Dated : 20.04.2018

Sr.PS. Dhananjay

आदेशकीप्रतिलिपिअग्रेषित/Copy of the Order forwarded to :

1. अपीलार्थी/ The Appellant
2. प्रत्यर्थी/ The Respondent
3. आयकरआयुक्त(अपील) / The CIT(A)
4. आयकरआयुक्त/ CIT- concerned
5. विभागीयप्रतिनिधि, आयकरअपीलीयअधिकरण, मुंबई/ DR, ITAT, Mumbai
6. गार्डफाईल / Guard File

आदेशानुसार/ BY ORDER,

उप/सहायकपंजीकार

(Dy./Asstt.Registrar)

आयकरअपीलीयअधिकरण, मुंबई/ ITAT, Mumbai