

**IN THE INCOME TAX APPELLATE TRIBUNAL, RANCHI
BENCH, RANCHI**

BEFORE SHRI N.S.SAINI, ACCOUNTANT MEMBER
&
SHRI PAVAN KUMAR GADALE, JUDICIAL MEMBER

ITA No.149/Ran/2015
A.Y. : 2011-2012

Azhar Ali, Flat No.304, Mayank Aptt. Sector-4, New Delhi	vs	ITO, Ward-1(1),Ranchi
PAN No. : AISPA 8706 H		
(Appellant)	.	Respondent

Assessee by : Shri Anish Jain, CA
Revenue by : Shri P.K.Mondal, JCIT
Date of Hearing : 23.05.2018
Date of Pronouncement : 25.05.2018

O R D E R

Per Pavan Kumar Gadale, JM:

This is an appeal filed by the assessee against the order of CIT(A), Ranchi, dated 28.08.2015, for the assessment year 2011-2012.

2. In this appeal, though the assessee has raised seven grounds of appeal, however, at the time of hearing, Id. AR filed additional grounds of appeal along with additional evidences and submitted that certain facts have been overlooked, which goes to the root of the case and prayed for the additional ground along with additional evidences to be taken on record.
3. Ld.DR opposed to the submissions of Id.AR of the assessee.
4. We heard the rival submissions and perused the material on record. Prima facie, we find that the Id.AR of the assessee has filed additional

ground along with additional evidences before us for the first time, which were not filed/raised before the lower authorities. We support our view with the decision of Hon'ble Supreme Court in the case of **National Thermal Power Co. Ltd. vs Commissioner Of Income Tax 229 ITR 383 (SC)**, wherein it is held as under :-

Held

Under section 254, the Tribunal may, after giving both the parties to the appeal an opportunity of being heard, pass such orders thereon as it thinks fit. 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 assess 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 that 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 Commissioner (Appeals). Both the assessee as well as the department have a right to file an appeal/cross objections before the Tribunal. There is no reason why the Tribunal should 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) takes too narrow a view of the powers of the Tribunal. Undoubtedly, the Tribunal will have the discretion to allow or not allow a new ground to be raised. But where the Tribunal is only required to consider a question of law arising from the 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.

In the instant case, therefore, the Tribunal had jurisdiction to examine a question of law which arose from the facts as found by the lower authorities and having a bearing on the tax liability of the assessee.

Note: The case has been decided in favour of the assessee.

4. Respectfully following the decision of the Hon'ble Supreme Court we admit the additional ground supported with additional evidences raised by the assessee before us and remit the matter to the file of CIT(A), who shall examine and verify the additional evidences filed by the assessee and pass order in accordance with law and the assessee should be provided adequate opportunity of hearing before passing of the order. Thus, appeal of the assessee is allowed for statistical purposes.

Order pronounced in the open court on 25/05 /2018

Sd/-
(N.S.SAINI)

ACCOUNTANT MEMBER

Ranchi, Dated 25/05/2018

Prakash Kumar Mishra , Sr. Ps

Copy of the Order forwarded to :

1. The Appellant –
2. The Respondent –
3. The CIT(A) concerned
4. CIT , concerned
5. DR, ITAT, Ranchi
6. Guard file.

//True Copy//

Sd/-
(PAVAN KUMAR GADALE)
JUDICIAL MEMBER

BY ORDER,

SR.PS, ITAT, RANCHI