

**IN THE INCOME TAX APPELLATE TRIBUNAL,
MUMBAI BENCH "E", MUMBAI**

**BEFORE SHRI MAHAVIR SINGH, JUDICIAL MEMBER AND
SHRI RAJESH KUMAR, ACCOUNTANT MEMBER**

**ITA No.2892/M/2014
Assessment Year: 1999-2000**

M/s. Shakti Cable Industries, C/o. Southern Electric Corp., E.S. Patanwala Cross Road, Cotton Green, Mumbai - 400 033 PAN: AAAFS1211R	Vs.	DCIT 22(3), Mumbai
(Appellant)		(Respondent)

Present for:

Assessee by : Mrs. Ritika Agrawal, A.R.
Revenue by : Shri D.G. Pansari, D.R.

Date of Hearing : 18.09.2018
Date of Pronouncement : 29.10.2018

ORDER

Per Rajesh Kumar, Accountant Member:

The present appeal has been preferred by the assessee against the order dated 04.02.2013 of the Commissioner of Income Tax (Appeals) [hereinafter referred to as the CIT(A)] relevant to assessment year 1999-2000.

2. The assessee has raised various grounds of appeal numbering 1 to 7 raising a legal issue and also various issues on merit.

3. The ground No.2 raised by the assessee is against the order of Ld. CIT(A) upholding the order of AO despite the fact that statutory notice issued under section 143(2) of the Act was

served upon the assessee after expiry of 12 months from the end of the month in which the assessee has filed the return.

4. The Ld. Counsel of the assessee at the outset submitted that the issue was challenged before the Ld. CIT(A) by raising additional ground vide letter dated 07.08.2018 raising the issue that the assessment order is illegal and void ab-initio since statutory notice under section 143(2) was served after expiry of 12 months from the end of the month in which the assessee filed the return of income. Therefore, assessment order should be annulled on this ground. The Ld. CIT(A) dismissed the additional ground raised by the assessee by not admitting the same for the reason that assessee has failed to demonstrate cogent and good reasons as to why the additional ground not raised earlier. The ld AR stated that it should be admitted as laid down by the Hon'ble Supreme Court in the case of National Thermal Power Company Ltd. vs. CIT 229 ITR 383 (SC), Ahmedabad Electricity Company Ltd. vs. CIT (1993) 199 ITR 351 (Bom) and Jute Corporation India vs. CIT (1991) 187 (ITR) 688. According to the Ld. CIT(A) the assessee has not shown any reason or material due to which the said ground could not be raised in the first round of appeal either before the AO or before the Ld. CIT(A) or before the Tribunal and therefore finally denied the admission of this ground.

5. The Ld. D.R., on the other hand, heavily relied on the order of Ld. CIT(A) on this issue by submitting that the ground which was not raised in the first round of appeal either before the AO or before the Ld. CIT(A) or before the Tribunal was rightly rejected by the Ld. CIT(A) and deserved to be affirmed.

6. Having heard the rival submissions and perusing the material on record, we find that the issue raised by the assessee is a legal issue which is arising out of the assessment records which were before the authorities below even in the first round of appeal. We are of the considered view that since the issue is arising out of assessment records, the assessee is within its rights to raise the said issue at any stage. The case of the assessee is fully supported by the decision of the Apex Court in the case of National Thermal Power Company Ltd. vs. CIT 229 ITR 383 (SC), Ahmedabad Electricity Company Ltd. vs. CIT (1993) 199 ITR 351 (Bom) and Jute Corporation India vs. CIT (1991) 187 (ITR) 688. In our opinion, the ends of justice would be met and principles of natural justice would be satisfied if the assessee is given one more chance to present its case before the lower authorities. Accordingly, we are setting aside the appeal to the file of the AO to decide the legal issue on the facts as per law after affording a reasonable opportunity to the assessee. We are not deciding the issues raised on merit at this stage as we have already restored the appeal to the file of the AO for denovo assessment.

7. In the result, appeal of the assessee is partly allowed for statistical purpose.

Order pronounced in the open court on 29.10.2018.

Sd/-
(Mahavir Singh)
JUDICIAL MEMBER

Sd/-
(Rajesh Kumar)
ACCOUNTANT MEMBER

Mumbai, Dated: 29.10.2018.

* Kishore, Sr. P.S.

Copy to: The Appellant
The Respondent
The CIT, Concerned, Mumbai
The CIT (A) Concerned, Mumbai
The DR Concerned Bench

//True Copy//

By Order

Dy/Asstt. Registrar, ITAT, Mumbai.