

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

**Before Sh. N. S. Saini, Accountant Member**

**ITA No. 5520/Del/2018 : Asstt. Year : 2010-11**

Naresh Kumar Yadav, CA, M. R. Sahu, M Sahu & Associates, Chartered Accountants, House No. 651, 1 <sup>st</sup> Floor, Sector-10A, Gurgaon- 122001, Haryana	Vs	Income Tax Officer, Ward-3(1), Gurgaon-122016 Haryana
<b>(APPELLANT)</b>		<b>(RESPONDENT)</b>
<b>PAN No. AAZPY8849E</b>		

**Assessee by : Sh. M. R. Sahu, CA**

**Revenue by : Sh. S. L. Anuragi, Sr. DR**

<b>Date of Hearing: 05.02.2019</b>
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<b>Date of Pronouncement: 08.02.2019</b>
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**ORDER**

This is an appeal filed by the assessee against the order of CIT(A)-I, Gurgaon dated 28.06.2018.

2. The assessee in the appeal has challenged the reopening of assessment for the first time before the Tribunal by taking following grounds of appeal being grounds nos. 1 to 4 of the appeal:

*"1. That on the facts, and in the circumstances of the case and in law, Ld.CIT(A) erred in sustaining the reopening action of Ld.AO under section 148 made in violation of mandatory jurisdictional conditions stipulated under the Act.*

*2. That on the facts and in the circumstances of the case and in law, the appellant submits that stand alone Annual Information Return (AIR) data is not valid to believe that income has escaped assessment accordingly reassessment proceedings under section 147 is not sustainable in the eye's of law , hence order*

*passed under section 143(3)/147 of the I.T Act,1961 is invalid and deserves to be quashed.*

*3. That on the facts and in the circumstances of the case and in law, the appellant submits that information available with Ld. AO is restricted to cash deposit in bank account ,in absence of tangible, credible , cogent and relevant material to form a reason to believe that cash deposits represented income of the assessee, issuance of notice towards reassessment is not valid and accordingly reassessment proceedings under section 147 is without jurisdiction and deserves to be quashed.*

*4. That on the facts and in the circumstances of the case and in law, the appellant submits that the proceedings under section 147 are based on surmises, conjectures and suspicion and therefore, the reassessment proceedings are without jurisdiction and accordingly liable to be quashed.”*

3. During the course of hearing, the AR of the assessee was asked whether he has challenged the reopening of assessment before the CIT(A) by taking requisite ground of appeal. The AR of the assessee submitted that this is a legal ground which was not raised before the CIT(A) and is being raised for the first time before the Tribunal. He submitted that the legal ground can be raised for the first time before the Tribunal and for this he relied on the decision of the Hon'ble Supreme Court in the case of National Thermal Power Corporation Vs CIT 229 ITR 383.

4. On the other hand, the DR objected to the admission of the ground of appeal for reopening of the assessment raised for the first time before the Tribunal.

5. After considering the rival submissions, I am of the considered opinion that the assessee has challenged the

reopening of the assessment which goes to the root of the assessment order. This is a legal ground and in view of the decision of Hon'ble Supreme Court in the case of National Thermal Power Corporation Vs CIT 229 ITR 383 (supra), the legal ground can be raised by the assessee before the Tribunal for the first time. I therefore, admit the same for hearing.

6. I find that this ground was not raised before the CIT(A) by the assessee. I, therefore, deem it fit and proper to restore the grounds of appeal being ground nos. 1 to 4 of the appeal to the file of the CIT(A) for adjudication of the same. I order accordingly.

7. As I have restore the grounds of appeal challenging the reopening of assessment by the AO, the other grounds of appeal taken on merits of the addition being ground nos. 5 to 7 of the appeal are also restored back to the file of the CIT(A) for adjudication afresh.

8. In the result, the appeal of the assessee is allowed for statistical purposes.

(Order Pronounced in the Open Court on 08/02/2019).

**Sd/-**  
**(N. S. Saini)**  
**Accountant Member**

**Dated: 08/02/2019**

\*Subodh\*

Copy forwarded to:

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

**ASSISTANT REGISTRAR**