

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

Before Sh. N. S. Saini, Accountant Member

ITA No. 7131/Del/2018 : Asstt. Year : 2010-11

Amit Kumar, CA M.R. Sahu, M Sahu & Associates, CAs, House No. 651, 1 st Floor, Sector-10A, Gurgaon, Haryana-122001	Vs	Income Tax Officer, Ward-1(1), Gurgaon
(APPELLANT)		(RESPONDENT)
PAN No. AUPEK6598D		

**Assessee by : Sh. M. R. Sahu, FCA
Revenue by : Sh. S. L. Anuragi, Sr. DR**

Date of Hearing: 10.04.2019	Date of Pronouncement: 25.04.2019
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ORDER

This is an appeal filed by the assessee against the order of Commissioner of Income Tax (Appeals)-1, Gurgaon dated 13.09.2018.

2. The assessee has raised additional ground by which he has challenged the reopening of the assessment as bad in law. The said ground reads as under:

"1. That on the facts and in the circumstances of the case in law, the appellant submits that no notice under section 148 was not served upon the assessee and this grounds of appeal was raised before CIT(A) not adjudicated, accordingly reassessment proceeding under section 147 is without jurisdiction."

3. At the time of hearing, the Id. Counsel of the assessee submitted that the additional ground should be accepted as it is a legal ground which goes to the root of the assessment order and no fresh facts are required for

deciding the same and that in view of the decision of the Hon'ble Supreme Court in the case of National Thermal Power Corporation Vs CIT (1998) 229 ITR 383 (SC), the same should be admitted.

4. The Id. Departmental Representative vehemently objected to the admission of the additional ground of appeal.

5. I have heard the rival submissions and perused the orders of the lower authorities and materials available on record. I find that challenge to the order of reassessment being bad in law was not made by the assessee before the Commissioner of Income Tax (Appeals). This has been made for the first time before the Tribunal. I find that it is a legal issue and in view of the decision of the National Thermal Power Corporation Vs CIT (supra), the same is admissible and hence, I admit the same.

6. I also find that this ground of appeal was not taken before the Commissioner of Income Tax (Appeals) and therefore, I set aside this issue to the file of the Commissioner of Income Tax (Appeals) for adjudicating the same after allowing reasonable and proper opportunity of hearing to the assessee. Thus, this additional ground of appeal is allowed for statistical purposes.

7. As I have restored back the additional ground relating to reopening of assessment u/s 147 of the Act back to the file of the Assessing Officer, I restore the other grounds of appeal raised in this appeal also to the file of the Commissioner of Income Tax (Appeals) for adjudicating afresh as per law. Thus, the appeal of the assessee is allowed for statistical purposes.

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

(Order pronounced in the Court on 25th day of April, 2019 at New Delhi)

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

Dated: 25/04/2019

Subodh

Copy forwarded to:

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

ASSISTANT REGISTRAR