

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

**BEFORE SHRI N.K. CHOUDHRY, HON'BLE JUDICIAL MEMBER &  
SHRI D.S. SUNDER SINGH, HON'BLE ACCOUNTANT MEMBER**

**I.T.A. No. 333/VIZ/2019  
(Asst. Year : 2009-10)**

M/s. Sri Gayatri Academy for Technical Education,  
9-1-59/12, Sri Balaji Agencies Building, Main Road, Tadepalligudem.      Vs.      Income Tax Officer  
Ward-1, Tadepaligudem.

PAN No. AAAJT 2069 C  
(Appellant)

(Respondent)

Assessee by                   :      Shri C.Subrahmanyam, FCA  
Department by               :      Smt.Suman Malik, Sr.DR

Date of hearing             :      16/03/2021.  
Date of pronouncement:      06/04/2021.

**ORDER**

**PER N.K. CHOUDHRY, JUDICIAL MEMBER**

This appeal has been preferred by the Assessee against the order dated 20/03/2019 impugned herein passed by the Id. Commissioner of Income Tax (Appeals) [for short, "Id. Commissioner"], Tirupati u/sec. 250(6) of the Income Tax Act, 1961 (hereinafter referred to as "Act") for the A.Y. 2009-10.

**2.** The Assessee's case is that the Assessee has filed its return of income on dated 29/09/2009 under the provisions of section 139(1) of

the Act. The due date for issuing notice u/sec. 143(2) for converting the case into scrutiny was dated 30/09/2010, however, instead of converting the case into scrutiny and issuing notice u/sec. 143(2), the AO issued notice u/sec. 148 on dated 12/04/2010. As the time limit was available to the AO to complete the assessment u/sec. 143(3) by issuing notice u/sec. 143(2) on or before the stipulated date i.e. 30/09/2010 as provided in the Act, up to that time, the case could have been converted into regular scrutiny, however, the AO jumped into reopening of the case by issuing notice u/sec. 148 of the Act without completing the original assessment. Therefore, as per mandate of law and the propositions laid down by various Courts to the effect that unless the return of income already filed is disposed of, notice for reassessment u/sec. 148 of the Act is not warranted.

**3.** During the course of hearing, the Assessee has drawn our attention to the Assessee's petition dated 01/03/2021 filed before Bench and submitted that Assessee is not pressing the original grounds of appeal filed along with Form No.36, therefore the Hon'ble Bench may consider the said grounds as not pressed, however, the Assessee is pressing additional ground filed on dated 09/11/2020 before the Hon'ble ITAT being a legal ground, which in fact was not raised before the Id. CIT(A),

**4.** Ld. DR refuted the claim of the Assessee.

**5.** Having heard the parties and perused the material available on record. The Assessee has raised the additional ground which is extracted below:-

*“Issue of notice u/sec. 148 and completing the assessment u/sec. 143(3) r.w.s. 147 of the IT Act is bad in law, therefore, the impugned order is liable to be quashed since the assessment ought to have been completed u/sec. 143(3) by issue of notice u/sec. 143(2) of the IT Act considering the availability of statutory time limit for issue of such notice.”*

**5.1.** The Hon'ble Apex Court in the case of *NTPC Vs. CIT* [229 ITR 383 (SC)] while considering the fresh claim made by the Assessee for the first time before the Tribunal by way of an additional ground, laid down the following propositions: -

*“7. .... 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 we fail to see 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.”*

**5.2.** As the Assessee has raised a legal ground which is arising from the facts already on record in the assessment proceedings, hence we are inclined to allow the Assessee to raise the additional ground and consequently the additional ground raised is admitted for hearing. The Id. AR fairly submitted that the additional ground filed on dated 09/11/2020 was not raised before the Id. Commissioner therefore the Id. Commissioner can be directed to adjudicate the additional ground. Considering the peculiar facts and circumstances of the case, as the decision of the issue requires elaborate discussion of material facts, we consider it appropriate to set aside the order passed by the Id. Commissioner and to remand the case back to the file of the Id. Commissioner for decision afresh on the additional ground raised before Bench. Consequently, the case stands remanded back to the Id. Commissioner on the aforesaid terms.

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

Order Pronounced in open Court on this 06<sup>th</sup> day of April, 2021.

Sd/-  
**(D.S. SUNDER SINGH)**  
**Accountant Member**

sd/-  
**(N.K. CHOUDHRY)**  
**Judicial Member**

**Dated: 06<sup>th</sup> April, 2021.**

**vr/-**

Copy to:

1. *The Assessee - M/s. Sri Gayatri Academy for Technical Education, 9-1-59/12, Sri Balaji Agencies Building, Main Road, Tadepalligudem.*
2. *The Revenue - ITO, Ward-1, Tadepaligudem.*
3. *The CIT (Exemptions), Hyderabad.*
4. *The CIT(A), Tirupati.*
5. *The D.R., Visakhapatnam.*
6. *Guard file.*

By order

(VUKKEM RAMBABU)  
Sr. Private Secretary,  
ITAT, Visakhapatnam.