

**IN THE INCOME TAX APPELLATE TRIBUNAL, RANCHI BENCH(SMC),  
RANCHI**

BEFORE SHRI PARTHA SARATHI CHAUDHURY, JUDICIAL MEMBER

ITA No. 138/Ran/2023 (Assessment Year 2008-09)  
(Physical Hearing)

Surendra Ram Bharti, Lower Rajbari Road, Jharia, Dhanbad-828111 (Jharkhand) <b>PAN No. ANUPB 7640 Q</b>	Vs.	I.T.O., Ward 2(2), Dhanbad.
Appellant/ Assessee		Respondent/ Revenue

Assessee represented by	Rajesh Kumar Kapardar, Adv.
Department represented by	Shri Khubchand T. Pandya, Sr.DR
Date of hearing	04/02/2025
Date of pronouncement	06/02/2025

**ORDER**

**PER: PARTHA SARATHI CHAUDHURY, JUDICIAL MEMBER:**

1. This appeal preferred by the assessee emanates from the order of learned Commissioner of Income Tax (Appeals), Dhanbad [in short, the Id. CIT(A)] dated 25/01/2019 for the Assessment Year (AY) 2008-09 as per the grounds of appeal on record.
2. This is a matter in which the department has alleged that the assessee has won Rs. 31,900/- from lottery. The Assessing Officer provided relief of Rs. 5,000/- as maximum limit of allowability under the Act. Therefore, the addition of Rs. 26,767/- was made by the Assessing Officer stating that this amount had to be taxed under Section 115BB(ii) of the Income Tax Act, 1961 (in short, the Act) at higher rate. The same was upheld by the Id. CIT(A).

3. Per contra, the contention of assessee through Id. Authorised Representative that it is not a lottery rather it is a gift from TATA Teleservices Ltd. in the form of scratch card which was given to the assessee. The assessee had won a bike through scratch card of which the value was Rs. 31,900/-. Therefore, question does not arise for taxing this amount of gift at a higher rate under Section 115BB(ii) of the Act.
4. I have carefully considered the submissions placed by the parties and the documents on record alongwith facts and circumstances in this case. The contention of department is that the alleged amount has been won in lottery whereas the assessee has contended that it is in the nature of a gift. However, neither in the order of Assessing Officer nor in the order of Id. CIT(A), this fact has been adjudicated. In order to ascertain the taxability of an income, the relevant facts needs to be verified. In view thereof, I set aside the order of Id. CIT(A) and remand the matter back to the file of Assessing Officer for necessary verification and passing an order de novo as per law complying with the principles of natural justice. Needless to direct that before passing the order on merit, the Assessing Officer shall grant reasonable opportunity of hearing to the assessee. As per the above terms, the grounds of appeal raised by the assessee stands allowed for statistical purposes only.
5. In the result, this appeal of assessee is allowed for statistical purposes.

Order announced in open court on 06th February, 2025.

Sd/-  
(PARTHA SARATHI CHAUDHURY)  
JUDICIAL MEMBER

Ranchi, Dated: 06/02/2025

*\*Ranjan*

Copy to:

1. Assessee
2. Revenue
3. CIT
4. DR
5. Guard File

By order

Sr. Private Secretary, ITAT, Ranchi