IN THE INCOME TAX APPELLATE TRIBUNAL, 'SMC' BENCH, KOLKATA

BEFORE
SHRI LAXMI PRASAD SAHU, ACCOUNTANT MEMBER

ITA No.1158/KOL/2026
Assessment Year: 2009-10

Crochet Trade and Investment Private Limited 313 Todi Chambers, 2 Lal Bazar Street, Kolkata-700001 **[PAN: AABCC2765Q]**	Vs.	**ITO, Ward-6(1), Kolkata**
APPELLANT		**RESPONDENT**

Appellant by	:	Shri Yash Baid, AR
Respondent by	:	Shri Amit Kumar Barua, DR
Date of hearing	:	06.10.2026
Date of Pronouncement	:	22.10.2026

O R D E R

PER LAXMI PRASAD SAHU, ACCOUNTANT MEMBER:

This is an Appeal filed by the Assessee against the order of the Commissioner of Income Tax (Appeal) ["the Ld. CIT(A)", for short], dated 31.01.2026 with DIN & Order No. ITBA/ALP/S/250/2025-26/1085404656(1), passed u/s 250 of the Income Tax Act, 1961 ("the Act", for short) for the Assessment Year 2009-10, arising out of the Assessment order dated 12.09.2016 passed u/s 148/147/144 of the Act on the following Grounds of Appeal:-

> *"1. The ex-parte assessment order u/s 148/147/144 of the I.T.Act, 1961, passed by the Id. A.O. is bad in law as the assessment was complete without the issue of mandatory statutory notice u/s 143(2) of the Income Tax Act, 1961.*
>
> *2. The ex-parte assessment order u/s 148/147/144 of the I.T.Act, 1961, passed by the Ld. A.O. is bad in law as the re-assessment was*

completed without providing a legible copy of the information based upon which reasons for reopening was recorded.

3. The ex-parte assessment order u/s 148/147/144 of the I.T. Act, 1961, passed by the Ld. A.O. is bad in law as the re-assessment was completed without providing a copy of the reasons for reopening u/s 148/147 of the I.T. Act, 1961.

4. The ex-parte assessment order u/s 148/147/144 of the I.T. Act, 1961, passed by the Ld. A.O. is bad in law as the re-opening was done solely on the basis of information received by the LD. A.O. on the 31.03.2016 without any self-analysis or self-application of mind on the information so received, the Ld. A.O. has proceeded to re-open on borrowed satisfaction.

5. Without prejudice to above, the Ld. A.O. erred in disallowing the loss on derivative transaction of Rs. 1545968/-, on the basis of data modification done at the end of the share broker and not by the assessee, without any specific against the assessee.

6. Without prejudice to above, the Ld. A.O. erred in disallowing the loss on derivative transaction of Rs. 1545968, the transactions were done following all the guidelines stated by the SEBI and through regular banking channels and through recognized stock exchanges in a bonafide manner.

7. The a' craves leave to add, alter, amend, delete, substitute any of the grounds and / or take additional ground / s before or at any time of hearing of this appeal."

2. Briefly stated, the facts of the case are that, the Assessee filed its return of income on 25.09.2009, declaring the income of Rs.81,470/-. The same was processed u/s 143(1) of the Act on 25.03.2011. Later on, the Assessing Officer, after taking approval from the PCIT, Income Tax-2, Kolkata, reopened the case, and notice u/s 148 of the Act dated 31.03.2016, was issued to the assessee company, and the time given for compliance was within 30 days from the date of service of notice. In response to notice issued u/s 148 of the Act, Assessee

company filed return of income on 22.04.2016, declaring the same income and asked for the reasons recorded for reopening of the case of the Assessee, which were supplied to the Assessee on 20.05.2016. The Assessee was given notice time to time, and Assessee filed its reply. But the Assessing Officer was not convinced and addition was made as per the discussion in the Assessment Order for Rs.15,45,968/-. Accordingly, income was assessed at Rs.16,27,456/-. Aggrieved by the order of the Assessing Officer, the Assessee filed Appeal before the Ld. CIT(A). During the course of first Appeal proceedings, the Assessee furnished the reply and relied on the Judgments, the Ld. CIT(A) dismissed of the Appeal of the Assessee. As against the order of the Ld. CIT(A), Assessee preferred an Appeal before this Tribunal.

3. At the outset of the hearing, the Learned Counsel submitted that the case of the Assessee was reopened after obtaining approval from the Competent Authority and that notice was served to the Assessee on 22.04.2016. A notice u/s 148 of the Act was issued on 31.03.2016, granting time for compliance within 30 days from the date of service of notice. In response, the Assessee furnished the return of income on 22.04.2016, which was within 30 days as specified in the notice u/s 148 of the Act. However, the Assessing Officer did not issue notice u/s 143(2) of the Act before completion of the assessment. Accordingly, the Learned Counsel submitted that the assessment framed by the

Assessing Officer was void ab initio in the eyes of law, as the issuance of notice is mandatory requirement, for taking jurisdiction to complete the assessment , once the valid return is filed. The I T Act also provided that, for taking jurisdiction to complete the assessment, the notice should have been issued before completion of the assessment or within the specified period.

4. On the other hand, the Ld. DR relied on the orders of the lower Authorities and submitted that the case of the Assessee was completed u/s 147/148 of the Act r.w.s. 144B of the Act after obtaining due approval from the Competent Authority and that the reasons were also provided to the Assessee within the short time sought by the Assessee. The Ld. DR requested that the orders of the lower Authorities be upheld.

5. In the rejoinder, the Learned Counsel submitted that the Revenue was unable to prove that the notice had been issued to the Assessee u/s 143(2) of the Act. Even in the Assessment Order, the Assessing Officer had not mentioned anything on the same point. Accordingly, Section 292BB would not apply in the case of the Assessee.

6. Considering the rival submissions and perusing the materials available on record and the orders of the Authorities below, I noted

that the Assessing Officer issued notice u/s 148 of the Act on 31.03.2016. In response to the notice u/s 148 of the Act, the Assessee filed the return of income on 22.04.2016 within the time allowed by the Assessing Officer for complying with the notice u/s 148 of the Act. Here, the main grievance of the Assessee's Counsel is that no notice had been issued by the Assessing Officer to the Assessee u/s 143(2) of the Act before completion of the assessment or within the specified period and the valid return was a n filed by the Assessee in response to the notice u/s 148 of the Act. The issuance of notice u/s 143(2) of the Act is a mandatory requirement for the Assessing Officer to assume jurisdiction to complete the assessment in case of valid return filed by the assessee. However, in the case on hand, the Ld. DR could not controvert the issue raised by the Assessee's Counsel and could not produce any documentary evidence that the notice had been issued by the Assessing Officer u/s 143(2) of the Act before completion of the assessment. Here, Section 292BB of the Act would also not help to the Revenue because there is no record to suggest that the notice had been issued u/s 143(2) of the Act. In support of my decision, I rely on the Judgment in *Balbir Singh vs. ACIT*, reported in [2025] 171 taxmann.com 572 [Raipur-Trib.], in which it was held as under:

> *"8. We have heard the Ld. Authorized Representatives of both the parties, perused the orders of the lower authorities and the material available on record, as well as considered the judicial pronouncements*

that have been pressed into service by the ld. AR to drive home his contentions.

9. Shri Sunil Kumar Agrawal, Ld. Authorized Representative (for short 'AR') for the assessee, submitted that the A.O had grossly erred in law and facts of the case in assuming jurisdiction and framing the impugned assessment vide his order u/s.143(3) r.w.s. 147 of the Act, dated 27.12.2017. Elaborating on his contention, the Ld. AR submitted that as the A.O had framed the assessment without issuing notice u/s.143(2) of the Act, therefore, the assessment was liable to be quashed on the said count itself. The Ld. AR in support of his aforesaid contention had relied on the following judicial pronouncements:

(i)	Asstt. CIT v. Hotel Blue Moon [2010] 188 Taxman 113/321 ITR 362 (SC)
(ii)	CIT v. Laxman Das Khandelwal [2019] 108 taxmann.com 183/266 Taxman 171/417 ITR 325 (SC)
(iii)	Pr. CIT v. S.G Portfolio (P). Ltd. [2023] 151 taxmann.com 307/454 ITR 761 (Delhi)
(iv)	Swapna Manuel v. Asstt.CIT [2024] 160 taxmann.com 166 (Madras)
(v)	Sapthagiri Finance & Investments v. ITO [2012] 25 taxmann.com 341/210 Taxman 78 (Madras) (Mag.)
(vi)	Pr. CIT v. Shri Jai Shiv Shankar Traders (P). Ltd. [2015] 64 taxmann.com 220/[2016] 383 ITR 448 (Delhi).
(vi)	CIT v. Salarpur Cold Storage (P) Ltd. , [2014] 50 taxmann.com 105/[2015] 228 Taxman 48 (Allahabad) (Mag.)
(vii)	Pr. CIT v. Marck Biosciences Ltd. [2019] 106 taxmann.com 399 (Gujarat)
(v iii)	CIT v. Alstom T & D India Ltd. [2014] 45 taxmann.com 424/226 Taxman 103 (Madras) (Mag.)
(ix)	Girishbhai Nanjibhai Solanki v. ITO [2023] 150 taxmann.com 267/200 ITD 686 (Rajkot - Trib.)

10. The Ld. AR submitted that though the assessee in compliance to the notice u/s.148 of the Act, dated 22.03.2017 had filed his return of income on 14.10.2017, declaring an income of Rs.16,98,520/-, Page 14 to 17 of APB, but the A.O had, thereafter, proceeded with and without issuing any notice u/s.143(2) of the Act framed the impugned assessment vide his order u/s.143(3) r.w.s. 147 of the Act, dated 27.12.2017. The Ld. AR in support of his aforesaid claim had taken us through the assessment order passed by the A.O u/s. 143(3) r.w.s. 147

of the Act, dated 27.12.2017, which was sub-silentio on the issuance of notice u/s.143(2) of the Act.

11. As the Ld. AR had assailed the validity of the jurisdiction that was assumed by the A.O for framing the assessment on the ground that no notice u/s.143(2) of the Act was issued by the A.O in the course of the assessment proceedings, therefore, the Ld. DR on 20.06.2024 was directed to produce the assessment record.

12. On 19.09.2024, the Ld. Sr. DR had produced the assessment record and filed the copy of a letter addressed to her office by the DCIT-1(1), Raipur, i.e. the A.O qua the issue under consideration. We find on a perusal of the letter dated 03.06.2024 of the A.O, that he had objected to the challenge thrown by the assessee as regards the validity of the jurisdiction that was assumed by the A.O to frame the assessment u/s.143(3) r.w.s. 147 of the Act, 27.12.2018 de-hors a notice u/s. 143(2) of the Act, for the reason that now when the said objection was never raised before the lower authorities, therefore, the same could not be raised in the course of the present proceedings before the Tribunal. But strangely, we find that the A.O had failed to answer the query that was specifically raised by the bench, i.e. as to whether or not a notice u/s.143(2) of the Act was ever issued by the A.O in the course of the assessment proceedings. Apart from that, the A.O had stated that no obligation is cast to issue notice u/s. 143(2) of the Act for framing of an assessment u/s. 147 of the Act.

13. As the A.O had come forth with an evasive reply on the issue as to whether or not a notice u/s. 143(2) of the Act was issued in the course of the assessment proceedings, therefore, we have consulted the assessment record and perused the order sheet notings. The copy of the return of income filed by the assessee on 14.10.2017 vide e-filing acknowledgment No.243250490141001 7 is found available on record, Page 72 to 75 of the assessment records.

14. We have thoughtfully considered the contentions advanced by the Ld. authorized representatives of both the parties in the backdrop of the orders of the lower authorities.

15. Admittedly, it is a matter of fact borne from record that the assessee in compliance to the notice issued u/s. 148 of the Act, dated 22.03.2017 had filed his return of income on 14.10.2017 declaring an income of Rs.16,98,520/-. The copy of the return of income filed by the assessee in response to notice u/s. 148 of the Act, dated 14.10.2017 is found available at Page 72 to 75 of the assessment record. Apart from that, the Ld. AR in order to dispel all doubts as regards his claim that the assessee had in compliance to notice u/s. 148 of the Act, dated 22.03.2017 filed his return of income on 14.10.2017, had placed on record a copy of the "screen shot" of the assessee's e-filing portal account, which reads as under (relevant extract):


View Filed Returns

The e-Filed Returns are available for download /view starting Assessment Year 2013-14.

Export To Excel

Filter

Please note that the refund will be credited only to the PAN linked Bank Account. Please ensure the same.

2 Filings till date

A.Y. 2012-13

Filing Type
Return filed in response to notice notice u/s 148
ITR Transferred to Jurisdiction AO
Dec 28, 2017

EVC Accepted
Dec 27, 2017

E-Verified
Dec 25, 2017

ITR : ITR-1
Acknowledgement No : 243250490141017
Filed By : self
Filing Date : Oct 14, 2017
Filing Section : 148

View Details
Download Form
Download Receipt
Download XML

On the basis of the aforesaid facts, it stands proved to the hilt that the assessee had complied with the notice u/s. 148 of the Act, dated 22.03.2017 and had filed his return of income on 14.10.2017.

16. The Ld. DR on being confronted with the assessee's claim that the A.O had wrongly assumed jurisdiction and framed the assessment vide his order passed u/s. 143(3) r.w.s. 147 of the Act, dated 27.12.2017, i.e. without issuing any notice u/s. 143(2) of the Act, had vide letter dated 06.06.2024 (filed on 07.06.2024) placed on record a report of the A.O on the aforesaid aspect, which reads as under:

GROUND NO-1: "On the facts.....to be quashed."

REBUTTAL:

The submission of the assesses is not acceptable as the assessee has neither raised, the objection at the time of assessment proceedings nor after the same. This is also endorsed by Hon ble Punjab and Haryana High Court in the case of CIT v. OCM India Ltd - [2017] 79 taxmann.com 435/389 ITR 314 (Punjab & Haryana) wherein it has held that "Assessee, having not raised any objection with regard to issuance and service of a valid notice during assessment proceedings and rather, without any' objection, having voluntarily taken part in such proceedings, could not seek annulment of assessment proceedings on ground of non-service of notice. Further it also held in Josh Builders &. Developers (P.) Ltd v. PCIT - [2017] 79 taxmanu.com 435 (Punjab & Haryana) [2017] 79 taxmann.com 435/389 ITR 314 (Punjab & Haryana) that "limitation prescribed under proviso to section 143(2) is not applicable to reassessment under section 147".

On a perusal of the aforesaid report dated, 03.06.2024 of the A.O, we find that he had not challenged the assessee's claim that no notice u/s. 143(2) of the Act was issued to him in the course of the assessment proceedings. Rather, it is the AO's contention that as the assessee had not objected to the issuance and service of a valid notice u/s. 143(2) of the Act during the course of assessment proceedings and had participated in the same, therefore, he cannot be permitted to raise such objection in the course of the present appellate proceedings. The A.O in support of his aforesaid contention had relied on the judgment of the Hon'ble High Court of Punjab & Haryana in the case of CIT v. OCM India Ltd., Josh Builders & Developers (P.) Ltd. v. Pr. CIT [2017] 79 taxmann.com 435/[2016] 389 ITR 314 (Punjab & Haryana). Also, the A.O had claimed that the limitation prescribed under the "1st proviso" to Section 143(2) of the Act is not applicable to reassessment proceedings u/s. 147 of the Act.

17. Controversy involved in the present appeal lies in a narrow compass, i.e. as to whether or not the assessment framed by the A.O vide order u/s. 143(3) r.w.s. 147 of the Act dated 27.12.2017 in absence of notice u/s. 143(2) of the Act having been issued by him is sustainable in the eyes of law?

18. Before proceeding any further, it would be relevant to deal with the Ld. DR's contention that as the assessee had not assailed the validity of the AO's jurisdiction in the course of the assessment proceedings, therefore, the same could not be allowed to be raised in the course of the present appellate proceedings before the Tribunal. We find that the ITAT, Mumbai in the case of Futura Polyster Limited v. ITO- 6(3)(1), ITA Nos. 1459 & 1460/Mum/2018, dated 16.07.2020, after relying on the judgment of the Hon'ble High Court of Bombay in the case of CIT v. Pruthvi Brokers & Shareholders [2012] 23 taxmann.com 23/208 Taxman 498/349 ITR 336 (Bombay) and a host of other judicial pronouncements had held that an assessee is entitled to raise additional grounds not merely in terms of legal submissions, but also additional claims to wit claims not made in the return filed by it. For the sake of clarity, the observations of the Tribunal are culled out as under:

"25.....We find that the said issue had been deliberated upon at length by the Hon'ble High Court of Bombay in the case of CIT v. Pruthvi Brokers & Shareholders (P) Ltd. [2012] 23 taxmann.com 23/208 Taxman 498/349 ITR 336 (Bombay). In its said judgment, it was held by the Hon'ble High Court that an assessee is entitled to raise additional grounds not merely in terms of legal submissions, but also additional claims to wit claims not made in the return filed by it. The Hon'ble High Court while concluding as hereinabove, had observed as under:

"10. A long line of authorities establish clearly that an assessee is entitled to raise additional grounds not merely in terms of legal

submissions, but also additional claims to wit claims not made in the return filed by it. It is necessary for us to refer to some of these decisions only to deal with two submissions on behalf of the department. The first is with respect to an observation of the Supreme Court in Jute Corporation of India Limited v. Commissioner of Income Tax, 1991 Supp (2) SCC 744 =[1990] 53 Taxman 85/ 187 ITR 688 (SC). The second submission is based on a judgment of the Supreme Court in Goetze (India) Limited v. Commissioner of Income Tax.

11(A). In Jute Corporation of India Limited v. CIT, for the assessment year 1974-75 the appellant did not claim any deduction of its liability towards purchase tax under the provisions of the Bengal Raw Jute Taxation Act, 1941, as it entertained a belief that it was not liable to pay purchase tax under that Act. Subsequently, the appellant was assessed to purchase tax and the order of assessment was received by it on 23rd November, 1973. The appellant challenged the same and obtained a stay order. The appellant also filed an appeal from the assessment order under the Income Tax Act. It was only during the hearing of the appeal that the assessee claimed an additional deduction in respect of its liability to purchase tax. The Appellate Assistant Commissioner (AAC) permitted it to raise the claim and allowed the deduction. The Tribunal held that the AAC had no jurisdiction to entertain the additional ground or to grant relief on a ground which had not been raised before the Income Tax Officer. The Tribunal also refused the appellant's application for making a reference to the High Court. The High Court upheld the decision of the Tribunal and refused to call for a statement of case. It is in these circumstances that the appellant filed the appeal before the Supreme Court.

The Supreme Court held as under :-

"5. In CIT v. Kanpur Coal Syndicate, a three Judge bench of this Court discussed the scope of Section 31(3)(a) of the Income Tax Act, 1922 which is almost identical to Section 251(1)(a). The court held as under: (ITR p. 229)

"If an appeal lies, Section 31 of the Act describes the powers of the Appellate Assistant Commissioner in such an appeal. Under Section 31(3)(a) in disposing of such an appeal the Appellate Assistant Commissioner may, in the case of an order of assessment, confirm, reduce, enhance or annul the assessment; under clause (b) thereof he may set aside the assessment and direct the Income Tax Officer to make a fresh assessment. The Appellate Assistant Commissioner has, therefore, plenary powers in disposing of an appeal. The scope of his power is co-terminus with that of the Income-tax Officer. He can do what the Income-tax Officer can do and also direct him to do what he has failed to do." (emphasis supplied)

6. The above observations are squarely applicable to the interpretation of Section 251(1)(a) of the Act. The declaration of law is clear that the power of the Appellate Assistant Commissioner is co-terminus with that of the Income Tax Officer, if that be so, there appears to be no reason as to why the appellate authority cannot modify the assessment order on an additional ground even if not raised before the Income Tax Officer. No exception could be taken to this view as the Act does not place any restriction or limitation on the exercise of appellate power. Even otherwise an Appellate Authority while hearing appeal against the order of a subordinate authority has all the powers which the original authority may have in deciding the question before it subject to the restrictions or limitations if any prescribed by the statutory provisions. In the absence of any statutory provision the Appellate Authority is vested with all the plenary powers which the subordinate authority may have in the matter. There appears to be no good reason and none was placed before us to justify curtailment of the power of the Appellate Assistant Commissioner in entertaining an additional ground raised by the assessee in seeking modification of the order of assessment passed by the Income Tax Officer."

[emphasis supplied]

(B) It is clear, therefore, that an assessee is entitled to raise not merely additional legal submissions before the appellate authorities, but is also entitled to raise additional claims before them. The appellate authorities have the discretion whether or not to permit such additional claims to be raised. It cannot, however, be said that they have no jurisdiction to consider the same. They have the jurisdiction to entertain the new claim. That they may choose not to exercise their jurisdiction in a given case is another matter. The exercise of discretion is entirely different from the existence of jurisdiction.

12. At page 694, after referring to certain observations of the Supreme Court in Additional Commissioner of Income-tax v. Gurjargravures P. Ltd., [1978] 111 ITR 1 (SC), the Supreme Court observed at Page 694 as under :- "The above observations do not rule out a case for raising an additional ground before the Appellate Assistant Commissioner if the ground so raised could not have been raised at that particular stage when the return was filed or when the assessment order was made, or that the ground became available on account of change of circumstances or law. There may be several factors justifying raising of such new plea in appeal, and each case has to be considered on its own facts. If the Appellate Assistant Commissioner is satisfied he would be acting within his jurisdiction in considering the question so raised in all its aspects. Of course, while permitting the assessee to raise an additional ground, the Appellate Assistant Commissioner should exercise his discretion in accordance with law and reason. He must be satisfied that the ground raised was bona fide and that the

same could not have been raised earlier for good reasons. The satisfaction of the Appellate Assistant Commissioner depends upon the facts and circumstances of each case and no rigid principles or any hard and fast rule can be laid down for this purpose."

[emphasis supplied]

13. The underlined observations in the above passage do not curtail the ambit of the jurisdiction of the appellate authorities stipulated earlier. They do not restrict the new/additional grounds that may be taken by the assessee before the appellate authorities to those that were not available when the return was filed or even when the assessment order was made. The sentence read as a whole entitles an assessee to raise new grounds/make additional claims :-

"if the ground so raised could not have been raised at that particular stage when the return was filed or when the assessment order was made..."

"or"

if "the ground became available on account of change of circumstances or law"

The appellate authorities, therefore, have jurisdiction to deal not merely with additional grounds, which became available on account of change of circumstances or law, but with additional grounds which were available when the return was filed. The first part viz. "if the ground so raised could not have been raised at that particular stage when the return was filed or when the assessment order was made... "clearly relate to cases where the ground was available when the return was filed and the assessment order was made but "could not have been raised" at that stage. The words are "could not have been raised" and not "were not in existence". Grounds which were not in existence when the return was filed or when the assessment order was made fall within the second category viz. where "the ground became available on account of change of circumstances or law."

14. The facts in Jute Corporation of India Ltd., various judgments referred to therein as well as in subsequent cases, which we will refer to, establishes this beyond doubt. In many of the cases, the grounds were, in fact, available when the return was filed and/or the assessment order was made. In Jute Corporation of India Ltd., the ground was available when the return was filed. The assessee did not claim any deduction of its liability to pay purchase tax as "it entertained a belief that it was not liable to pay purchase tax under the Bengal Raw Jute Taxation Act, 1941". Thus, the ground existed when the return was filed. The assessment order was even made and received by the assessee. It is only after the appeal was filed that the assessee claimed

a deduction in respect of the amount paid towards the purchase tax under the said Act. It is also significant to note that the assessee's entitlement to claim deduction had been held to be valid in view of an earlier judgment of the Supreme Court in Kedarnath Jute Manufacturing Company Limited v. Commissioner of Income-tax, [1971] 82 ITR 363 (SC). This was, therefore, a case of error in perception/judgment. Despite the same, the Supreme Court upheld the decision of the Appellate Assistant Commissioner in allowing the deduction. The words "could not have been raised" must, therefore, be construed liberally and not strictly.

15. It is indeed a question of exercise of discretion whether or not to allow an assessee to raise a claim which was not raised when the return was filed or the assessment order was made. As held by the Supreme Court there may be several factors justifying the raising of a new plea in appeal and each case must be considered on its own facts.

However, such cases include those, where the ground though available when the return was filed or the assessment order was made, was not taken or raised for reasons which the appellate authorities may consider valid. In other words, the jurisdiction of the appellate authorities to consider a fresh or new ground or claim is not restricted to cases where such a ground did not exist when the return was filed and the assessment order was made.

16(A). A Full Bench of this Court in Ahmedabad Electricity Limited v. Commissioner of Income-tax, [1992] 66 Taxman 27/199 ITR 351 (Bombay) considered a similar situation. In that case, the appellant/assessee did not claim a deduction in respect of the amounts it was required to transfer to contingencies reserve and dividend and tariff reserve either before the Income Tax Officer or before the Appellate Assistant Commissioner in appeal. Subsequently, this Court had, in Amalgamated Electricity Company Limited v. Commissioner of Income-tax, [1974] 97 ITR 334 (Bombay), held that such amounts represented allowable deductions on revenue account. The appellant, therefore, raised a new claim and additional grounds before the Tribunal in that connection. The Tribunal rejected the same. The second question which was raised in the reference before the Division Bench was as under :-

"(2) Whether, on the facts and in the circumstances of the case, the Tribunal erred in not allowing the assessee leave to raise in its own appeals additional grounds and in the departmental appeals cross objections regarding the deductibility of the sums transferred to contingency reserve and tariff and dividend control reserve?"

(B) The Division Bench which heard the reference, finding that there was a conflict of decisions, placed the papers before the Hon'ble Chief Justice for constituting a larger bench to resolve the controversy.

The Full Bench answered the reference in the affirmative and in favour of the assessee. The Full Bench held as under:

"Thus, the Appellate Assistant Commissioner has very wide powers while considering an appeal which may be filed by the assessee. He may confirm, reduce, enhance or annul the assessment or remand the case to the Assessing Officer. This is because, unlike an ordinary appeal, the basic purpose of a tax appeal is to ascertain the correct tax liability of an assessee in accordance with law. Hence an Appellate Assistant Commissioner also has the power to enhance the tax liability of the assessee although the Department does not have a right of appeal before the Appellate Assistant Commissioner. The Explanation to subsection (2), however, makes it clear that for the purpose of enhancement, the Appellate Assistant Commissioner cannot travel beyond the proceedings which were originally before the Income-tax Officer or refer to new sources of income which were not before the Income-tax Officer at all. For this purpose, there are other separate remedies provided under the Income-tax Act."

(C) It is unnecessary to refer to all the judgments that the Full Bench referred to while answering the reference. The Full Bench referred to the observations of the Supreme Court in Jute Corporation of India Limited v. Commissioner of Income-tax (supra) set out above. It is important to note that even in this case, therefore, the ground existed when the return was filed. The mere fact that a decision of a court is rendered subsequently does not indicate that the ground did not exist when the law was enacted. Judgments are only a declaration of the law. The assessee could have raised the ground in its return itself. It did not have to await a decision of a court in that regard. Indeed, even if a judgment is against an assessee, it is always open to the assessee to claim the deduction and carry the matter higher. The words "could not have been raised", therefore, cannot be read strictly. Neither the Supreme Court nor the Full Bench of this Court meant them to be read strictly. They include cases where the assessee did not raise the claim for a reason found to be reasonable or valid by the appellate authorities in the facts and circumstances of a case.

17. The next judgment to which our attention was invited by Mr. Mistri is the judgment of a Bench of three learned Judges of the Supreme Court in National Thermal Power Company Limited v. Commissioner of Income-tax, (1997) 7 SCC 489 =[1999] 97 Taxman 358/229 ITR 383 (SC). In that case, the assessee had deposited its funds not immediately required by it on short term deposits with banks. The interest received on such deposits was offered by the assessee itself for tax and the assessment was completed on that basis. Even before the Commissioner of Income-tax (Appeals), the inclusion of this amount was neither challenged by the assessee nor considered by the Commissioner of Income-tax (Appeals). The assessee filed an appeal before the

Tribunal. The inclusion of the amount was not objected to even in the grounds of appeal as originally filed before the Tribunal.

Subsequently, the assessee by a letter, raised additional grounds to the effect that the said sum could not be included in the total income. The assessee contended that on a erroneous admission, no income can be included in the total income. It was further contended that the ITO and the Commissioner of Income-tax (Appeals) had erred and failed in their duty in adjudicating the matter correctly and by mechanically including the amount in the total income. It is pertinent to note that the assessee contended that it was entitled to the deduction in view of two orders of the Special Benches of the Tribunal and the assessee further stated that it had raised these additional grounds on learning about the legal position subsequently.

The Tribunal declined to entertain these additional grounds.

The Supreme Court did not answer the question on merits, but framed the following question and held as under :-

"4. The Tribunal has framed as many as five questions while making a reference to us. Since the Tribunal has not examined the additional grounds raised by the assessee on merit, we do not propose to answer the questions relating to the merit of those contentions. We reframe the question which arises for our consideration in order to bring out the point which requires determination more clearly. It is as follows:

"Where on the facts found by the authorities below a question of law arises (though not raised before the authorities) which bears on the tax liability of the assessee, whether the Tribunal has jurisdiction to examine the same."

Under Section 254 of the Income Tax Act the Appellate Tribunal may, after giving both the parties to the appeal an opportunity of being heard, pass such orders thereon as it thinks fit. The power of the Tribunal in dealing with the appeals is thus expressed in the widest possible terms. The purpose of the assessment proceedings before the taxing authorities is to assess correctly the tax liability of an assessee in accordance with law. If, for example, as a result of a judicial decision given while the appeal is pending before the Tribunal, it is found that a non-taxable item is taxed or a permissible deduction is denied, we do not see any reason why the assessee should be prevented from raising that question before the Tribunal for the first time, so long as the relevant facts are on record in respect of that item. We do not see any reason to restrict the power of the Tribunal under Section 254 only to decide the grounds which arise from the order of the Commissioner of Income Tax (Appeals). Both the assessee as well as the Department have a right to file an appea1/cross- objections before the Tribunal. We fail to see why the Tribunal should be prevented from considering

questions of law arising in assessment proceedings although not raised earlier."

18. In the case before us, the CIT(A) and the Tribunal have held the omission to claim the deduction of Rs.40,00,000/- to be inadvertent. Both the appellate authorities held, after considering all the facts, that the assessee had inadvertently claimed a deduction of Rs.20,00,000/- paid after the end of the year in question. We see no reason to interfere with this finding. We see less reason to interfere with the exercise of discretion by the appellate authorities in permitting the respondent to raise this claim. That the respondent is entitled to the deduction in law is admitted and, in any event, clearly established. In the circumstances, the respondent ought not be prejudiced.

19. The orders of the CIT(A) and the Tribunal clearly indicate that both the appellate authorities had exercised their jurisdiction to consider the additional claim as they were entitled to in view of the various judgments on the issue, including the judgment of the Supreme Court in National Thermal Power Corporation Limited. This is clear from the fact that these judgments have been expressly referred to in detail by the CIT(A) and by the Tribunal.

20. We wish to clarify that both the appellate authorities have themselves considered the additional claim and allowed it. They have not remanded the matter to the Assessing Officer to consider the same. Both the orders expressly direct the Assessing Officer to allow the deduction of Rs.40,00,000/- under section 43B of the Act. The Assessing Officer is, therefore, now only to compute the respondent's tax liability which he must do in accordance with the orders allowing the respondent a deduction of Rs.40,00,000/-under section 43B of the Act.

21. The conclusion that the error in not claiming the deduction in the return of income was inadvertent cannot be faulted for more than one reason. It is a finding of fact which cannot be termed perverse. There is nothing on record that militates against the finding. The appellant has not suggested, much less established that the omission was deliberate, mala-fide or even otherwise. The inference that the omission was inadvertent is, therefore, irresistible.

22. It was then submitted by Mr. Gupta that the Supreme Court had taken a different view in Goetze (India) Limited v. Commissioner of Income-tax. We are unable to agree. The decision was rendered by a Bench of two learned Judges and expressly refers to the judgment of the Bench of three learned Judges in National Thermal Power Company Limited v. Commissioner of Income-tax (supra). The question before the Court was whether the appellant-assessee could make a claim for deduction, other than by filing a revised return. After the return was filed, the appellant sought to claim a deduction by way of a letter before

the Assessing Officer. The claim, therefore, was not before the appellate authorities. The deduction was disallowed by the Assessing Officer on the ground that there was no provision under the Act to make an amendment in the return of income by modifying an application at the assessment stage without revising the return. The Commissioner of Income-tax (Appeals) allowed the assessee's appeal. The Tribunal, however, allowed the department's appeal. In the Supreme Court, the assessee relied upon the judgment in National Thermal Power Company Limited contending that it was open to the assessee to raise the points of law even before the Tribunal. The Supreme Court held :-

"4. The decision in question is that the power of the Tribunal under section 254 of the Income-tax Act, 1961, is to entertain for the first time a point of law provided the fact on the basis of which the issue of law can be raised before the Tribunal. The decision does not in any way relate to the power of the Assessing Officer to entertain a claim for deduction otherwise than by filing a revised return. In the circumstances of the case, we dismiss the civil appeal. However, we make it clear that the issue in this case is limited to the power of the assessing authority and does not impinge on the power of the Income-tax Appellate Tribunal under section 254 of the Income Tax Act, 1961. There shall be no order as to costs."

[emphasis supplied]

23. It is clear to us that the Supreme Court did not hold anything contrary to what was held in the previous judgments to the effect that even if a claim is not made before the assessing officer, it can be made before the appellate authorities. The jurisdiction of the appellate authorities to entertain such a claim has not been negated by the Supreme Court in this judgment. In fact, the Supreme Court made it clear that the issue in the case was limited to the power of the assessing authority and that the judgment does not impinge on the power of the Tribunal under section 254.

24. A Division Bench of the Delhi High Court dealt with a similar submission in Commissioner of Income-tax v. Jai Parabolic Springs Limited, [2008] 172 Taxman 258/306 ITR 42 (Delhi). The Division Bench, in paragraph 17 of the judgment held that the Supreme Court dismissed the appeal making it clear that the decision was limited to the power of the assessing authority to entertain a claim for deduction otherwise than by a revised return and did not impinge on the powers of the Tribunal. In paragraph 19, the Division Bench held that there was no prohibition on the powers of the Tribunal to entertain an additional ground which, according to the Tribunal, arises in the matter and for the just decision of the case."

We, thus, in terms of the aforesaid settled position of law are of a firm conviction that the assessee in the present case before us remained

well within his right to assail the validity of the jurisdiction that was assumed by the A.O for framing of assessment u/s. 143(3) r.w.s. 147 of the Act, dated 27.12.2017 in absence of notice u/s. 143(2) of the Act.

19. Apropos the maintainability of the aforesaid claim of the assessee, we find that the Hon'ble Apex Court in the cases of Hotel Blue Moon and Laxman Das Khandelwal (supra), had held that pursuant to the return of income filed by the assessee, the A.O remains under a statutory obligation to issue notice u/s. 143(2) of the Act for framing the assessment.

20. Our aforesaid view is further fortified by the judgment of the Hon'ble High Court of Delhi in the case of Shri Jai Shiv Shankar Traders (P) Ltd. (supra). The Hon'ble High Court had held that absence of notice u/s.143(2) of the Act impregnates the proceeding with a jurisdictional defect, and hence, renders it as invalid in the eyes of law. The aforesaid view had thereafter been reiterated by the Hon'ble High Court of Delhi in the case of Pr. CIT v. Dart Infrabuild (P) Ltd. [2024] 166 taxmann.com 4 (Delhi). Also, the Hon'ble High Court of Allahabad in the case of Salarpur Cold Storage (P) Ltd.(supra) had after relying upon the judgment of the Hon'ble Apex Court in the case of Hotel Blue Moon (supra), held that the requirement of issuance of notice u/s.143(2) of the Act was mandatory and cannot be brought within the meaning of a procedural irregularity. The Hon'ble High Court of Madras in the case of Sapthagiri Finance & Investments (supra) had held that where the A.O found that there was a problem in the return of income filed by the assessee u/s.148 of the Act, which required an explanation, then he ought to have followed up by a notice u/s.143(2) of the Act. The Hon'ble High Court of Delhi in the case of S.G Portfolio (P) Ltd. (supra) had, inter alia, held that where the assessee had filed return of income in response to notice u/s. 148 of the Act, the A.O was required to issue notice u/s.143(2) of the Act for framing the assessment. We further find that Hon'ble High Court of Madras in the case of Amec Foster Wheeler Iberia SLU-India Project Office v. Dy. CIT [2023] 148 taxmann.com 124/451 ITR 117 (Madras) had held where the A.O did not issue notice u/s.143(2) of the Act upon the assessee, then initiation of reassessment proceedings, order rejecting assessee's objection against assumption of jurisdiction for reopening and, also the reference to the TPO were to be quashed.

21. We, thus, in terms of our aforesaid observations are of the considered view, that as in the present case before us, neither is any material discernible from the record which would dislodge the Ld. AR's claim that no notice u/s. 143(2) of the Act was issued by the A.O nor any material proving to the contrary had been placed on record by the Ld. DR, therefore, the assessment framed by the A.O vide his order passed u/s. 143(3) r.w.s. 147 of the Act, dated 27.12.2017 in absence

of a notice u/s. 143(2) of the Act having been issued by him cannot be sustained and is liable to be quashed.

22. As we have quashed the assessment framed by the A.O vide his order passed u/s. 143(3) r.w.s. 147 of the Act, dated 27.12.2017, therefore, we refrain from adverting to the other contentions that have been raised by the Ld. AR as regards the merits of the case which, thus, are left open.

23. In the result, appeal of the assessee is allowed in terms of our aforesaid observations."

7. By respectfully following the above Judgment, I allow the Appeal of the Assessee.

Order pronounced on 22.10.2026.

Sd/-
(LAXMI PRASAD SAHU)
ACCOUNTANT MEMBER

Dated: 22.10.2026
DP, PS

Copy of the order forwarded to:
1. Appellant
2. Respondent
3. Pr. CIT
4. CIT(A)
5. CIT(DR)

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