IN THE HIGH COURT OF ANDHRA PRADESH :: AMARAVATI

Income Tax Tribunal Appeal Nos:8, 13, 16, 17, 18, 19, 20, 21, 22, 23, 24, 25, 26, 27, 28, 29, 30, 31, 32, 33, 34, 35, 37, and 46 of 2023

PROCEEDING SHEET

Sl. No.	DATE	ORDER	OFFICE NOTE
07.	25.03.2025	**NJS,J & TRR,J** **ITTA No.19 of 2023** The appellant is a partnership firm with ten partners carrying on the activity of Auto financing. It filed its return of income under Section 139 (1) of Income Tax Act for the year 2009-2010. Subsequently, a search was conducted under Section 132 of the Act on M/s. MOVVA group and thereafter, a notice under Section 153 (A) of the Act was issued to the appellant and on considering the response to the same, the Assessing Officer passed Assessment Order dated 28.12.2011. Aggrieved by the Assessment Order, the learned counsel for the appellant submits that the appellant carried the matter in appeal before the Commissioner of Income Tax (Appeals), Guntur, raising several grounds. He also submits that detailed written submissions along with relevant case law were filed. He submits that the Commissioner of Income Tax (Appeals) allowed, the appeal, in-part, aggrieved by which the appellant filed an appeal before the Appellate Tribunal, Visakhapatnam. He submits that before the Appellate Tribunal, the appellant has also	Contd…

raised additional grounds, on the additions that are made without there being any incriminating material found during the course of search under Section 132 of the Act.

But, the Appellate Tribunal, he submits that without considering the said aspect, which infact was specifically urged in the written submissions also to the effect that no additions can be made after assessment made under Section 153 (A) and consequent to the search without any incriminating material, passed orders dated 30.09.2016. He further submits that as the Appellate Tribunal had decided the appeal without considering the point raised, with reference to passing of Assessment Order without any incriminating material, in the correct perspective, on the premise that no such specific ground was raised, despite the reference to the submissions made, the appellant was constrained to file a Miscellaneous Application under Section 254 (2) of the Income Tax Act. He submits that the learned Appellate Tribunal without examining the matter in detail, had passed the order dated 15.12.2022 simply extracting its earlier order dated 30.09.2016 and the same is not sustainable.

Stating that the appellant, aggrieved by the original order dated 30.09.2016 and against the orders dated 15.12.2022 passed in M.A No.7/Vizag/2017 in ITA No.144/Viz/2014, preferred ITTA No.8 of 2023, he submits that as the orders

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		under challenge are not sustainable, more particularly, in the light of the questions of law referred to hereunder, the appeal may be admitted and heard on merits. On the other hand, the learned counsel for the respondent, sought to sustain the orders under challenge, stating that no questions of law are involved in the appeal and infact the appeal against the orders dated 15.12.2022 in M.A No.13/Viz/2017 is not maintainable. On considering the submissions made, the matter requires adjudication, more particularly, in view of the following substantial questions of law:- 1. Whether the Income Tax Appellate Tribunal is right in law in holding that there is no error in its original order as it has considered the additional ground raised regarding validity of additions made without any incriminating material in a case of assessment that is not pending when notice u/S.153A is issued? 2. Whether the observations of the Income Tax Appellate Tribunal in the order under Section 254 (2) is not perverse, in holding the observations in original order of not considering the arguments due to lack of specific ground, equivalent to having the ground have been already considered and thus there	Contd…

		is no mistake apparent in the order? 3. Whether the Appellate Tribunal is right in law in sustaining its earlier findings “that the assessee also argued a legal issue without raising any specific ground in any of the years, in relation to validity of the assessment order passed by Assessing Officer, when in fact the assessee questioned the validity of those additions resorted to under Section 68 of the Act as submitted in the memorandum dated 18.05.2016 filed before it? 4. Whether the Appellate Tribunal is right in upholding the order of the Commissioner of Income Tax (Appeals) with regard to the additions made under Section 68 of the Act, notwithstanding the fact that those additions were not established by any incriminating material identified at the time of Search under Section 132 of the Act, which is a mandatory requirement laid down by the 2nd proviso appended to Section 153A of the Act read with Judicial precedents brought to its notice? 5. Whether the Appellate Tribunal is justified in confirming its erroneous order passed under Section 254(1) of the Act by ignoring the submission in the M.A, and the additional ground raised in the	Contd…

Memorandum, dated: 18.05.2016, merely on technical ground ignoring the Rule of law laid down by both under statute and also various judgments on the issue?

Hence, **Admit.**

Mr. Anup Koushik Karavadi, learned Senior Standing Counsel for the Income Tax, takes notice on behalf of the respondent.

NJS,J

TRR,J

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