

IN THE INCOME TAX APPELLATE TRIBUNAL  
(DELHI BENCH "D" NEW DELHI)  
BEFORE SHRI S.V. MEHROTRA AND SHRI I.C. SUDHIR

Cross Objections Nos.138 to 142/Del/2014  
Assessment year: 2004-05 to 2007-08

Income-tax Officer,  
Ward 25(3),  
New Delhi.  
(PAN:)

(Applicant)

vs. Jasjit Singh, 29/56,  
Punjabi Bagh,  
New Delhi-1100 26

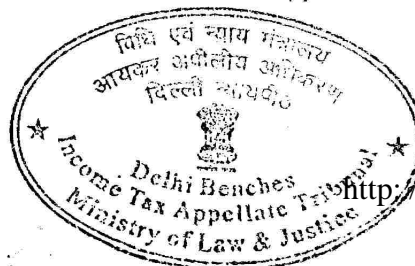
(Respondent)

Assessee by: Shri Prakash Chand Yadav, Adv. & Sh. Sachin Jain  
Revenue by: Ms. Sulekha Verma & Sh. Sachin Jain, DRs

**INTERIM ORDER**

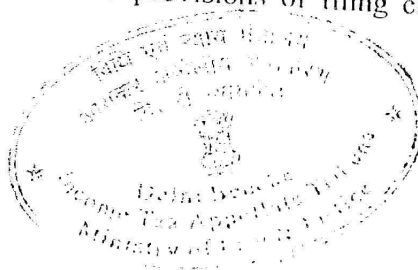
PER I.C. SUDHIR: JUDICIAL MEMBER

At the outset of hearing, the Learned CIT(DR) raised a preliminary objection regarding the maintainability of the cross-objections preferred by the assessee on the plea that the issue raised in Objections Nos. 1 to 3 is not the part of the first appellate order. She submitted that the assessee has not taken similar objections (Objection Nos. 1 to 3 ) before the Assessing Officer nor the Learned CIT(Appeals) has adjudicated upon these grounds. She pointed out further that besides this, assessee has also supported the first appellate order in Objection Nos. 4 to 6 of the cross objections for the assessment years 2004-05 to 2006-07. The Learned DR reiterated that cross objections can be filed only against any part of the order of the appellate



authority and the concerned party should be aggrieved in the present case. The Learned DR submitted further that objection numbers 5 & 6 raised in the cross-objections for the assessment year 2008-09 are also not permissible under the provisions of section 253(4) of the Income-tax Act, 1961. In support, she referred Rule 22 of the ITAT Rules, 1963 as well as section 253(4) of the Income-tax Act, 1961 and placed reliance on the following decision of the ITAT in the case of ITO vs. Neetee Clothing (P) Ltd. (2010) 129 TTJ 342 (Del.).

2. The Learned AR on the other hand opposed the above preliminary objection raised by the Learned DR. He submitted that the decision of the ITAT in the case of ITO vs. Neetee Clothing (P) Ltd. (supra) relied upon by the Learned DR was based on the ratio laid down by the Hon'ble High Court in the case of Ugar Sugar Works 141 ITR 326 (Bom.). The said decision of Hon'ble High Court in the case of Ugar Sugar Works has now been overruled by the larger Bench of the same Hon'ble High Court in the case of Ahmedabad Electricity 199 ITR 351 (Bom.) (Full Bench). He submitted that the decision of the ITAT in the case of Neetee Clothing (supra) is thus not helpful to the Revenue. He submitted that the provisions of filing cross-



objections are given in section 253(4) of the Income-tax Act, 1961 and Rule 22 of the ITAT Rules, 1962. On perusal of these provisions, it is clear that cross objection is also an appeal and the only difference is that an appeal is to be filed in 60 days along with fee and a cross-objection is filed in 30 days from the date of receipt of the notice of appeal. He submitted that cross-objection is also an appeal which is supported by the following decisions:

- i) CIT vs. Purwanchal Parivahan Ghosthi 234 ITR 663 (Gauhati);
- ii) Dahoodi Sehkari 282 ITR 321 (Guj.).

3. The learned AR submitted that the Special Bench of the ITAT in the case of DHL Operations 108 TTJ 152 (SB) (Mumbai) vide its order dated 02.03.2007 has in categorical and in unequivocal terms has held that in a cross-objection before the ITAT, a legal issue can be raised which has not been raised before the authorities below at any stage. In this regard, he referred contents of Para No. 23 of the said order of the Special Bench. The Learned AR also referred the decision of Hon'ble Supreme Court in the case of NTPC 229 ITR 383 (S.C) wherein the word 'Cross Objection' has been used in the decision.



4. We find that the decision of the ITAT in the case of ITO vs. Neetee Clothing (P) Ltd. (supra) holding that an aggrieved party can file Memorandum of Cross-objections only when an issue has been decided against the cross-objector, heavily relied upon by the Learned DR in support of the preliminary objection was also based on the decision of Hon'ble Bombay High Court in the case of Ugar Sugar Works Ltd. vs. CIT (supra). The said decision of Hon'ble Bombay High Court in the case of Ugar Sugar Works has been overruled by the larger Bench of the same Hon'ble High Court in the case of Ahmedabad Electricity 199 ITR 351 (Bom.) (Full Bench). The objection of the Learned CIT(DR) remained that if an issue has not been raised before the Learned CIT(Appeals) or the Learned CIT(Appeals) has not adjudicated upon such issue in that case, such issue cannot be raised by the parties in the cross-objection before the ITAT. The plea of the opposite party i.e. cross objector remained that rights of cross-objector and of appellant are same, hence, a fresh legal issue which goes to the route of the matter can be decided by the ITAT. As per Rule 22 of the ITAT Rules, 1963 the cross-objection is also registered and numbered as an appeal and the only difference is that an appeal is to be filed in 60 days on receipt of the first appellate order, whereas a cross-objection is filed in 30



days from the date of the receipt of the notice of the appeal. In support, reliance was sought on the decision in the cases of CIT vs. Purvanchal Parivahan Ghosthi (supra) and Dahood Sehkari (supra). It has been held therein that the ITAT has to decide the cross-objection as if it was an appeal.

Discussing the provisions of sec. 253(4) of the Act and Rule 22 of the ITAT Rules, 1963 Hon'ble High Court has held that cross-objections need not be confined to the points taken by the opposite party in the main appeal. The words against any part of the order of the DCIT" are wide enough to cover a

situation where the Revenue has challenged the order of the DCIT(A) on the merits regarding the quantum of the tax liability but the assessee in cross-

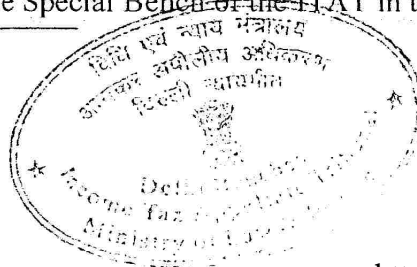
objections can challenge the order of the DCIT not only on the quantum of tax amount but on other points also. IT was further held that on a point of law there is absolutely no difference between an appeal and cross-objection.

IT was held that the only difference at all can be pointed out that an appeal can be preferred within 60 days from the date of receipt of the order, whereas a cross-objection can be filed within a period of 30 days of the date of service of appeal by the opposite party. Hon'ble High Court observed further that the provisions under sub-section (4) of section 253 of the Act and Rule 22 of the ITAT Rules, 1963 stand on a better footing than the

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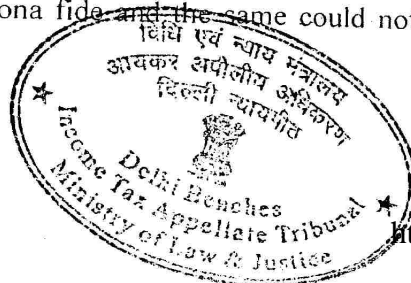
provisions made in order 41 Rule 22 of the Code of Civil Procedure which deals with filing of cross-objection. Whereas there is no provision in Code of Civil Procedure to number and Cross-objection as an appeal such provision has been made by the rule making authority under the ITAT Rules, 1963. Thus, we fully concur with the plea of the learned AR that once the cross-objection is registered for hearing before the ITAT, it acquires the status of the appeal and similar treatment is expected from the ITAT as towards an appeal is treated for adjudication by it. Now, the question is as to whether a cross-objector can raise an issue before the ITAT which was not raised before the first appellate authority. In the present case, the objection of the Learned CIT(DR) is that objection Nos.1 to 6 of the cross-objections for the assessment years 2004-05 to 2006-07 and Objection Nos. 5 & 6 for the assessment year 2008-09 were not raised before the Learned First Appellate Authority, hence, the same could not be raised before the ITAT. The contention of the learned AR remained that like in an appeal, the cross objector can raise a legal objection which goes to the route of the matter before the ITAT for the first time. In this regard, reliance was placed on several decisions including decision of the Special Bench of the ITAT in the



case of DHL Operations (supra). Para No. 23 of the said decision is relevant which is being reproduced hereunder for a ready reference:

"Clearly, therefore, the powers of the Tribunal are not confined to deal with the issues arising out of the orders of the authorities below. As long an issue has relevance to the correct determination of taxes in respect of the year, and particularly when relevant facts can be ascertained from the material already on record, it is open to the appellant and the cross-objector, to raise that issue, provided the issue so raised is bona fide and the same could not have been raised earlier for good reasons. As held by Hon'ble Madras High Court in the case of Wilson Industries Vs. CIT (2003) 179 CTR (Mad.) 186 : (2003) 259 ITR 318 (Mad.), it is open to the Tribunal to permit even the A.O. to raise a new ground of appeal if no new facts are required to be ascertained'. We agree that the Tribunal does indeed have the powers of admitting an additional ground of appeal which may not arise out of the orders of the authorities below. There is no longer any dispute or controversy about the powers of the Tribunal to admit an additional ground of appeal, as has been laid down by the Hon'ble Supreme Court in the case of National Thermal Power Corporation Ltd. (supra).

5. On perusal of the above cited decisions of the Special Bench, it appears that the appellant as well as cross-objector both are at liberty to raise an issue provided the issue so raised is bona fide and the same could not



have been raised earlier for good reasons. The Special Bench has held that powers of the ITAT are not confined to deal with the issue arising out of the orders of the authorities below as long as an issue has relevance to the correct determination of the taxes in respect of the years and particularly when relevant facts can be ascertained from the material already on record.

The Special Bench while deciding the issue has taken strength of the ratios laid down in several decisions cited before it including Wilson Industries vs. CIT (supra) of Hon'ble Madras High Court and of Hon'ble Supreme Court in the case of NTPC vs. CIT 229 ITR 383 (S.C). The Hon'ble Supreme Court

in the case of NTPC vs. CIT (supra) has been pleased to hold that the view that the ITAT is confined only to issues arising out of the appeal before the Learned CIT(Appeals) has too narrow a view to take of the powers of the ITAT. Undoubtedly, the ITAT has the discretion to allow or not to allow a new ground to be raised but where the ITAT is only required to consider the question of law arising from the facts which are on record in the assessment proceedings, there is no reason 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. The Hon'ble Supreme Court observed that the purpose of the assessment proceedings before the authorities





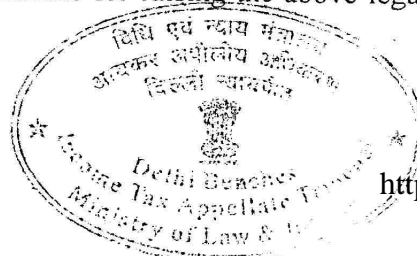
is to assess correctly the tax liability of an assessee in accordance with law. We, thus find that for raising a new issue before the ITAT, as per the ratios laid down by the Hon'ble Supreme Court in the case of NTPC is to consider the question of law arising from the facts which are on record in the assessment proceedings and the second requirement is that consideration of that question of law is necessary in order to correctly assess the tax liability of an assessee.

6. Having gone through the above cited decisions, we come to the conclusion that the whole purpose of preferring the appeal and the cross objections and raising new ground for the first time before the appellate authority is to correctly assess the tax liability of an assessee. When we consider the present case under the above background, we find that there is no dispute that for deciding the issue raised before the ITAT in the cross objections regarding validity of the assessment order on the basis that (i) the Assessing Officer had not recorded satisfaction while proceedings for framing assessment under sec. 153-C of the Act; (ii) the Assessing Officer had not signed the manuscript of the assessment order as required under sec. 282A of the Act; (iii) no incriminating documents in respect of the assessee



was found from the possession of persons covered under sec. 153A of the Act, no new facts outside the record of the authorities below is required to be considered. In other words, the question of law raised above is arising from the facts which are on record in the assessment proceedings. When there is no need to consider the new facts outside the record for the adjudication of the above issue and undisputedly when those issues are necessary to consider to correctly assess the tax liability of an assessee, as per the ratios laid down by the Hon'ble Supreme Court in the case of NTPC, there is no reason why such a question should not be allowed to be raised.

7. The learned AR has also explained the reasons and the bona fide of the assessee for not raising these issues before the authorities below. He submitted that the assessee has been cooperating with the Department since 2009. The assessee for the last six years has been craving for supply of the copy of note of satisfaction which is sine qua non for assuming jurisdiction under sec. 153C of the Act. He pointed that lastly vide letter dated 08.08.2014 the assessee deposited the requisite fee with the request to supply copy of the note of satisfaction in writing but he could not succeed. All these events would prove bona fide and good reasons for raising the above legal



plea which goes to the root of the matter. We do not find reason to doubt these explanation of the assessee. Under these circumstances, we are of the view that the legal issues raised in the cross objections for the first time before the ITAT have been validly raised by the assessee, hence, it cannot be said that the cross objections raising those issues for the first time would be amounting to non-maintainability of the cross objections under consideration. The preliminary objection raised by the Learned CIT(DR) thus does not stand. It is rejected accordingly.

8. The parties are directed to proceed with their respective cases on its merits.

(S.V. MEHROTRA)  
ACCOUNTANT MEMBER

(I.C. SUDHIR)  
JUDICIAL MEMBER

Dated: 23/09/2014  
Mohan Lal

Copy forwarded to:

1. Applicant
2. Respondent
3. CIT
4. CIT(A)
5. DR:ITAT



ASSISTANT REGISTRAR

Assistant Registrar,

आयकर अपीलीय अधिकरण

Income-tax Appellate Tribunal

दिल्ली पीठ, नई दिल्ली

Delhi Benches, New Delhi