

ITAT to consider question of law even if it was not raised as ground of appeal before CIT(A)

Summary – The High Court of Karnataka in a recent case of Sankeshwar Printers (P.) Ltd., (the Assessee) held that where legal question was raised for the first time before Tribunal, it was required to consider same in accordance with law.

Facts

- The assessee-company was engaged in the business of printing and publishing. It purchased shares from its shareholders.
- The Assessing Officer held that the amount paid by the assessee-company to purchase the shares from the shareholders amounts to distribution of dividend and the same has to be considered as accumulated profits in the hands of the assessee within the meaning of section 2(22)(d).
- On appeal, the Commissioner (Appeals) confirmed the order of the Assessing Officer.
- On second appeal, the assessee contended that since the provisions of section 77-A of the Companies Act had been applicable to buyback of shares of the assessee-company, section 2(22)(d) of the Income-tax Act would not attract to consider as deemed dividend in order to apply the provisions of section 115-O.
- The Tribunal however, did not consider the said contention on the ground that the said point was not canvassed before the Commissioner (Appeals) and the same was not raised as a ground in the appeal memo.
- On further appeal:

Held

- Legal question can be raised at the stage of the appeal and such a question need not be raised as a ground. When the legal question is raised, the Tribunal has to consider the same in accordance with law. In the instant case the Tribunal has committed an error in not considering the question of law raised by the appellant. Therefore, the HC allowed the appeal and remanded the matter to the Income-tax Appellate Tribunal in order to consider the question in accordance with law and on merits. The appeal was allowed accordingly.