

ITAT flaked for confirming addition of an exp. which wasn't subject matter of appeal

Summary – The High Court of Calcutta in a recent case of Sheo Kumar Mishra, (the Assessee) held that where Tribunal confirmed addition of expense which was not subject matter of challenge, action of Tribunal was not justified

Facts

- The assessee delivered bitumen (goods) to various oil companies. The oil companies alleged that the assessee violated transportation agreement by taking different route to transport goods and, thus, charged excess transportation charges.
- The Assessing Officer, during block assessment proceedings, treated excess claim of transportation charges, *i.e.*, Rs. 2.02 crores as undisclosed income of the assessee. He also opined that the assessee had shown bogus expenditures and bogus creditors, the peak credit whereof was Rs. 1.59 crores. He, however, did not treat said amount as undisclosed income on ground that said amount was less than the amount of excess claim of transportation charges and, therefore, no separate addition was made on this account.
- The Commissioner (Appeals) upheld order of the Assessing Officer.
- The Tribunal reversed addition of Rs. 2.02 crores on ground that said charges were already accounted for by the assessee in its account books and, therefore, could not be taxed. The Tribunal, however, confirmed addition of Rs. 1.59 crores on account of bogus expenditures.
- On appeal before the High Court:

Held

- It was not open to the Tribunal to confirm the addition of the sum of Rs. 1.59 crores because no such addition was made. In the absence of any such addition, there was no basis for the Tribunal to confirm the same. This addition was made by the Tribunal for the first time which the Tribunal could not have done.
- The assessee did not raise the issue before the Tribunal of any addition of a sum of Rs. 1.59 crores because there was no addition of the sum of Rs. 1.59 crores or any part thereof. The assessee attempted to demonstrate the fallacy in the finding arrived at by the Assessing Officer by holding at one place that there was an undisclosed income of Rs. 2.02 crores and at another place by holding that there was an undisclosed income of Rs. 1.59 crores. When the Assessing Officer had not made the addition of Rs. 1.59 crores, the assessee had no occasion to challenge the same. When the assessee carried the matter to the Commissioner (Appeals), the latter, without anything more, could have enhanced the addition. But the Commissioner (Appeals) did not do so. He merely confirmed the order of the Assessing Officer. Therefore, the subject matter of challenge before the Tribunal was the addition of Rs. 2.02 crores. The Tribunal could either have upheld the same or could have

set aside the same. The Tribunal chose to set aside that addition. The matter should therefore have come to an end in the absence of any cross objection by the revenue.

- Reference, in this regard, may be made to a Division Bench judgment of the Bombay High Court in the case of *Motor Union Insurance Co. Ltd. v. CIT* [\[1945\] 13 ITR 272](#), wherein it was viewed that apart from statute, it is elementary that if a party appeals, he is the party who comes before the Appellate Tribunal to redress a grievance alleged by him. If the other side has any grievance, he has a right to file a cross appeal or cross-objections. But if no such thing is done, the other party, in law, is deemed to be satisfied with the decision. He is, of course, entitled to support the judgment of the first Officer on any ground open to him, but he is not entitled to raise a ground so as to work adversely to the appellant and in his favour.
- Same view was also endorsed by the Supreme Court in the case of *State of Kerala v. Vijaya Stores* [1979] 116 ITR 15. It was observed therein that in the absence of an appeal or cross-objections by the department against the order in dispute, the Appellate Tribunal will have no jurisdiction or power to enhance the assessment.
- For the aforesaid reasons, the addition of a sum of Rs. 1.59 crores was clearly in excess of jurisdiction.