

**HIGH COURT OF KARNATAKA**

**Sankeshwar Printers (P.) Ltd.**

**v.**

**Deputy Commissioner of Income-tax, Circle-2(1)\***

**K.L. MANJUNATH AND S.N. SATYANARAYANA, JJ.**

**IT APPEAL NO. 5001 OF 2011†**

**AUGUST 28, 2013**

**JUDGMENT**

---

**K.L. Manjunath, J.** - The concurrent findings of the authorities are questioned by the appellant herein.

2. The appellant is an assessee. The dispute is in regard to the assessment year 2004-05. The assessee is engaged in the business of printing and publishing for the assessment year 2004-05. The appellant filed the return of income on 4.10.2004 declaring the total income of Rs. 12,01,960/-. The order of assessment came to be passed on 15.11.2006 and came to the conclusion that the amount paid by the company to purchase the shares from the shareholders amounts to distribution of dividends and the same has to be considered as accumulated profits in the hands of the assessee bringing the same within the meaning of Section 2(22)(d) of the Income-tax Act. The same was questioned by the appellant by filing an appeal before the CIT (Appeals) which appeal also came to be dismissed.

3. Challenging the same, an appeal came to be filed before the Income Tax Appellate Tribunal, Bangalore, in ITA No.672/BANG/2010. The appellant raised a contention 'contending whether the provisions of Section 77-A of the Companies Act having been applicable to buyback of shares of the appellant company, Section 2(22)(d) of the Income-tax Act would attract to consider as deemed dividend in order to apply the provisions of Section 115-O of the Income-tax Act.

4. The aforesaid contention was not raised by the appellant either before the Assessing Officer or before the Commissioner of Income Tax (Appeals). The said question was raised for the first time before the Income Tax Appellate Tribunal, Bangalore. The Income Tax Appellate Tribunal did not consider the said question on the ground that the said point was not canvassed before the Commissioner for Income Tax (Appeals) and the same was not raised as a ground in the appeal memo. Accordingly the appeal filed by the assessee came to be dismissed. Challenging the same, the present appeal is filed.

5. The short question arises for our consideration in this appeal is whether an assessee can raise a question of law before the Income Tax Appellate Tribunal for the first time and the Tribunal can refuse to answer the same on the ground that the same was not raised either before the Commissioner of Income Tax (Appeals) or as a ground in the appeal memo filed by him.

6. The main contention of Sri Parthasarathi, the learned counsel for the appellant is that whenever a legal question arises, the assessee need not plead it as a ground. Legal point can be raised at the time of arguments also and the Tribunal was required to consider the same.

7. We do see some force in the arguments advanced by the learned counsel for the appellant. The legal question can be raised at the stage of the appeal and such a question need not be raised as a ground. It can be argued by a counsel at the time of hearing. 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, this Court has to allow the appeal and remand the matter to the Income Tax Appellate Tribunal in order to consider this question and we are

not interfering with the orders of the Income Tax Appellate Tribunal or the Commissioner of Income Tax (Appeals) or the Assessing Officer. It is for the Tribunal to consider only the question of law raised by the appellant in accordance with law and on merits. The appeal is allowed accordingly.

RITESH

---

[\\*In favour of assessee.](#)

[†Arising out of order of Tribunal in ITA No. 672/Bang/2010, dated 7-10-2010.](#)