

ITAT wasn't competent to make addition under different section if it wasn't subject matter of appeal

Summary – The High Court of Allahabad in a recent case of Smt. Sarika Jain, (the Assessee) held that where subject matter of dispute all through before Tribunal in appeal was only with regard to addition of alleged amount of gift received by assessee as her personal income under section 68 and Tribunal was of view that said addition could not be sustained, Tribunal was unjustified in making addition of said income under section 69A

Facts

- The assessee was a partner in the firm SJT. He inducted capital of certain amount in the partnership firm. The assessment of the relevant year was completed and proceedings for reassessment were initiated under section 148 and a notice was given to the assessee to explain the source of the above capital as inducted in the partnership. In reply to the said notice, the assessee submitted that he had received a gifts of certain amounts from MKK and ZB. The gifts were received through banking channel. In order to prove the aforesaid gift transactions, gift deeds were also produced before the authorities. The statement of the two donors were also recorded under section 131 and they proved the factum of the gift.
- The Assessing Officer held that gifts were not genuine as these were held to be unnatural and aforesaid amounts were added as undisclosed income of assessee under section 68.
- On appeal, the Commissioner affirmed the said order.
- On further appeal, the Tribunal, held that the addition made by the Assessing Officer under Section 68 and sustained by the Commissioner (Appeals) could not be sustained. However, the Tribunal proceeded to add the aforesaid amount as the income of the assessee under Section 69-A
- In instant appeal, the assessee contended that all through the case of the parties was as to whether the aforesaid amount alleged to have been received by the assessee was liable to be added under Section 68 and the question of addition under Section 69-A was never there. Therefore, the Tribunal had erred in making addition under Section 69A.

Held

- A plain reading of the section 254(1) reveals that the Tribunal has power to pass such orders thereon as it thinks fit.
- The use of the word 'thereon' is important and it reflects that the Tribunal has confined itself to the questions, which are arising or are subject matter in the appeal and it cannot be travelled beyond the same. The power to pass such orders as the Tribunal thinks fit can be exercised only in relation to the matter that arises in the appeal and it is not open to the Tribunal to adjudicate any other question or an issue, which is not in dispute and which is not the subject matter of the dispute in appeal.

- In the present case, it is apparent that the subject matter of the dispute all through before the Tribunal in appeal was only with regard to the addition of alleged amount of the gift received by the assessee as his personal income under section 68 and not whether such an addition can be made under section 69A.
- It could safely be said that the Tribunal travelled beyond scope of appeal in making addition of said income under section 69A. It may be worth noting that the Tribunal has recorded a categorical Finding that it is clear that under the provisions of section 68, the addition may be the Assessing Officer and Sustained by the Commissioner (Appeals) cannot be sustained, meaning thereby that the Tribunal was of the opinion that the Assessing Officer on the Commissioner (Appeals) committed an error in adding the aforesaid amount in the income of the appellant-assessee under section 68.
- When said income could not be added under section 68 and Tribunal was not competent to make said addition under section 69A entire order of the Tribunal stand vitiated in law.
- Accordingly, the Tribunal was not competent to make any addition under section 69A and as the same was not subject matter of the appeal before it.