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## **ALL ABOUT RAISING AN ADDITIONAL GROUND OF APPEAL BEFORE ITAT**

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# INTRODUCTION:

The Income Tax Appellate Tribunal ('ITAT') is the final fact-finding authority in the appellate hierarchy under the Income Tax Act, 1961. Once ITAT delivers its decision, only a substantial question of law can be raised before higher authorities i.e. High Courts and Supreme Court. Accordingly, to ensure preservation of Taxpayers' rights, safeguarding Taxpayers' ability to pursue the full scope of further remedies and for fair representation, it is essential that all possible grounds of appeal, factual and legal, are raised before the ITAT.

However, it may often happen that certain grounds of appeal are not taken in memorandum of appeal while filing such appeal before the ITAT or that such grounds of appeal are not taken before lower authorities. In this scenario, it is imperative for Taxpayers and Tax Professionals to have a comprehensive understanding of how to raise additional grounds of appeal before ITAT:

# WHAT CONSTITUTES AN ADDITIONAL GROUND OF APPEAL BEFORE ITAT?

**An Additional Ground of Appeal before ITAT can be broadly classified into two categories:**

## **Ground Not Originally Raised in Form 36**

A ground of appeal not originally raised in the memorandum of appeal (Form 36) at the time of filing such appeal, which the Taxpayer seeks to urge later at the time of or before the date of hearing

## **Ground Not Raised Before Lower Authorities**

A ground of appeal not raised before the lower authorities i.e. AO and CIT(A), which may be raised by the Taxpayer either in memorandum of appeal (Form 36) or urged later at the time of or before the date of hearing

# POWERS OF ITAT TO ADMIT ADDITIONAL GROUND OF APPEAL:

## For Additional Ground of Appeal not originally raised in Memorandum of Appeal (Form 36)

The legislature itself vide **Rule 11 of Income Tax (Appellate Tribunal) Rules, 1963**, which contains provisions for **"grounds which may be taken in appeal"**, has granted ITAT discretionary powers to admit an additional ground of appeal which was not raised originally in memorandum of appeal.

### **Rule 11 of Income Tax (Appellate Tribunal) Rules, 1963:**

*"11. The appellant shall not, except by leave of the Tribunal, urge or be heard in support of any ground not set forth in the memorandum of appeal, but the Tribunal, in deciding the appeal, shall not be confined to the grounds set forth in the memorandum of appeal or taken by leave of the Tribunal under this rule:*

*Provided that the Tribunal shall not rest its decision on any other ground unless the party who may be affected thereby has had a sufficient opportunity of being heard on that ground."*

# POWERS OF ITAT TO ADMIT ADDITIONAL GROUND OF APPEAL:

## For Additional Ground of Appeal not raised before Lower Authorities:

Though no explicit powers have been granted to ITAT under the statutes, however, as per judicial interpretation, particularly in the case of ***Mahalaxmi Textile Mills Ltd. [1967] 66 ITR 170 (SC)*** and in the case of ***National Thermal Power Co. Ltd. [1998] 229 ITR 383 (SC)***, there is discretionary power with the ITAT to admit an additional ground of appeal not raised before lower authorities.

### **Mahalaxmi Textile Mills Ltd.**

"There is nothing in the Income-tax Act which restricts the Tribunal to the determination of questions raised before the departmental authorities."

### **National Thermal Power Co. Ltd.**

"The view that the Tribunal is confined only to issues arising out of the appeal before the Commissioner (Appeals) takes too narrow a view of the powers of the Tribunal. .... Undoubtedly, the Tribunal will have the discretion to allow or not allow a new ground to be raised. But where the Tribunal is only required to consider a question of law arising from the facts which are on record in the assessment proceedings we fail to see 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."

# ADJUDICATION OF ADDITIONAL GROUND OF APPEAL BY ITAT:

An important aspect to note in raising an additional ground of appeal before ITAT is that the Tribunal has jurisdiction to examine a question of law which arises from facts as found by lower authorities or on record before lower authorities and which has a bearing on the tax liability of the assessee.

## **Question of Law from Existing Facts**

If a question of law, arising from facts already on record, is raised by the Taxpayer before ITAT by way of an additional ground for the first time, then the ITAT has the power to either allow or dismiss such additional ground of appeal.

## **New Facts or Evidence**

Where the Taxpayer wants to bring on record new facts or new evidence, not presented before lower authorities, then the provisions of Rule 29 of Income Tax (Appellate Tribunal) Rules, 1963, become applicable, which provide ITAT with discretionary powers to admit additional evidence only when the Tribunal deems it necessary to enable it to pass orders or for any other substantial cause. In such instances, where the Tribunal allows admittance of additional evidences, matters are generally remanded back or set aside to lower authorities for adjudication.

# CONCLUSION:

The power of the Income Tax Appellate Tribunal to admit additional grounds of appeal reflects the legislative intent to ensure that justice is not defeated by procedural rigidity. As the final fact-finding authority under the Income-tax Act, 1961, the ITAT plays a crucial role in determining the correct tax liability of a taxpayer based on both facts and law. Therefore, it is vital that taxpayers and their Representatives are vigilant in raising all relevant grounds—whether factual or legal—at the earliest opportunity, and, where necessary, seek leave to urge additional grounds in accordance with Rule 11 of the ITAT Rules, 1963.

Judicial pronouncements such as Mahalaxmi Textile Mills Ltd. and National Thermal Power Co. Ltd. have firmly established that the Tribunal possesses wide discretionary powers to entertain additional grounds that arise from facts already on record, in the interest of fair and complete adjudication.

**In essence, the raising of additional grounds before the ITAT is not merely a procedural step but a substantive right aimed at ensuring that the taxpayer's true liability is determined in accordance with law.**

The Tribunal's discretion in this regard must always be exercised to advance the cause of justice, balance the interests of both parties, and uphold the integrity of the appellate process.

Navigating complex litigation requires both experience and precision.  
For more insights, contact us at:



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