

## The Commissioner of Income Tax Vs Shivam Complex

**Court:** Jharkhand High Court

**Date of Decision:** Aug. 19, 2011

**Acts Referred:** Income Tax Act, 1961 " Section 251(2)

**Hon'ble Judges:** Prakash Tatia, Acting C.J.; Harish Chandra Mishra, J

**Bench:** Division Bench

**Final Decision:** Allowed

### Judgement

1. Heard learned Counsel for the parties on the question of law that whether, in case where as per the provisions of Section 251(2) of the Income

Tax Act, 1961, the Commissioner of Income Tax (Appeal) has not given an opportunity of hearing to the Assessee to show cause against any

enhancement in the liability of the Assessee, than the Income Tax Tribunal was justified in not remanding the matter to the appellate authority to

give opportunity of hearing to the Assessee and pass fresh order and was justified in setting aside the addition.

2. Learned Counsel for the Respondents has submitted that the Income Tax Tribunal not only allowed the appeal of the Assessee on that legal

ground alone, but also considered the merits of the case in paragraph-6.

3. We have perused paragraph-6 of the impugned judgment dated 25th September 2008 and we are of the considered opinion that in paragraph-

6, only the argument of the counsel were taken note of and in paragraph-7, the Tribunal has specifically held that in view of the illegality in the order

passed by the Commissioner (Appeal), which is in violation of Section 251(2) of the Act of 1961, the Tribunal is not going into the merits of the

addition made by the C.I.T (Appeal). Therefore, the Tribunal has not decided the question of fact on merit and decided the appeal only on the

question of law.

4. We are of the considered opinion that in a case where an opportunity of hearing was not given u/s 251(2) of the Act of 1961, then instead of

setting aside the addition, the matter should have been remanded to the Commissioner of Income Tax (Appeal) for giving an opportunity of hearing

to the Assessee and to pass an order. Therefore, this tax appeal is allowed. The impugned order dated 25th September 2008 is set aside and the

matter is remanded to the C.I.T.(Appeal) to comply with the provisions of Section 251(2) of the Act of 1961 and afford an opportunity of hearing

to the Assessee and pass an order.