



**IN THE INCOME TAX APPELLATE TRIBUNAL,  
RAIPUR BENCH, RAIPUR**

**BEFORE S/SHRI N.S SAINI, ACCOUNTANT MEMBER  
AND PAVAN KUMAR GADALE, JUDICIAL MEMBER**

**ITA No.370/Rpr/2014**  
Assessment Year : 2009-2010

Income Tax Officer, Ward 2(3), Aayakar Bhavan, Central Revenue Building, Civil Lines, Raipur	Vs.	Champalal Prajapati, Near Bottle House, New Shanti Nagar, Raipur
PAN/GIR No.AEQPP 5660 P		
<b>(Appellant)</b>	..	<b>( Respondent)</b>

Assessee by : None  
Revenue by : Shri Ajit Kumar Laskar, DR

**Date of Hearing : 16/01/ 2018**  
**Date of Pronouncement : 17 /01/ 2018**

**ORDER**

**Per Pavan Kumar Gadale, JM**

This is an appeal filed by the revenue against the order of the CIT(A)-  
Raipur, dated 17.9.2014 for the assessment year 2009-2010.

2. The revenue has raised the following grounds of appeal:

"1. Whether on the facts and circumstances of the case, the  
CIT(A) has erred in admitting additional evidence under Rule  
46A of the Income Tax Act, 1961 without there being any  
reasonable cause for the assessee not to have produced before  
the Assessing Officer.



2. Whether on the facts and circumstances of the case, the CIT(A) has erred in deleting the addition of Rs.1,40,556/- made by the AO on account of applying NP rate at 8% by rejecting the books of account on account of various discrepancies pointed out in the assessment order.

3. Whether on the facts and circumstances of the case, the CIT(A) has erred in not considering the value adopted by the stamp duty authority for the purpose of calculation of long term capital gain u/s.50C.

4. Whether on the facts and circumstances of the case, the CIT(A) has erred in deleting the disallowance of claim of deduction u/s.54B of the I.T.Act, 1961 of Rs.31,00,000/- as the assessee has failed to fulfill conditions for claiming deduction under that section.”

3. Brief facts of the case are that the assessee is an individual deriving income from civil contract work. The Assessing Officer found that on total receipts of Rs.68,35,990/-, the assessee has shown gross profit at Rs.6,18,366 being @ 9.05% and net profit of Rs.4,06,323/- @ 5.94%. The Assessing Officer further observed that the assessee has claimed labour wages expenses of Rs.18,68,826/- but has not maintained any registers or documents for daily attendance of the labours, or daily works done. The assessee has also claimed material purchase expenses of Rs.65,76,455/- and the expenses are not supported by proper bills and vouchers. It was in this backdrop that the Assessing Officer was not satisfied with the correctness and completeness of the accounts of the assessee and, therefore, rejected the books of account and determined the net profit of the



assessee @ 8% of the total receipts of Rs.68,35,990/-, which worked out to Rs.5,46,879/-.

Similarly, the Assessing Officer observed that the assessee has credited Rs.32,67,295/- on account of sale of agricultural land. However, on AIR information, the Assessing Officer found that the sale transaction is Rs.66,50,000/- against total land of 0.380 hectare sold by the assessee jointly with Shri Meghraj Prajapati on 22.10.2008. The Dy. Registrar had adopted the value of the property at Rs.1,72,71,000/- as per norms of the State Government and that as per the provisions of sub-section (1) of Section 50C of the Act. Since the assessee has not disputed before the State Government, the Assessing Officer has taken value of sale consideration at ½ share of Rs.1,72,71,000/- and allowing indexed cost of acquisition determined the taxable long term capital gain at Rs.85,16,365/-.

Further, the Assessing officer found that the assessee has claimed purchase of another agricultural land at Village: Boria Khurd for Rs.35,00,000/-. The Assessee has filed copy of sale agreement dated 30.9.2009, in which the registration of the sale deed was to be executed within two months from the date of agreement. Since the assessee did not file details regarding agricultural activities done and sale of agricultural



activities and other queries made by the Assessing Officer, the deduction u/s.54B was not allowed to the assessee.

4. On appeal, the CIT(A) allowed the appeal of the assessee.

5. At the time of hearing, Id D.R. submitted that the CIT(A) has erred in additional evidence without confronting the same with the Assessing Officer. He also submitted that since the assessee has not maintained proper books of account, the Assessing Officer has rightly rejected the books of account of the assessee and estimating the net profit on percentage basis. Similarly, the assessee has claimed deduction u/s.54B of the Act. As the assessee could not comply with the conditions u/s.54B of the Act, the Assessing Officer has made the addition and the CIT(A) was not justified in deleting the same. Ld D.R. prayed that the Assessing Officer should have been afforded opportunity to verify and examine the claim of the assessee.

6. We have heard the submission of Id D.R, perused the orders of lower authorities and materials available on record. Prima facie, on perusal of the assessment order, we find that the Assessing officer has rejected the books of account as he was not satisfied with the correctness and completeness of the accounts and book result shown in contract business and, accordingly, determined the net profit on percentage basis. The CIT(A) without bringing any evidence on record has allowed relief. We also find that the CIT(A) has



not called for any remand report from the assessing Officer. Further, at para 15 of the CIT(A)'s order, we find that the CIT(A) has considered an affidavit from the sellers as regards to possession of agricultural land, in the form of additional evidence produced by the assessee without confronting the same with the Assessing Officer. Considering all these factors into consideration, we are of the opinion that there is strength in the arguments of Id D.R. that the CIT(A) has admitted additional evidence without calling for a remand report from the Assessing officer. In view of above, we fit it proper to remit the matter back to the file of the Assessing Officer to decide the disputed issues afresh as per law and after giving opportunity to the assessee.

7. In the result, appeal filed by the revenue is allowed for statistical purposes.

Order pronounced on 17 /01/2018.

Sd/-

**(N.S Saini)**  
**ACCOUNTANT MEMBER**

sd/-

**(Pavan Kumar Gadale)**  
**JUDICIALMEMBER**

Raipur; Dated 17 /01/2018  
B.K.Parida, SPS



**ITA No.370/Rpr/2014**  
Assessment Year : 2009-2010

**Copy of the Order forwarded to :**

1.	The Appellant : Income Tax Officer, Ward 2(3), Aayakar Bhavan, Central Revenue Building, Civil Lines, Raipur
2.	The respondent : Champalal Prajapati, Near Bottle House, New Shanti Nagar, Raipur
3.	The CIT(A)- Raipur
4.	Pr.CIT- Raipur
5.	DR, ITAT, Raipur
6.	Guard file. //True Copy//

BY ORDER,

SR.PRIVATE SECRETARY  
**ITAT, Raipur**