

आयकर अपीलीय अधिकरण, इन्दौर न्यायपीठ, इन्दौर

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

**BEFORE SHRI KUL BHARAT, JUDICIAL MEMBER
AND
SHRI MANISH BORAD, ACCOUNTANT MEMBER**

**ITA No.248/Ind/2013
Assessment Year: 2008-09**

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| M/s. Satnam Transport Company 137, Transport Nagar, Indore (Appellant) | बनाम/ Vs. | CIT-II Indore (Revenue) |
| P.A. No.AARFS4063L | | |

**ITA No.514/Ind/2013
Assessment Year: 2009-10**

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| M/s. Satnam Transport Company 137, Transport Nagar, Indore (Appellant) | बनाम/ Vs. | DCIT-5(1) Indore (Revenue) |
| P.A. No.AARFS4063L | | |

**ITA No.285/Ind/2013
Assessment Year: 2009-10**

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| DCIT-5(1) Indore (Revenue) | बनाम/ Vs. | M/s. Satnam Transport Company 137, Transport Nagar, Indore (Respondent) |
| P.A. No.AARFS4063L | | |

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| Appellant by | Shri Girish Agrawal & Subhash Jain CA |
| Respondent by | Shri Lal Chand, CIT-DR |
| Date of Hearing: | 02.01.2018 |
| Date of Pronouncement: | 19.01.2018 |

आदेश / O R D E R

PER KUL BHARAT, J.M:

These three appeals by the assessee and Revenue pertaining to the A.Y. 2008-09 directed against two separate orders of Ld. Commissioner of Income Tax-II, and Commissioner of Income Tax dated 25.03.2013 & 11.02.2013 respectively.

First, we take up the appeal pertaining to the A.Y. 2008-09, the assessee has raised following grounds of appeal:

“1. On the facts and in the circumstances of the case, the CIT erred in holding that there was late deposit of TDS. As a matter of facts TDS was not deductible since the freight was not payable but was actually paid. However the assessee deducted the same and paid to the Central Govt.

2. On the facts and in the circumstances of the case, the assessment order is not erroneous in as much as the AO rightly allowed deduction u/s 40(ia) of the IT, Act.

3. On the facts and in the circumstances of the case, the CIT erred in holding that the assessment order was prejudicial to the interest of revenue. In any event TDS is deducted this year, is definitely deductible in the next year even the view of the CIT is accepted. This would result in multiplicity of the labour with no result.

4. On the facts and in the circumstances of the case the CIT of his own did not call for and examine the record but acted on the basis of the objection of the audit hence the order of the CIT be quashed.”

2. The facts giving rise to this appeal in brief are that the Ld. CIT-II, Indore by invoking the provisions of section 263 revised the assessment completed by the Assessing Officer vide order u/s 143(3) dated 30.12.2010 on the ground that the Assessing Officer failed to appreciate the facts that the deduction claimed in respect

of payment made by the assessee was not allowable in view of the provisions of section 40(a)(ia) since the assessee has not deposited the tax so deducted within the prescribed period.

3. Ld. Counsel for the assessee reiterated the submissions as made in the written submissions and submitted that the facts which are undisputed that the tax was deposited late after deduction. It is further submitted that AO duly made inquiry with regard to payment made by the assessee and deduction of tax Ld. counsel submitted that the Ld. CIT is empowered invoking provisions of section 263 only in the event where twine conditions are satisfied viz. assessment order framed by the AO is erroneous in so far as it is prejudicial to the interest of the revenue. Therefore, he contended that erroneous order which is not prejudicial to the interest of the revenue, cannot be revised u/s 263 of the Act. Similarly, a prejudicial order which is not erroneous cannot be revised. In support of the contention the Ld. Counsel for the assessee placed reliance on various case laws. Ld. Counsel for the assessee relied upon the judgment of Hon'ble' Madhya Pradesh High court in the case of CIT vs. Jawahar Lal Agrawal (2014) 23 ITJ 55 (M.P.). The Ld. counsel also placed reliance on the judgment of Hon'ble' Apex Court in the case of Malabar Industrial Co. Limited [2000] 243 ITR 83 (SC). The Ld. Counsel placed further reliance on the judgment of Hon'ble' Jurisdictional High court in the case of Nazir Singh (2001) 252 ITR 820(MP). The Ld. counsel further placed reliance on the judgment of Hon'ble Delhi High Court in the case of

CIT v. Anil Kumar Sharma [2010] 194 Taxman 504 and also judgment of Hon'ble Delhi High Court in the case of CIT vs. Vikas Polymers [2010] 194 Taxman 57(Del). Ld. Counsel also placed reliance on the judgment of Bombay High Court in the case of Design & Automation Engineers (Bombay) P. Ltd. [2008] 323 ITR 632.

4. Per contra Ld. DR opposed the submissions and placed reliance on the judgment of Hon'ble' Supreme Court in the case of Malabar Industrial Co. Ltd. v. CIT(supra) and Smt. Tara Devi Aggarwal v. CIT 88 ITR 323(SC).

5. We have heard the Ld. Representatives of the parties, perused the material on record. The issue is to be examined whether the action of the Ld. CIT for revising the assessment order is justified under the facts of the case. There is no dispute with regard to the facts that the assessee is required to deduct tax which has been accepted by the Ld. counsel for the assessee. The assessee did not deposit the tax within the time prescribed under the law in force. The law is well settled that the action of the assessment order can be revised by the Ld. CIT u/s 263 if it satisfied twine conditions embodied into the provisions that is the order sought to be revised erroneous in so far as it is prejudicial to the interests of the revenue. It is the contention of the Ld. CIT-DR, the assessee was required to deposit the tax in respect of the tax deducted. He submitted that as per the ld. CIT, the assessee made a payment of freight of Rs.42,20,599/- was made on 20.02.2008 and deducted

tax of Rs.10,551/- was deducted on same date and the amount of TDS was deposited on 12.04.2008 on the Government Account. The Ld. CIT(A) was of the view that this amount was required to be deposited by 31st March 2008. Non deposit of the tax attracted the provision of section 40(a)(ia) of the Act. In view of the said provisions the AO ought to have disallowed the entire expenditure claimed by the assessee in respect of Akal Sahai Carrier. There cannot be any dispute in respect of the proposition that law is required to be applied which is in force, in respect of particular assessment year, the assessment year involved is 2008-09. The amendment in the provisions of section 40(a)(ia) came into force subsequently, as per proviso to section 40(a)(ia) as it was in force wherein in respect of any such tax has been deducted any subsequent year or has been deducted in the previous year but paid in the subsequent year after expiry of the time period sub-section (1) of section 139; Such sum shall be allowed as a deduction in computing the income of the previous year in which such tax has been paid.

6. We find that the Ld. CIT has allowed the deduction in the assessment year 2009-10. It is evident from the assessment year that the assessing officer has acted contrary to the law in force. In our view such order is certainly erroneous as per this provisions, the expenditure as claimed was required to be disallowed which admittedly is not done by the AO. This has caused prejudice to the interest of the revenue therefore we are of the view that the twine conditions as embodied u/s 263 are satisfied in the present case.

The case laws as relied by the assessee would not have application as those are in the context of proposition that if one of the condition out of the two conditions are not satisfied, then, the Ld. CIT(A) cannot exercise this power u/s 263. Therefore, we do not see any reason to interfere in the decision of Ld. CIT, same is hereby confirmed. The grounds raised in the appeal are dismissed.

7. As a result, appeal of the assessee is dismissed.

Now coming to the Cross Appeals of the parties are pertaining to the A.Y. 2009-10.

First we take of assessee's appeal in I.T.A.T. No.514/Ind/2013.

8. The assessee has filed following grounds of appeal:

"1. On the facts and in the circumstances of the case the CIT(A) erred in holding that the books of accounts of the assessee were correctly rejected u/s 145(3) of the I.T. Act. by the AO while the books of account of the assessee are duly audited u/s 44AB of the Income Tax Act.

2. On the facts and in the circumstances of the case the Ld. CIT(A) erred in sustaining addition of Rs.261018/- in respect of alleged differences in the freight receipt amount relating to TDS with the accounts of other parties.

3. On the facts and in the circumstances of the case the Ld. CIT(A) erred in sustaining disallowance of Rs.4250000/- out of truck plying expenses.

4. Any other relief which the Hon'ble Tribunal find fit and proper for relief.

5. That the appellant reserves its right to add to amend to alter or to modify any of above grounds and to pursue any other or further grounds as may be required."

9. Briefly stated facts are that the case of the assessee was picked up for scrutiny assessment and the assessment u/s 143(3) of the

Income Tax Act 196(hereinafter called as 'the Act') was framed vide order dated 30th December 2011. The Assessing Officer rejected the books of accounts and made addition of Rs.65,26,760/- on account of difference in receipts shown in the books of accounts with form No.26AS and the Assessing Officer also made addition on account of disallowance out of Rs.85,00,000/-.

10. Being aggrieved, the assessee preferred an appeal before the Ld. CIT(A) who after considering the submissions partly allowed the appeal thereby, he sustained the addition of Rs.2,61,068/- against the addition of Rs.65,26,707/- and further sustained addition of Rs.42,50,000/- out of 85,00,000/- in respect of disallowance of truck expenses.

11. Against this order both the assessee and Revenue have come in appeal.

12. Ground No.1 of assessee's appeal is against the rejection of books of accounts. The counsel for the assessee submitted that sufficient opportunity was not granted by the AO and the books of account were rejected without giving any notice to the assessee which is against the settled principles of law. The Ld. counsel reiterated the submissions as made in the written submissions. He submitted that during the assessment proceedings the assessee had produced books of accounts, cash book, ledgers & vouchers, account of various trucks, full details of truck expenses along with bills and vouchers, details of diesel expenses and their bills pertaining to amount incurred on own trucks and were duly examined by the AO. He submitted that method of accounting as

employed of the assessee is mercantile. He submitted that it is evident from the finding of the AO that the AO has failed to bring on record any specific defects or instances in order to corroborate his findings. He contended that the AO has rejected the books of accounts but no estimation of profit was made by the AO. He submitted that the books of accounts are duly audited u/s 44AB of the Act and no specific instance has been stated by the auditors which negate the manner in which books of accounts are maintained by the assessee. Also, no adverse remarks or findings are stated in the audit report. He submitted that the ld. CIT(A) in mechanical manner accepted the rejection of books of accounts without appreciating the material placed on record in right prospective. Under these facts serious prejudice is caused to the assessee. Ld. Counsel placed reliance on the decision of coordinate bench of this Tribunal rendered in the case of Supreme Transport Co. ITA No.544/Ind/2012 dated 31.10.2013. He further relied upon the judgment of Hon'ble Chhattisgarh High Court in the case of Roopchand Tharani (2012) 20 taxmann.com 204 dated 01.11.2011. The Ld. counsel also placed upon reliance on the various other case laws as stated in the written submissions. The ld. counsel urged that the findings of the AO on rejecting the books of accounts may be reversed and the trading result as declared in the books of accounts may be accepted.

13. On the contrary Ld. DR opposed the submissions and supported the order of the authorities below. He submitted that the AO has brought on record that there was a difference in the receipt

recorded by the assessee and reflected in Form No.26AS. He further submitted that the AO has categorically recorded that the assessee was asked to verify the books, so that it can be ascertained that amount was shown by the assessee in earlier years. Under these facts the expenses are not verifiable, there is a huge difference in the receipts recorded in the books of accounts and disclosed in the form no.26AS. He submitted that the assessee was required to reconcile the entries as disclosed in the books of accounts and as were recorded in form no. 26AS.

14. We have heard the rival contentions and perused material on record. So far the question on rejection of books of accounts is concerned the AO, the law is well settled the AO is empowered to reject the books of accounts if in his opinion the books of accounts so placed before him, does not enable the AO to deduce the correct figure of profit. In the case in hand where the AO has observed that there was a difference in receipts and also the truck expenses were not verifiable. In our view, these were sufficient grounds to reject the books of accounts, is a given case. But the law is also well settled that books of accounts cannot be rejected automatically wherever the AO find any defect, the AO is required to show cause the assessee with regard to the defect. If assessee is in a position to reconcile the entries, there would no need to reject books of accounts.

15. In the present case we find from the records there was not sufficient time to verify the accounts and make inquiries independently. Therefore, we deem it proper to set aside the order of

rejecting the books of accounts and restore it to the file of the AO for verifying the veracity of the claim of the assessee. In view of the facts that in earlier years truck expenses as claimed by the assessee has been accepted by the Revenue and before rejecting books of accounts the assessee was not given sufficient opportunity to present its case. We, therefore, direct the AO to decide the issue on rejection of books of accounts afresh after giving opportunity to the assessee. Ground No.1 of the assessee is allowed for statistical purposes.

16. Apropos Ground No.2 is against the sustaining the addition of Rs.2,61,018/-

Ld. Counsel for the assessee reiterated the submissions as made in the written submissions. He vehemently argued that the Ld. CIT(A) failed to appreciate the fact that due to nature of business the entries are given effect in subsequent year. On the contrary the Ld. DR opposed the submissions of the assessee.

17. We have heard the rival contentions since we have allowed ground no.1 for statistical purposes relating to rejection of books of accounts; we deem it proper to restore this issue as well to the file of the AO for decision afresh. We, therefore, restore this ground as well to the AO for verifying the veracity of the claim of the assessee.

18. Ground No.3 is against the sustaining disallowance of Rs.42,50,000/- out of truck plying expenses.

The Ld. Counsel for the assessee reiterated the submission as made in the written submissions and contended that these expenses are reasonable. The Revenue has been allowing in earlier

year. Therefore, the authorities have wrongly disallowed the same.

19. On the contrary the Ld. DR opposed the submissions and support the assessment order.

20. We have heard the rival contentions. We find that the AO rejected on the basis that the expenditure is excessive as in the absence of verification of the vouchers. The Assessing Officer made disallowance. We have already restored the issue of rejection of books of accounts of the AO. Under the facts of the present case, we deem it proper to restore this issue to the file of the AO for making necessary inquiry regarding the expenditure as related to truck plying. Thus, this ground is allowed for statistical purposes.

21. Ground No. 4 & 5 of the assessee are general in nature thus, the same does not require any adjudication.

Now we take up Revenue's appeal in ITA.No.285/Ind/2013

The Revenue has filed following grounds of appeal:

"On the facts and the circumstances of the case the Ld. CIT(A) is erred in:-

- 1. Restricting the addition of Rs.65,26,707/- to Rs.2,61,078/- applying N.P. rate only on the portion of the receipt not declared by the assessee, while in the case of application of N.P. rate the same should be applied on entire receipt.*
- 2. Restricting the addition of Rs.85,00,000/- to 42,50,000/- by applying N.P. rate of 4% while the correct figure is worked out at Rs.77,98,051/- by applying the rate adopted by the ld. CIT(A).*

22. Both the Ld. Representative of the parties have adopt the same argument as were addressed in Ground No. 2 & 3 of the assessee's

appeal in ITA No.514/Ind/2013 since we have set aside the order of the AO on rejection of books of accounts and other grounds are also to the file of the AO. Under the facts of the present case we deem it proper to restore these grounds to the file of the AO to decide it afresh after making due inquiry.

23. Both ground of the Revenue's Appeal are restored to the file of the AO for decision afresh.

24. In the result, both the appeals of the Assessee and Revenue are partly allowed for statistical purpose.

Order was pronounced in the open court on 19 .01.2018.

Sd/-
(MANISH BORAD)
CCOUNTANT MEMBER

Sd/-
(KUL BHARAT)
JUDICIALMEMBER

Indore; दिनांक Dated : 19/ 01/2018

Patel, P.S./नि.स.

Copy to: Assessee/AO/Pr. CIT/ CIT (A)/ITAT (DR)/Guard file.

By order
Private Secretary/DDO, Indore