

**IN THE INCOME TAX APPELLATE TRIBUNAL,  
KOLKATA 'A' BENCH, KOLKATA**

**Before Shri P.M. Jagtap, Vice-President (KZ)  
and Shri S.S. Viswanethra Ravi, Judicial Member**

**I.T.A. No. 2131/KOL/2013  
Assessment Year: 2007-2008**

***Income Tax Officer,.....Appellant  
Ward-1(1), Kolkata,  
Aayakar Bhawan,  
P-7, Chowringhee Square,  
Kolkata-700 069***

**-Vs.-**

***M/s. Sanwaria Steel Pvt. Limited,.....Respondent  
134/54K, Girish Ghosh Road, Belur Math,  
Howrah-711 202  
[PAN: AAHCS 7892 JJ***

**Appearances by:**

*Shri Sankar Halder, Addl. CIT, Sr. D.R., for the Appellant  
Shri S.P. Dutta, Advocate, for the Respondent*

Date of concluding the hearing : November 27, 2018

Date of pronouncing the order : November 30, 2018

**O R D E R**

**Per Shri P.M. Jagtap, Vice-President (KZ):-**

This appeal is preferred by the Revenue against the order of Id. Commissioner of Income Tax (Appeals)-XXIV, Kolkata dated 29.04.2013 on the following grounds:-

*"1. That on the facts and in the circumstances of the case the Ld. CIT(A) has erred in deleting the addition of Rs.26,03,899/- u/s.69 on account of sundry creditors in spite of the facts that assessee could not establish the aforesaid credits.*

*2. That on the facts and in the circumstances of the case the Ld. CIT(A) has erred in deleting the addition of Rs.1,10,000/- u/s.69 on account of unexplained investment.*

*3. That on the facts and in the circumstances of the case the Ld. CIT(A) has erred in deleting the addition of Rs.3,27,751/- on account of current liabilities like C-Form and CST payable of Rs.13,665/- in spite of the facts that assessee could not establish the aforesaid credits.*

*4. That on the facts and in the circumstances of the case the Ld. CIT(A) has erred in deleting the addition of Rs.62,49,021/- u/s.69 on account of investment in stock for making undisclosed sales.*

*5. That on the facts and in the circumstances of the case the Ld. CIT(A) has erred in deleting the disallowance of Rs.2,23,598/- on account of pre-operative expenses.*

*6. That on the facts and in the circumstances of the case the Ld. CIT(A) has erred in deleting the disallowance of Rs.96,000/- on account of watch & ward expenses u/s40(a)(ia).*

*7. That on the facts and in the circumstances of the case the Ld. CIT(A) has erred in law making observation that no additions u/s.68 or u/s.69 of the IT Act could not be made where books of accounts has been rejected u/s.145 of the IT Act and profit has been estimated”.*

2. The assessee in the present case is a Company, which is running an Iron Ore Crusher Plant. The return of income for the year under consideration was filed by it on 09.02.2008 declaring total income of Rs.1,38,978/-. During the course of assessment proceedings, it was noticed by the Assessing Officer from the relevant figures of sales, purchases, expenses and sundry debtors as declared by the assessee that there was some undisclosed sales. When the assesee-company was required by the Assessing Officer to offer its explanation in the matter, a statement of its own Trading, Profit & Loss Account was filed by the assessee-company projecting sales of Rs.1,58,59,107/- and purchases of Rs.65,64,622/- as against the sales and purchases of Rs.36,578/- and Rs.43,250/- respectively disclosed in the return of income. In the Trading and Profit & Loss Account filed during the course of assessment

proceedings, Gross Profit rate was shown by the assessee at 54% while the Net Profit was shown at 20%. Thereafter the assessee-company again filed another Trading and Profit & Loss Account showing Gross Profit rate of 65% and Net Profit rate of 21%. Keeping in view these three different accounts filed by the assessee, which were not in conformity with each other, the Assessing Officer rejected the books of account of the assessee for the year under consideration and determined the business income of the assessee by applying a Net Profit rate of 30%. He accordingly estimated the business income of the assessee at Rs.47,57,732/-. He also treated the difference between the opening stock and closing stock amounting to Rs.62,49,021/- as the capital introduced by the assessee for the purpose of unaccounted business and added the same to the total income of the assessee under section 69 of the Act. He further made the following additions to the total income of the assessee:-

(i)	Difference in the balance of sundry creditor	Rs.26,03,899/-
(ii)	Difference in the loans and advances added under section 69	Rs. 1,10,000/-
(iii)	Disallowance of sales tax payable under section 43B	Rs. 3,27,751/-
(iv)	Disallowance of pre-operative expenses	Rs. 2,33,598/-
(v)	Disallowance of Ward and Watch expenses under section 40(a)(ia)	Rs. 96,000/-

Accordingly the total income of the assessee for the year under consideration was determined by the Assessing Officer at Rs.1,20,04,470/- in the assessment completed under section 143(3) vide an order dated 29.12.2009.

3. Against the order passed by the Assessing Officer under section 143(3), an appeal was preferred by the assessee before the Id. CIT(Appeals) and after considering the submissions made by the assessee as well as the material available on record, the Id. CIT(Appeals) upheld

the action of the Assessing Officer in rejecting the books of account of the assessee and determining its business income on estimated basis. He, however, held that the estimate made by the Assessing Officer by applying the Net Profit rate of 30% was on higher side and found it fair and reasonable to restrict the same to 25%. As regards the other additions made by the Assessing Officer to the total income of the assessee, the Id. CIT(Appeals) held that the same were not sustainable when the books of account of the assessee were rejected and the income of the assessee was determined on estimated basis by applying net profit rate. To arrive at this conclusion, he relied on the decision of the Hon'ble Andhra Pradesh High Court in the case of Indwell Constructions -vs.- CIT [232 ITR 776] and that of the Hon'ble Allahabad High Court in the case of CIT -vs.- Banwarilal Banshidhar [229 ITR 229]. Aggrieved by the order of the Id. CIT(Appeals), the Revenue has preferred this appeal before the Tribunal.

4. We have heard the arguments of both the sides and also perused the relevant material available on record. It is observed that the books of account of the assessee were rejected by the Assessing Officer and the income of the assessee was determined on estimated basis by applying a net profit rate. Although the Id. CIT(Appeals) reduced the estimate of assessee's income as made by the Assessing Officer by applying the net profit rate of 25% as against the net profit rate of 30% adopted by the Assessing Officer, the action of the Assessing Officer in rejecting the books of account of the assessee was upheld by him. After estimating the business income of the assessee at a substantially higher figure, the Assessing Officer proceeded further to make various other additions on the basis of books of account of the assessee, which were rejected by him. In the case of CIT -vs.- Banwarilal Banshidhar (supra) relied upon by the Id. CIT(Appeals) in his impugned order while deleting these other additions made by the Assessing Officer, the income of the assessee was determined by applying a gross profit rate and a further disallowance was

made on account of purchases. Hon'ble Allahabad High Court held that the disallowance so made by the Assessing Officer on account of purchases was not maintainable by observing that when the gross profit rate was applied, that would take care of everything and there was no need for the Assessing Officer to make scrutiny of the amount incurred on the purchases by the assessee. To the similar effect is the decision of the Hon'ble Andhra Pradesh High Court in the case of Indwell Constructions – vs.- CIT (supra) relied upon by the Id. CIT(Appeals) in his impugned order, wherein it was held that no disallowance could be made on the basis of rejected books of account. It was held that if at all there was any defect or deficiency warranting a disallowance, the same was taken into consideration while estimating the business income of the assessee by applying a net profit rate on total sales and no such disallowance or addition could be made separately. Keeping in view the ratio of both these judicial pronouncements relied upon by the Id. CIT(Appeals) in his impugned order, we are of the view that the additions made by the Assessing Officer on the basis of rejected books of account over and above the business income estimated by him by applying a net profit rate were not sustainable and the Id. CIT(Appeals) was fully justified in deleting the same. In that view of the matter, we uphold the impugned order of the Id. CIT(Appeals) and dismiss this appeal of the Revenue.

**5. In the result, the appeal of the Revenue is dismissed.**

Order pronounced in the open Court on November 30, 2018.

**Sd/-**  
**(S.S. Viswanethra Ravi)**  
**Judicial Member**

**Sd/-**  
**(P.M. Jagtap)**  
**Vice-President (KZ)**

***Kolkata, the 30<sup>th</sup> day of November, 2018***

*Copies to : (1) Income Tax Officer,  
Ward-1(1), Kolkata,  
Aayakar Bhawan, P-7, Chowringhee Square,  
Kolkata-700 069*

- (2) ***M/s. Sanwaria Steel Pvt. Limited,  
134/54K, Girish Ghosh Road, Belur Math,  
Howrah-711 202***
- (3) *Commissioner of Income Tax (Appeals)-XXIV, Kolkata,*  
(4) *Commissioner of Income Tax- ,*  
(5) *The Departmental Representative*  
(6) *Guard File*

*By order*

*Assistant Registrar,  
Income Tax Appellate Tribunal,  
Kolkata Benches, Kolkata*

***Laha/Sr. P.S.***