

आयकर अपीलीय अधिकरण न्यायपीठ रायपुर में ।  
**IN THE INCOME TAX APPELLATE TRIBUNAL,  
RAIPUR BENCH, RAIPUR**

**BEFORE SHRI ANIL CHATURVEDI, AM AND  
SHRI PARTHA SARATHI CHAUDHURY, JM**

आयकर अपील सं. / ITA No.72/RPR/2016  
निर्धारण वर्ष / Assessment Year : 2010-11

M/s. Annapurna Industries,  
Ramdhin Marg,  
Rajnandgaon (CG)  
Pin-491441  
PAN : AAMFA3334K

.....अपीलार्थी / Appellant

**बनाम / V/s.**

The Income Tax Officer-1,  
Rajnandgaon.

.....प्रत्यर्थी / Respondent

Assessee by : Shri R. B. Doshi  
Revenue by : Shri R.P. Namdeo

सुनवाई की तारीख / Date of Hearing : 16.01.2019  
घोषणा की तारीख / Date of Pronouncement : 17.01.2019

**आदेश / ORDER**

**PER PARTHA SARATHI CHAUDHURY, JM :**

This appeal preferred by the assessee emanates from the order of Ld. CIT(Appeals)-II, Raipur dated 04.02.2016 for the assessment year 2010-11 as per following grounds of appeal on record:

*“1. In the facts and circumstances of the case and in law, the Ld. CIT(A) erred in confirming addition of Rs.3,51,540/-, out of the*

*addition of Rs.4,51,980/- made by the AO on account of low yield of husk. The addition sustained is not justified.*

*2. The appellant reserves the right to add, amend or alter any of the ground/s of appeal.*

2. The brief facts in this case are that the assessee company is engaged in the business of manufacturing and trading rice, broken rice and konda etc. In this case, assessment was completed u/s.143(3) of the Income Tax Act, 1961 (hereinafter referred to as 'the Act') determining total income at Rs.10,92,220/-. During the year, it was noticed by the Assessing Officer that the assessee has consumed 167402.63 qtls. Of paddy in the rice mill plant and has manufactured 97395.47 qtls. of rice, 14423.10 qtls. of broken rice, 9225.68 qtls. of konda and 29437.45 qtls. of husk. The yield of various products manufactured by the assessee in the rice mill plant in terms of percentage is 66.79% of rice including broken rice, 5.51% of konda and 17.58% of husk. During the year, it was also noted by the Assessing Officer that the yield of various products shown by the assessee in the Rice Mill Plant are appropriate and are comparable with standard yield in Arva Rice Mill Plant except the yield of husk shown at 17.58%. In an Arva rice mill plant, the standard yield of husk out of milling activity carried out is 22%. Against this standard yield of husk, the assessee has shown yield of husk at 17.58% i.e. yield of husk is shown less by the assessee by 4.42%. Thereafter, the assessee was asked to furnish reasons, along with proof, if any for showing lower yield/generation of husk by

4.42% during the year. The assessee thereafter submitted details written submissions with reasons for showing lower yield of husk during the year. However, those submissions did not find favour with the Assessing Officer and addition of Rs.4,51,980/- was made on the total income of the assessee.

3. The Ld. CIT(Appeals) out of the said addition of Rs.4,51,980/- confirmed the addition to the extent of Rs.3,51,540/- as per reasons appearing in his order which is on record.

4. The Ld. AR of the assessee at the time of hearing before us vehemently argued that the addition has been made on presumption basis. There is no specific finding recorded by the Revenue Authority. The Ld. AR has placed reliance on the decision of the Co-ordinate Bench of the Tribunal in the case of M/s. Anant Rice Industries Vs. Income Tax Officer, in ITA No.280 (Nag.) of 2008 where the facts and circumstances are similar with that of the assessee's case.

5. On the other hand, the Ld. DR has placed reliance on the orders of the sub-ordinate Authorities.

6. We have perused the case records and judicial pronouncement placed before us. In ITA No. 280 (Nag.) of 2008 (supra.), the facts were that

the assessee is a rice miller and husk is a by-product. Husk is nothing but wastage being un-useful garbage received on milling. The Assessing Officer alleged that the assessee firm had not shown the sale of husk or as closing stock in its books and hence he presumed that the assessee might have sold the husk out of books. The Assessing Officer estimated the net saleable husk at 21% of the total quantity of paddy milled and thus made an addition of Rs.1,88,000/- on account of unaccounted sale of such husk. The Ld. AR pointed out that in the preceding year also no husk was sold and no addition was made by the Revenue. The Co-ordinate Bench of the Tribunal has held as follows:

*“4. We have heard the parties and perused the material placed before us. In our opinion the AO has gone more on presumption than on reality. He has not pointed out a single instance of sale of husk by the assessee or even there is no evidence of such sales brought on record. It has been pointed out by the learned Counsel that even in earlier assessment years also there was no sale of husk and the department did not make any addition on that account. The assessee has also furnished examples of various other assesses doing similar nature of rice milling business who have not sold any husk. The exercise of the AO in adopting the net saleable price of husk was based on his surmises and conjectures. In that view of the matter, the addition of Rs.1,88,000/- made on account of unrecorded sale of husk was not justified and the CIT(A) went wrong in upholding the same. The addition therefore is directed to be deleted.”*

In the present case also, the addition made by the Assessing Officer and partly confirmed by the Ld. CIT(Appeals) are absolutely based on presumption. They are nothing but surmises and conjectures. There is no evidence on record to demonstrate that specific enquiry has been

conducted either by the Assessing Officer or by the Ld. CIT(Appeals) while arriving at their respective decisions. There cannot be any addition on presumption basis.

Respectfully, following the decision of the Co-ordinate Bench of the Tribunal in ITA No. 280 (Nag.) of 2008 (supra.), we set aside the order of the Ld. CIT(Appeals) and allow the appeal of the assessee.

7. In the result, appeal of the assessee is allowed.

Order pronounced on 17<sup>th</sup> day of January, 2019.

Sd/-  
**ANIL CHATURVEDI**  
**ACCOUNTANT MEMBER**

Sd/-  
**PARTHA SARATHI CHAUDHURY**  
**JUDICIAL MEMBER**

रायपुर/ RAIPUR ; दिनांक / Dated : 17<sup>th</sup> January, 2019.  
SB

**आदेश की प्रतिलिपि अग्रेषित / Copy of the Order forwarded to :**

1. अपीलार्थी / The Appellant.
2. प्रत्यर्थी / The Respondent.
3. The CIT(Appeals)-II, Raipur (CG)
4. The Pr. CIT-II, Raipur (CG)
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, रायपुर बेंच, रायपुर / The DR, ITAT, Raipur Bench, Raipur.

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आदेशानुसार / BY ORDER,

निजी सचिव / Private Secretary  
आयकर अपीलीय अधिकरण, रायपुर / ITAT, Raipur.

		Date	
1	Draft dictated on	16.01.2019	Sr.PS/PS
2	Draft placed before author	17.01.2019	Sr.PS/PS
3	Draft proposed and placed before the second Member		JM/AM
4	Draft discussed/approved by second Member		AM/JM
5	Approved draft comes to the Sr. PS/PS		Sr.PS/PS
6	Kept for pronouncement on		Sr.PS/PS
7	Date of uploading of order		Sr.PS/PS
8	File sent to Bench Clerk		Sr.PS/PS
9	Date on which the file goes to the Head Clerk		
10	Date on which file goes to the A.R		
11	Date of dispatch of order		

