

**IN THE INCOME TAX APPELLATE TRIBUNAL**  
**AMRITSAR 'SMC' BENCH, AMRITSAR**  
BEFORE SH. B. R. BASKARAN, ACCOUNTANT MEMBER

**I.T.A. Nos. 360 & 361/Asr/2018**  
Assessment Years: 2008-09 & 2009-10

Shri Lashman Dass S/o Suraj Bhan Incharge, Computer Study Centre Talwanti Sabo, Distt. Bathinda [PAN: AHBPD 6470D] <b>(Appellant)</b>	vs.	Income Tax Officer, Ward1(1) Bathinda  <b>(Respondent)</b>
--	-----	---

**I.T.A. Nos. 365 & 366/Asr/2018**  
Assessment Years: 2008-09 & 2009-10

Teja Singh Bhullar S/o Nidhan Singh Incharge Principal Computer Study Centre Kalajhrani, Tehsil Distt. Bathinda [PAN: BEJPS 9011K] <b>(Appellant)</b>	vs.	Income Tax Officer, Ward 2(1) Bathinda  <b>(Respondent)</b>
---	-----	--

**I.T.A. Nos. 367 & 368/Asr/2018**  
Assessment Years: 2008-09 & 2009-10

Tarsem Lal Dhingra S/o Sh. Jagdish Rai Dhingra W-15, Old Power House, Guru Nanak Pura Mohalla, Rampura Phul, Distt. Bathinda [PAN: ADMPL 1047M] <b>(Appellant)</b>	vs.	Income Tax Officer, Ward 1(3) Bathinda  <b>(Respondent)</b>
--	-----	--

**I.T.A. Nos. 369 & 370/Asr/2018**  
Assessment Years: 2008-09 & 2009-10

<p>Shri Mohit Sharma 21393, Power House Road, Bathinda</p> <p>[PAN: BCOPS 4102A] <b>(Appellant)</b></p>	vs.	<p>Income Tax Officer, Ward 1(1) Bathinda</p> <p style="text-align: right;"><b>(Respondent)</b></p>
---	-----	---

**I.T.A. Nos. 393 & 394/Asr/2018**  
Assessment Years: 2008-09 & 2009-10

<p>Shri Iqbal Singh S/o Sh. Jang Singh (Tara Infotech Computers), Bhagta Bhai Ka, R/o Near Govt. School, Vill. Kotha Guru Tehsil Rampura Phul</p> <p>[PAN: BOMPS 0967K] <b>(Appellant)</b></p>	vs.	<p>Income Tax Officer, Ward 1(3) Bathinda</p> <p style="text-align: right;"><b>(Respondent)</b></p>
--	-----	---

Appellant by : Sh. Ashwani Kalia (C.A.)  
Respondent by: Sh. Amar Pal Meena (D.R.)

Date of Hearing: 29.08.2019  
Date of Pronouncement: 30.08.2019

**ORDER**

Per B. R. Baskaran, Accountant Member:

All these appeals filed by the respective assesseees are directed against the orders passed by Ld CIT(A), Bathinda in their respective hands for assessment years 2008-09 and 2009-10. Since the issues urged in these appeals are identical in

nature, they were heard together and are being disposed of by this common order, for the sake of convenience.

2. All the assesseees are aggrieved by the decision of Ld CIT(A) in partially confirming the income estimated by the assessing officer in their hands for the above said assessment years.

3. Since the facts are identical in all the cases, the fact relating to Shri LashmanDass, as narrated by the Ld A.R, is being discussed here. All these assesseees were running Computer Study Centers. The said computer centers were opened under the “Chief Minister Self Employment Scheme” initiated by the Government of Punjab for generation of employment in the State. The Computer Centers opened in Bathinda District were affiliated with “Punjab Technical University, Jalandhar”. The fee structure is designed by the University and the assessee is required to collect the fees as per the said scheme only. Further, the assessee is also required to share a part of fees with the University and DRDO. The fee for collected from students as Examination fees is required to be remitted to the University.

4. All these assesseees had filed their return of income for both the years under consideration. The AO collected information from Punjab Technical University and noticed that the gross receipts declared by these assesseees were lesser than the amount mentioned in the said information. Accordingly, the AO reopened the assessments of assessment years 2008-09 and 2009-10 in the hands of all the assesseees herein by serving notice u/s 148 of the Act in March, 2015. Since there was no co-operation from the assesseees, the AO completed the assessments of both

the years to the best of his judgment in the hands of all the assesseees. The AO determined the income of the assesseees as under:-

- (a) From the details collected from the University, the AO collated the gross fees collections.
- (b) The AO allowed deduction towards amount payable to University, DRDO and exam fee.
- (c) The AO also allowed deduction towards expenses for running the institute on 'estimated' basis.
- (d) The Net Profit so arrived by him under the above said methodology in both the years was assessed in the hands of respective assesseees in the respective years.

5. The assesseees herein challenged the assessment orders so passed by the AO by filing appeals before Ld CIT(A). The first appellate authority noticed that the rate of net profit worked out by the AO in both the years in the hands of all the assesseees was very much higher. For example, the net profit rate worked out to 42.46% and 52.75% in AY 2008-09 and 2009-10 respectively in the case of Shri Lashman Das. The Ld CIT(A) took the view that the net profit rate should be reasonable. Accordingly he determined the net profit rate at 25% and applied the same on the gross receipts worked out by the AO. Accordingly he granted partial relief to all the assesseees in both the years under consideration. Still aggrieved, the assesseees have filed these appeals.

6. The Ld A.R submitted that computer centers run by these assesseees were run as per the directions, rules and regulations of Punjab Technical University with regard to collection of fees, sharing of fees etc. He submitted that the return of income filed by these assesseees have been accepted in past and also in succeeding

years. The computer centers have since been closed from 2012 onwards. However, the AO was sending notices to the addresses of the computer centers, which were lying closed and accordingly, these assesseees were not aware of the notices issued by the AO. Hence they could not appear before him and hence the AO was constrained to make the assessments to the best of his judgement.

7. The Ld A.R submitted that the AO has collected the details of fee collections from the University and accordingly collated the gross fees collections. However, the gross fee collections determined by the AO suffers from following pertinent mistakes, viz.,

(a) The assesseees have been directed to give a discount of 15% to the students and hence the gross collection was only 85% of the prescribed fees. This fact is evident from the table extracted by the AO in the assessment order. However, the AO has computed the "Gross collections" @ 100% of prescribed fee, instead of 85% of the prescribed fee.

(b) The computer training is run in two semesters, viz., September and March. The enrolment for March Semester would start in April only. Hence the fee collection of March 2008 semester would start from April, 2008 onwards. Similarly, the fee collection for March, 2009 would commence from April, 2009 onwards, i.e., the fee for March semester would spill over to the succeeding year. The assesseees have accounted the March semester fees in the succeeding year, when they actually start enrolling and collecting fees. However, the AO has included the March, 2008 fees in AY 2008-09 itself and March, 2009 fees in AY 2009-10. On the other hand, the assessee has collected fees pertaining to March, 2007 semester in AY 2008-09 and the fees pertaining to March, 2008 in AY 2009-10.

The Ld A.R further submitted that the AO has estimated the expenses for running the Computer centers and allowed the deduction. However, the estimate so made by the AO was very low. He submitted that these assesseees have maintained books of accounts and also filed returns of income, wherein the details of expenses were also given. However, the AO did not refer to the original returns of income for determining the expenses, which was not justified.

8. The Ld A.R further submitted that the assessee has brought out all these mistakes and deficiencies before Ld CIT(A) and the first appellate authority also called for a remand report from the AO. However, the AO did not accept the submissions of the assessee on the ground that the student wise details was not furnished by the assessee. The Ld A.R submitted that the submissions of the assessee could be corroborated with the information collected by the AO from the University and hence there is no reason to reject the submissions of the assessee.

9. The Ld A.R submitted that the Ld CIT(A), however, proceeded to estimate the net income of the assesseees by rejecting the methodology adopted by the AO. He submitted that the AO has estimated the net profit by adopting the rate of 25% without citing any comparable case or without making reference to the assessee's own case. He submitted that the rate of Net Profit declared by these assesseees was in the range of 8.74% to 14.50% in the past and succeeding years. Accordingly he submitted that the rate of 25% adopted by the Ld CIT(A) was very much disproportionate to the rate declared by the assesseees.

10. On the contrary, the Ld D.R supported the orders passed by Ld CIT(A).

11. I heard the parties and perused the record. I notice that the assessing officer has completed the assessments to the best of his judgement u/s 144 of the Act by estimating the income of both the years in their hands. The Ld CIT(A) has, however, modified the methodology and estimated the net profit @ 25% of gross collections computed by the AO.

12. The Ld A.R has pointed out that there are errors in computing the gross collections. From the information collected by the AO from the University, it is clear that the assesseees are required to give discount of 15% to the students and accordingly, it is the submission of the assesseees that they have collected only 85% of the prescribed fees after allowing discount to the students. However, the AO has taken 100% of the prescribed fees for computing gross fee collections. It is an admitted fact that the assesseees are required to share 20% of actual fee collection with the University. From the table extracted by the AO, it is noticed that the 20% is computed on the 85% of the fees. Hence there is merit in the submission of the assesseees that the Gross fee collections should be computed by adopting 85% of the prescribed fees.

13. It is also the submission of the assesseees that the fee for March semester shall be collected in the succeeding years. There is merit in this submission also, since the fees shall be paid by the students only when they enrol. However, the AO has included March semester fees in the same year, which is apparently a mistake. Accordingly, I am of the view that the gross collections computed by the AO suffers from the above said errors and hence the same is required to be computed afresh.

14. The Ld A.R pleaded that the matters may be restored to the file of the AO for determining income on the basis of books of accounts. However, I notice that the assessee herein have not produced the books before the AO and hence both the tax authorities have proceeded to estimate the income of the assessee. Since the issue before me is with regard to the estimation of income, I do not find it necessary to accept the request of the Ld A.R at this stage. When this opinion was put before Ld A.R, he submitted that the rate of net profit of 25% estimated by the Ld CIT(A) was very much higher. He submitted that the rate of net profit declared by the assessee during the two years under consideration was around 8% only. Accordingly he pleaded that the rate of net profit may be determined at around 12% and the same may be applied on the corrected amount of gross collections.

15. I have considered the above said submissions of Ld A.R. I have already held that the gross collections computed by the AO suffers from pertinent mistakes and the same needs to be computed afresh. With regard to the rate of net profit, I notice that the rate of net profit declared by the assessee was in the range of 8% to 14.50% in the past and succeeding years. However, the Ld CIT(A) has adopted a rate of 25% without giving any basis. There is merit in the contention of the Ld A.R that the Ld CIT(A) should have furnished any comparable cases or the internal results in support of his determination of net profit @ 25%. Accordingly, I am of the view that the rate of net profit estimated by Ld CIT(A) is very much on the higher side. Considering the book results of various years, I am of the view that the rate of net profit may be determined at 15%. When this was pointed out to Ld A.R, he also agreed to the same.

16. Accordingly, I modify the orders passed by Ld CIT(A) in both the years in the hands of all the assessee and direct the AO to recompute the total income by

recomputing the Gross fee collections as per the discussions made supra and by adopting the rate of net profit @ 15%. I order accordingly.

17. In the result, all the appeals of assessee are partly allowed.

*Order pronounced in the open court on August 30, 2019*

Sd/-  
(B. R. Baskaran)  
Accountant Member

Date: 30.08.2019

/GP/Sr. Ps.

Copy of the order forwarded to:

- (1) The Appellant:
- (2) The Respondent:
- (3) The CIT(Appeals)
- (4) The CIT concerned
- (5) The Sr. DR, I.T.A.T

True Copy

By Order