

**IN THE INCOME TAX APPELLATE TRIBUNAL**  
**RANCHI, 'E' COURT, AT KOLKATA**

**Before Shri S.S, Godara, JM & Dr. A.L. Saini, AM**

**ITA No.130/Kol/2019**  
(Assessment Year: 2014-15)

<b>Padam Kumar Jain, Ranchi</b> 303, Paras Apartment, Kutchary Road, Ranchi-834001.	Vs.	<b>ACIT, Circle-2, Ranchi</b>
<b>स्थायी लेखा सं./जीआइआर सं./PAN/GIR No. : AAWPJ4189M</b>		
<input type="checkbox"/> पीलार्थी / <b>Appellant</b>	..	<input type="checkbox"/> प्रत्यर्थी / <b>Respondent</b>

Appellant by : None  
Respondent by : Shri A. K. Mohanti, Addl. CIT, Sr. DR

सुनवाई की तारीख / **Date of Hearing** : **22/07/2020**

घोषणा की तारीख/**Date of Pronouncement** : **24/08/2020**

**आदेश / O R D E R**

**Per Dr. A. L. Saini, AM:**

The captioned appeal filed by the assessee, pertaining to Assessment Year 2014-15, is directed against the order passed by the Id. Commissioner of Income Tax(Appeals), Jharkhand, in appeal No.CIT(A)/Ranch/10437/2016-17, dated 03.12.2018, which in turn arises out of an assessment order passed by Assessing Officer under section 144 of the Income Tax Act, 1961 (hereinafter referred to as the 'Act'), dated 26.12.2016.

2. The grounds of appeal raised by the assessee are as follows:

*"1. The appellant claim for the relief of Rs. 1,37,68,274/- being the amount of addition computed by the Ld. AO u/s 144 of the Income Tax Act, 1961 after rejecting the books of accounts and presuming the net profit from business @8% of the total turnover.*

*2. The appellant produced before the Ld. AO, the books of accounts and the audit report for the relevant AY 2014-15 during the course of assessment and also during the course of remand proceeding on the direction of Ld. CIT (A) to the Ld. AO. The facts regarding the maintenance of books of accounts were confirmed by the Ld. AO in its assessment order and also in the remand report to CIT(A).*

*3. The practice of maintenance of books of account is followed by the appellant for several years.*

*4. For that the order of the AO may be modified and the assessee may be given such relief as your honour deems fit and proper in the circumstances of the case.*

*5. For that the assessee craves to leave to add, to alter & to modify any of ground on or before the date of hearing.”*

3. Brief facts qua the issue are that on perusal of Profit and Loss account of the assessee, it was noticed by the assessing officer that the assessee had shown Net Profit at the rate of 0.71% from the business of trading in textiles. In this connection, a show case notice was issued by the assessing officer to the assessee on 16-12-2016 to explain the reason of such low profitability. The assessee was also asked to produce books of accounts, Stock Register but the assessee could neither produce the Stock Register nor could he furnish documents regarding method of stock-taking and valuation of stock. The assessee could only furnish some bills and vouchers before the assessing officer. Thereafter, the assessing officer noticed that other assesseees (who are also being assessed for the same assessment year in the Income Tax Circle) and engaged in the similar trade / business and running their business in the same locality had shown much higher Net Profit as compared to corresponding profit figures shown by the assessee. The assessing officer noticed that the Net Profit declared by other assesseees were found to be as high as 4.75% and the assessee was also found to be maintaining proper books of accounts, which were duly examined and verified. But before the assessing officer, the assessee could not furnish the books of accounts as called for, therefore assessing officer rejected books of accounts u/s 145(3) of the Act and made estimated addition at the rate of 8% of the turnover at Rs. 1,53,08,394/- ( 8% of Rs. 19,13,54,919).

4. Aggrieved by the order of Assessing Officer, the assessee carried the matter in appeal before the CIT(A) who has confirmed the addition made by the Assessing Officer observing the following:

*“As per the assessment order, the AO stated that, the appellant could neither produce the stock nor could he furnish documents regarding method of stock-taking and valuation of stock. Moreover, the complete books of accounts, bills & vouchers were not produced by the appellant. Therefore, the AO rejected the books of accounts u/s 145(3) and computed the profit @8% of turnover. As per SI. No. 12 & 12.1 of Form no. 35, the appellant has stated that he does not want to furnish any new evidence. However, during the appellate proceedings, the AR stated one opportunity may be granted to the appellant to produce the books of account and bills and vouchers before the AO. The request of appellant was accepted and the case was remanded to the AO. During the remand proceedings, the AO has verified the books of accounts. As per the remand report dated 09.11.2018, the AO has categorically stated that, the appellant could not produce the stock register as it was not maintained by him. Thereafter, the AR furnished written submission and stated inter-alia that, the appellant has the practice of taking physical verification of stock on the last Saturday of every financial year. Subsequently, the appellant has also for the first time furnished certain details of the Closing Stock. It is pertinent to mention here that these details of closing stock has never been furnished before the AO even during the remand proceedings. It is only for the first time that, the appellant has filed alongwith the written submission filed in Dak on 29.11.2018. Therefore, this new evidence which have been filed subsequent to the receipt of remand report is not admissible as new evidence. Moreover, the appellant has also not made out a case that the case of the appellant is covered under any of the exceptions prescribed under Rule 46A.*

*The A/R had also stated that the AO has rejected the books of accounts u/s 143(3) while accepting the audited accounts and audit report u/s 44AB. In this regard, it is stated that there as no such bar as per provisions of Income-tax, Act, 1961. The AO has categorically sought the appellant to produce the Stock Register and to furnish the documents regarding method of stock-taking and valuation of stock, which were not produced. As the appellant does not maintain the stock register and details of valuation etc., of the closing stock and the appellant has not justified the valuation of closing stock, before the AO the action of the AO with respect to rejection of books of accounts u/s 145(3) and consequently computation of profit @8% of turnover is hereby upheld. Therefore, all three grounds of appeal are dismissed.”*

5. Aggrieved by the order of Id. CIT(A), the assessee is in appeal before us.

6. None appeared on behalf of the assessee. We have heard Ld DR for the Revenue and perused the materials available on record. Learned DR for the Revenue has primarily reiterated the stand taken by the Assessing Officer, which we have already noted in our earlier para and is not being repeated for the sake of brevity. We have gone through the assessment order wherein assessing officer stated that, the assessee could neither produce the stock nor could he furnish documents regarding method of stock-taking and valuation of stock. Moreover, the complete books of accounts, bills and vouchers were not produced by the assessee before the assessing officer. Therefore, the assessing officer rejected the books of accounts u/s 145(3) and computed the estimated profit @8% of turnover. On appeal, Id CIT(A) confirmed the addition made by assessing officer.

It is an admitted fact that the assessing officer has estimated the profit on the basis of gross receipt/turnover @8%, but assessing officer has failed to bring on record any comparable case in support of his estimation that too @ 8%. No doubt estimate of the profit can be resorted to in these types of cases but the estimate and that too at a particular percentage or fraction of percentage which assessing officer has adopted has to be based on sound reasoning in comparison with the past results as well as comparable cases. Without this the estimation so made cannot be said to be valid estimation. We note that in the assessee`s case under consideration, the assessing officer has not demonstrated comparable cases except to make a general statement. The assessing officer has also failed to take into account the average past profits/results of the assessee for the purpose of making profit estimation.

It is well settled that in a best judgment assessment there is always a certain degree of guesswork. No doubt the authorities concerned should try to make an honest and fair estimate of the income even in a best judgment assessment and should not act totally arbitrarily. Department must act judiciously, while passing the order under section 144 of the Act and must be guided by judicial consideration and by rule of justice, equity and good conscience. And also that there must be honest and fair estimate of the proper figure of assessment, for which consideration of local knowledge and repute, besides the previous returns an assessment of the assessee concerned, and all other matters must

be taken into account for fair and proper estimate which of course, would fall in the category of guesswork, but a honest guesswork.

Based on the factual position narrated above, we are of the view that estimation made by assessing officer is not based on sound reasoning in comparison with the past results as well as comparable cases. Hence, we are of the view that this issue should be remitted back to the file of the assessing officer for fresh estimation of profit. Therefore, we direct the assessing officer to estimate profit of the assessee based on five years average past profits of the assessee, if five years average profit is not available then assessing officer should bring on record the identical businesses and based on the profit ratio of said identical businesses functioning in the same locality and environment, the profit estimation may be made.

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

Order pronounced in the open court on this 24/08/2020.

**Sd/-**

**(S. S. Godara)**

न्यायिक सदस्य / JUDICIAL MEMBER

**Sd/-**

**(A. L. Saini)**

लेखा सदस्य / ACCOUNTANT MEMBER

कोलकाता/Kolkata;

Dated:24/08/2020

RS

**आदेश की प्रतिलिपि अग्रेषित / Copy of Order Forwarded to:-**

1. अपीलार्थी/Appellant-Padam Kumar Jain, Ranchi
2. प्रत्यर्था/Respondent- ACIT, Circle-2, Ranchi
3. संबंधित आयकर आयुक्त / Concerned CIT
4. आयकर आयुक्त- अपील / CIT (A)
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण / DR, ITAT,
6. गार्ड फाइल / Guard file.

//True Copy//

By order/आदेश से,

Sr. Private Secretary