

आयकर अपीलीय अधीकरण, न्यायपीठ –“A” कोलकाता,
IN THE INCOME TAX APPELLATE TRIBUNAL “A” BENCH: KOLKATA
 [Before Shri A. T. Varkey, Hon’ble Judicial Member and Dr. M. L. Meena, Hon’ble Accountant Member]

I.T.A. No. 1056/Kol/2019
Assessment Year: 2015-16

Ashok Kumar Ghosh [PAN: ADIPG 4934 C]	Vs.	ACIT, Circle – 1, BWN
Appellant		Respondent

Date of Hearing (Virtual)	03.08.2021
Date of Pronouncement	06.08.2021
For the Appellant	Shri Somnath Ghosh, Advocate
For the Respondent	Smt. Ranu Biswas, Addl. CIT

ORDER

Per Shri A.T. Varkey:

This is an appeal preferred by the assessee against the order of Ld. CIT(A)-Burdwan dated 03.05.2019 for assessment years 2015-16.

2. The main grievance of the assessee is against the action of the Ld. CIT(A) in enlarging the scope of limited scrutiny and rejecting the books of accounts of the assessee and estimating the income.

3. The facts in nut shell as stated by the AO is that the assessee had filed return of income declaring total income of Rs. 53,95,817/- for limited scrutiny on four issues as discernible from page 24 of PB which is the notice u/s. 143(2) of the Income Tax Act, 1961 (hereinafter referred to as the “Act”). The AO after calling for the explanation and documents in respect of four issues raised inter alia has only drawn adverse inference against the assessee on one issue i.e. Sundry creditors. Thereafter made an addition on this issue of Rs. 1,48,19,758/-.

4. Aggrieved the assessee preferred an appeal before the Ld. CIT(A) who was pleased to delete the addition made by the AO. However, thereafter he proceeded to estimate the

income of the assessee and directed the AO to estimate the net profit at 8% on the gross receipt [assessee has shown NP at 6.54%].

5. Aggrieved the assessee is before us.

6. We have heard both the parties and perused the records. We note that the Ld. A.R. of the assessee Shri Somnath Ghosh brought to our notice that the Ld. CIT(A) has made contradictory findings to reject the books of account. First of all he drew our attention to assessment order para 4.5 wherein the AO has recorded the facts that the assessee had submitted before him the copies of cash book and copies of ledger account of purchase/credit parties. According to Ld. A.R. this factual finding recorded by the AO shows that the assessee had produced before the AO cash book, the ledger copies and documents for verification of the AO and AO has not found any shortcomings in the books maintained by the assessee in order to invoke section 145(3) of the Act (*rejection of books of accounts*). According to Ld. A.R., even the Ld. CIT(A) has relied on the cash book to give relief to the assessee in respect of addition made by the AO in respect of sundry creditors. In order to show the contradictory findings/observations of the Ld. CIT(A), the Ld. A.R. drew our attention to the certain observation made by the Ld. CIT(A) wherein Para 6 he has in his own words noted “... *Further it was the case of the AO that the books of accounts and other documents maintained which was not as per his satisfaction. Since the Books of accounts of the assessee were not maintained as per his satisfaction, the AO ought to have invoked the provision of Section 145(3) of the Act and rejected the books of account of the assessee.*” According to Ld. A.R. these observation of the Ld. CIT(A) is on wrong assumption of facts because the AO nowhere in the assessment order has made any such observation that he is not satisfied with the books of accounts maintained by the assessee and there was any shortcomings as per Section 145(1) or Section 145(2) of the Act. Thereafter, he brought to our notice the other contradiction/finding/conclusion wherein at Para 6 of last line of Ld. CIT(A) observes “.....*in the instant case, as stated above, it is a good ground for rejection of books of accounts.*” The Ld. A.R. wondered as to how the Ld. CIT(A) has come to such a conclusion when the AO has made a categorical observation at para 4.5 of the assessment order that the assessee had produced the cash book and ledger and other documents called for by him and did not find any fault other

than that the assessee had not produced certain supporting bills/vouchers. Thereafter, he drew our attention to para 6.1 wherein the Ld. CIT(A) observes that *"I am of the view that since the books presented for verification before the AO were not up to his satisfaction, it is construed that income cannot properly be deduced from such accounts maintained by the appellant. Considering the factual matrix of the case, I am of the opinion that in the absence of production of the books of accounts, it would be apt to reject the books of accounts and frame the assessment in terms of Section 145(3) of the Act."* According to Ld. A.R. this conclusion of Ld. CIT(A) is again on totally wrong assumption of fact when he has not even called for books of accounts of assessee during the First Appellate proceedings and has not mentioned in his impugned order as to when he has called for such documents from the assessee. So according to Ld. A.R. the Ld. CIT(A) has misdirected himself from assuming that the assessee has not produced books/documents neither before the AO nor before him and has proceeded to estimate the income of the assessee which is not in accordance to law and therefore, his impugned action has to be interdicted. We find force in the submission of the Ld. A.R. that there is per-se contradiction in the findings of the Ld. CIT(A) in respect of books of accounts of the assessee. Even though a brave attempt has been made by the Ld. Sr. D.R. Smt. Ranu Biswas to say that the AO has observed that the assessee could not produce the vouchers and bills to substantiate the purchase and payments made etc, so, according to her, these omissions on the part of assessee would vitiate the books of accounts. We do not agree with the contention of the Ld. Sr. D.R. on this issue for the reasons that if there is deficiency in vouchers or bills supporting the inference of the expense, this in our view cannot make accounts maintained by the assessee to be incorrect or incomplete. At the most, the expenses to the extent they are not supported by the vouchers can be regarded to be non-genuine and can be disallowed by the AO while computing the income of the assessee, but it cannot give the power to the AO to hold that the accounts are not correct or incomplete i.e. for the said reason only the AO cannot resort to reject the books of accounts of the assessee. However, in this case as discussed, we note that the First Appellate Authority [Ld. CIT(A)] has ventured to do so (*rejection of books of account*) by assuming incorrect facts and misdirected himself by stating that the assessee has not produced the books of accounts before the AO/himself, whereas the AO has categorically

observed that the assessee has produced cash books, ledgers and other documents called for by him. And in this context, it is noted that the Ld. CIT(A) has deleted the addition of Rs. 1.48 crores by relying on the veracity of the cash book submitted by the assessee before him. The observation of the Ld. CIT(A) reproduced (supra) are not repeated for the sake of brevity. However on the perusal of the observations and the findings of the Ld. CIT(A) on this issue shows non-application of mind and exposes per-se contradiction of facts. Therefore, the assumption drawn by the Ld. CIT(A) to re-compute the net profit of the assessee at 8% in place of 6.54% as returned by the assessee needs to be interfered with because it has no sanction of law and we set aside the same. Therefore the assessee succeeds. So, the direction of Ld. CIT(A) to re-compute the income of the assessee at 8% of the net profit of the gross receipt is canceled.

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

Order is pronounced in the open court on 6th August, 2021.

Sd/-

(Dr. M. L. Meena)
Accountant Member

Sd/-

(A. T. Varkey)
Judicial Member

Dated: 6th August, 2021

SB, Sr. PS

Copy of the order forwarded to:

1. Appellant- Ashok Kumar Ghosh, C/o. S.N. Ghosh & Associates, Advocates, "SEBEN BROTHERS LODGE", P.O. Buroshibtala, P.S. Chinsurah, Dist. Hooghly – 712 105.
2. Respondent – ACIT, Circle – 1, BWN.
3. The CIT(A)- Burdwan (sent through e-mail)
4. CIT-
5. DR, Kolkata Benches, Kolkata (sent through e-mail)

True Copy

By Order

Senior Private Secretary/DDO
ITAT, Kolkata Benches, Kolkata