

**IN THE INCOME TAX APPELLATE TRIBUNAL (VIRTUAL COURT)  
"A" BENCH, MUMBAI**

**BEFORE SHRI S. RIFAUR RAHMAN, HON'BLE ACCOUNTANT MEMBER AND  
SHRI PAVAN KUMAR GADALE, HON'BLE JUDICIAL MEMBER**

**ITA NOs. 73 & 74/MUM/2018  
(A.Ys: 2012-13 & 2013-14)**

M/s. Associate Lumbers Pvt. Ltd., 85-A, Associate House Sant Savta Marg, Mustafa Bazar Mumbai – 400010  <b>PAN: AAACA4273C</b>	v.	ACIT – Central Circle – 8(2) Room No. 658 Aayakar Bhavan, M.K. Road Mumbai - 400020
<b>(Appellant)</b>		<b>(Respondent)</b>

**ITA NOs. 80 & 81/MUM/2018  
(A.Ys: 2012-13 & 2013-14)**

DCIT – Central Circle – 8(2) Room No. 658, 6th Floor Aayakar Bhavan, M.K. Road Mumbai - 400020	v.	M/s. Associate Lumbers Pvt. Ltd., 85-A, Associate House Sant Savta Marg, Mustafa Bazar Mumbai – 400010  <b>PAN: AAACA4273C</b>
<b>(Appellant)</b>		<b>(Respondent)</b>

<b>Assessee by</b>	<b>:</b>	<b>Neha Paranjpe</b>
<b>Department by</b>	<b>:</b>	<b>S.N. Kabra</b>
<b>Date of Hearing</b>	<b>:</b>	<b>04.02.2022</b>
<b>Date of Pronouncement</b>	<b>:</b>	<b>23.02.2022</b>

**ORDER****PER S. RIFAUR RAHMAN (AM)**

1. These cross appeals are filed by the assessee and revenue against different orders of the Learned Commissioner of Income Tax (Appeals)-50, Mumbai [hereinafter in short "Ld.CIT(A)"] dated 27.04.2016 for the A.Ys. 2012-13 and 2013-14.

2. Brief facts of the case are, a search and seizure action u/s. 132 of the Income Tax Act 1961 (in short "Act") was carried out on 24.02.2014 at the premises of Associate Group and assessee also was covered in the above operation. Subsequently, notice under section 153A of the Act was issued and served on the assessee. In response, assessee filed return of income for the A.Y. 2012-13 declaring a total income of ₹.3,29,64,290/-

3. During the course of search, it was inter alia found that the assessee has made unaccounted sales and had incurred unaccounted expenses as under: -

<b>Period</b>	<b>Gross Sales (Rs.)</b>	<b>Commission (Rs.)</b>	<b>Discount (Rs.)</b>	<b>Net Sales (Rs.)</b>	<b>Expenses (Rs.)</b>
March, 2012 to January 2013	19,41,97,264	92,61,569	1,22,977	18,48,12,718	2,04,94,000

**4.** During the search statement of the employees, chairman and managing director were recorded in which it was confirmed and accepted that unaccounted cash sales were made by the assessee from which cash expenses were also incurred. It was emerged from the record that assessee had concealed sales to the extent of ₹.19,41,97,264 during the period March 2012 to January 2013, which falls in two assessment years viz., assessment years 2012–13 and 2013–14 and sales involved for these years are ₹.174,98,000/- and ₹.17,49,83,000/- respectively. The assessee when confronted with this fact, assessee accepted and declared the same as unaccounted cash sales and offered gross profit at the rate of 18.67% on such sales and reduced the expenses from them on prorata cash expenses instead of offering entire unaccounted cash sales as profit for the period covered above in the return of income filed under section 153A of the Act.

**5.** During assessment proceedings, assessing officer (AO) confronted the assessee why the entire unaccounted sale proceeds should not be treated as income, in response, assessee submitted that only gross income of such undisclosed cash sale can be considered as income of the assessee after reducing expenditure by relying on several cases including decision of the Hon'ble Jurisdictional High Court in the case of

CIT v. Hariram Bhambani (ITA No. 313 of 2013) and decision of Hon'ble Delhi High Court in the case of CIT v. Ajay Kapoor (ITA No. 155/2011). After considering the submissions of the assessee, assessing officer rejected the contentions and submissions made by the assessee and proceeded to made the addition the entire unaccounted sales as income of the assessee as detailed below:

<b>Total Unaccounted Sales (Rs)</b>	<b>Period of Sales</b>	<b>A.Y.</b>	<b>Pro-Rata Unaccounted Sales (Rs)</b>	<b>Assessee's Offer In Return Of Income (Rs)</b>	<b>Difference (RS)</b>
19,41,97,264	March 2012	2012 -13	$19,41,97,264 \times 1/11$ $=1,76,54,297$	14,04,000	1,62,50,297
	April 2012 to January 2013	2013-14	$119,41,97,264 \times 10/11$ $= 17,65,42,967$	1,12,91,000	16,52,51,967

6. Aggrieved with the above order, assessee preferred an appeal before Ld.CIT(A)-50, Mumbai. Before him assessee filed detailed submissions vide letter dated 3.10.2017 and 16.10.2017, for the sake of brevity it is reproduced below:

"1. During the course of the search proceedings under section 132 of the Income tax Act, 1961, certain papers were found which led to an inference by the Assessing Officer that the sum of Rs 16,52,51,967/for AY 2013-2014, being the unaccounted sales is the undisclosed income of the assessee, without considering the fact that the cost of these materials have to be factored whilst arriving at the income and there from the expenses incurred have to be reduced to arrive at the taxable income.

2. The Learned AO has also erred in holding that the appellant has offered the entire undisclosed cash sales as income and that the

*purchase and expenses incurred in cash rank for disallowance under provisions of section 40A(3) of the Income tax Act, 1961 , without adducing evidence that all expenses were incurred in excess of Rs.20,000/and that there is no purchases for effecting these cash sales.*

3. *It will be pertinent to state that at the time of the search, it was stated that there is a cost of acquiring the goods so sold and expenses should be allowed and the net income can be taxed. Therefore, at the time of filing the return, the assessee arrived at the gross profit on sale proceeds by adopting the average rate of gross profit disclosed and accepted in the earlier years and reduced the expenses there from and declared the net income on these sales.*

4. *It will be pertinent to state that the purchases for effecting the alleged undisclosed sales were made from various farmers/cultivators of forest produce and cash payments made to them are outside the purview of the section 40A(3) of the Income tax Act, 1961 as clause (e) of Rule 6DD excludes these payments from the rigors of the said section.*

5. *It has been held by various courts that the entire turnover cannot be added to the income of the assessee and profits embedded in the turnover can only be taxed.*

6. *We invite your kind attention to the decision in the case of Commissioner of Income-tax vs. Hariram Bhambani [ITA No 313 of 213 [Bombay High Court dated 01.02.2015] wherein it was held*

*"that it is not the entire sales consideration which is to be brought to tax but only the profit attributable on the total unrecorded sales consideration which alone can be subject to income tax"*

7. *We also invite your kind attention to the decision of the Hon'ble Delhi High Court in the case of CIT vs. Ajay Kapoor ITA 155/2011[Delhi]. wherein it was also held that the entire unrecorded sales cannot be added to the income and that the rate of gross profit on such unrecorded sales should be the average of the gross profit declared in the earlier years . The Hon'ble judges held " that the " Respondent substantially succeeded in the first appeal as the Commissioner of Income Tax (Appeals) in his order dated 5th November, 2004 observed that the profits of the block period between 1st April, 2001 to 6th November, 2001 of Rs.5,23,46,173/- as calculated by the Assessing Officer was abnormally high and gross profit rate 53.76% (G.P. rate) had been applied on a turnover of*

*Rs.9.73 crores. He referred to the GP rate of the assessee during the period 1996-97 to 2000-2001 which was between 1.92% to 2.83% giving an average GP rate of 2.19%. In the preceding assessment year ie. 2001-02, the GP rate declared was 2.25%. By applying the GP rate of 2.25%, CIT (Appeals) came to the conclusion that undisclosed income from unrecorded sales was Rs.21,90,685/-. The CIT (Appeals) also deleted the entire addition. Nevertheless, there are substantial and good reasons for adopting the GP rate of 2.25%, as it is apparent that GP rate of 53.76% adopted by the Assessing Officer is too high and unacceptable."*

8. *It was also held in the case of CIT v. President Industries Ltd [258 ITR 654(Guj.)], by the Hon'ble High Court held that the sale proceeds could not represent the income of the assessee and only the excess of sale process over cost incurred could form profits, which could be included in the income of the assessee.*

9. *Further, in the case of Commissioner of Income tax -III vs. V. R. Textiles [Tax appeal 1828 of 2010] it was held as under "On the ground that the entire undisclosed sales could not be treated as profit of the assessee, relying on the judgment of this Court in the case of CIT v. President Industries Limited, (258 ITR 654 (Guj)), it upheld the findings of the CIT [A] which applies the gross profit ratio against the unaccounted sales for the purpose of making additions on account of undisclosed income. The Tribunal also ratified the decision of the CIT [A] in considering the issue of deployment of minimum capital investment for the purpose of making and rotating the sales outside the books of account. For not having found anything contrary to the findings arrived at by the CIT [A] and on cumulatively examining the facts, which were presented before the Tribunal, it upheld the findings of the CIT [A] which applied the gross profit ration as against the undisclosed sales made by the assessee for the purpose of making the additions Date of decision – 5<sup>th</sup> December 2011.*

10. *The Income tax Appellate Tribunal -Delhi in the case of Kayyum Ahmed, Meerut v. ITO [ITS. No. 2410/Del/ 2013 has also held that " the entire turnover cannot be added to the income of the assessee and profits embedded in the turnover can only be taxed."*

11. *In view of the above judgments and the statement recorded at the time of the search, what can be taxed is only the gross profit @18.67% for AY 2012/2013 and 17.10% for AY 2013/2014 on the total sales of Rs. 19,41,97,264/- apportioned for a period of 1 month for AY 2012/2013 and 10 months for the AY 2013/2014 which works*

out to Rs. 32.67 lacs for AY 2012/2013 and Rs. 299.22 lacs for AY 2013/2014 and there from the expenses incurred for realizing the said sales to be deducted. Therefore, the additional income which can be assessed is Rs 14.04 lacs for AY 2012-2013 and Rs. 112.91 for AY 2013 as per enclosed working sheet.

12. Further, it will be pertinent to state the if the entire turnover is taxed as income, the gross profit ratio will increase to 20.7% (33.08% for AY 2013/2014) which is abnormally high in this trade. The Learned AO ought to have considered the general rate of profit prevailing in this line of trade before coming to a conclusion that the entire sale is to be taxed.

13. Further, the Learned AO has wrongly considered that in the case of one sister concern the said company has accepted the gross sale as its income without considering the line of business of the said company. In the said company, sawn timber is sold and the wastage generated in sawing over the years was sold. Hence, no new purchase can be attributed to the said sale as the remnants of the purchase which is sawn is only sold.

14. In view of the above, it is gross unfair to tax the entire sale amount as income and considering the facts of the case and the judgments quoted above, the addition made of Rs. 16,52,51,967/- for AY 2013-2014 may kindly be deleted."

The Ld. AR vide letter dated 16.10.2017 further submitted as under:

"In addition to the grounds of appeal filed along with the appeal memo and our previous submissions, we are instructed by our above clients to submit as under:

1. That our clients have had no transactions with Shri Pramod Singh or his concerns during the block period and therefore there is no question of furnishing any details of purchases made from him or his associates. At the time of search, it was not possible to recapitulate details of all purchases and therefore at that point of time it was stated by the Director that he would submit details within a weeks time.

2. Since it was thereafter explained to the Learned A.O that no purchases were made from the said party, no addition was made.

3. *That the scrap value of Rs.97,00,000/- does not relate to the appellant and as such no addition is made on this count also. We trust the above explanation will suffice. However, we shall be pleased to furnish any further details and/or information you may so require."*

7. After considering the detailed submissions of the assessee, Ld.CIT(A) agreed with the submissions of the assessee i.e., to tax the Gross Profit as taxable income out of such unaccounted cash sales and not the entire sales as income of the assessee as added by the assessing officer. However, he relying on the facts available on record and judicial pronouncements, he sustained the addition to the extent of ₹.4,99,600/- towards estimated undisclosed initial investment for out of books purchase, net addition on unaccounted sales to the extent of ₹.6,95,760/- being the estimated figure of additional GP added in the out of books sales transactions and disallowed cash expenses to the extent of ₹.3,72,600/- (20% of ₹.18,63,000). With the above additions, he partly allowed the appeal filed by the assessee.

8. Aggrieved with the above order, both assessee as well as revenue are in appeal before us raising following grounds of appeal: -

**Assessee's grounds of appeal for the A.Y. 2012-13: -**

"1. *The Ld. Commissioner of Income Tax (Appeals)—50, Mumbai [hereinafter referred to as the "Ld. CIT(A)"] erred in making addition of Rs.6,95,760/- on account of unaccounted sales without appreciating facts and circumstances of the case. Thus, the addition of Rs.6,95,750/- is unjustified and the same may be deleted.*

2. *The Ld.CIT(A) erred in making addition of Rs.34,99,600/- on account of undisclosed initial investment by estimating the same at the rate of 20% of sales turnover of Rs.1,74,98,000/- without appreciating the facts and circumstances of the case. Thus, the addition of Rs.34,99,600/- is unjustified and the same may be deleted.*

3. *The Ld. CIT(A) erred in making disallowance of Rs.3,72,600/- being cash expenses at the rate of 20% on expenditure incurred amounting to Rs.18,63,000/- without appreciating the facts and circumstances of the case."*

**Revenue's grounds of appeal for the A.Y. 2012-13: -**

(i) *"On the facts and in the circumstances of the case and in law, the Ld. CIT(A) erred in holding that instead of entire amount of unaccounted sales only gross profit needs to be taxed."*

(ii) *On the facts and in the circumstances of the case and in law, the Ld. CITA) erred in holding that the purchases needs to be reduced from sales, ignoring the fact that the assessee has not proved the purchases and no details of purchases are available with the assessee, which questions the existence and veracity of such purchases."*

(iii) *On the facts and in the circumstances of the case and in law, the Ld. CIT(A) erred in reducing the disallowance of cash expenses incurred from Rs. 1,86,31,000/- to Rs.3,72,600/- without any basis, as the assessee has not been able to furnish any details of break-up of cash expenses incurred as result of which the entire cash expenses of Rs.18,63,000/needs to the disallowed."*

9. At the time of hearing, Ld AR brought to our notice facts of the case from Page No.21 to 29 of the assessment order and submitted that assessing officer proceeded to make the addition the entire unaccounted cash sales without considering the judicial pronouncements and merits in the case. He further brought to our notice findings of the Ld.CIT(A) and submitted that no doubt Ld.CIT(A) basically accepted the submissions of

the assessee that only net profit has to be considered for taxation not the entire unaccounted sales as income of the assessee however the Ld.CIT(A) rejected the profit declared by the assessee but estimated the profit to the extent of 20% whereas assessee has declared and offered the profit at the rate of 14%. There is no basis for the Ld.CIT(A) to increase the profit to the extent of 20%. Further he submitted that Ld.CIT(A) brought the concept of seed capital and disallowed on estimation basis to the extent of 20% of the sales on account of unexplained initial investment in purchases being made out of books meant for sales out of books. He also submitted that Ld.CIT(A) disallowed 20% of the expenses claimed by the assessee without any basis, he submitted that the expenses are required to achieve the sales even though it is unaccounted in the books of account. For that purpose, he relied in the following cases:

- (i). *CIT v. Shri. Hariram Bhambhani before the Hon'ble Bombay High Court (Income Tax Appeal No. 313 of 2013).*
- (ii). *CIT v. President Industries before the Hon'ble Gujarat High Court [2002] 124 TAXMAN 654 (GUJ.).*
- (iii). *Man Mohan Sadani v. CIT before the Hon'ble High Court of Madhya Pradesh {[2008] 304 ITR 52 (Madhya Pradesh)}*
- (iv). *CIT v. Balchand Ajit Kumar before the Hon'ble High Court of Madhya Pradesh {[2004] 135 Taxman 180 (Madhya Pradesh)}*

**10.** On the other hand, Ld. DR submitted that various loose documents were found during search and several employees of the company are covered in the search and their statements were recorded. It is found that assessee has indulged in non-disclosing the cash sales in the books of account. She submitted that the cash sales which assessee has not disclosed were comes out of excess stock from imports, which were not declared by the assessee after assortment of imported goods. Assessee imports huge timbers and woods and it is practice in this line of business to receive excess material on top of declared quantity. Therefore, there is no cost involved in such excess material received thereon, she submitted that the cash sales made by the assessee has no related cost. She supported the findings of the assessing officer and prayed that the addition may be sustained as per the assessment order. She brought to our notice page 102 of the paper book, which is the question No. 14 of the statement recorded on oath from Shri Raghavan who has explained the details of declared quantity, actual quantity received, actual sales et cetera. It clearly indicates that assessee has received unaccounted quantity on import of timber, further, she brought to our notice page 90 and 91 of the paper book to impress upon us that there is no actual cost to the assessee.

**11.** With regard to Department appeals she relied on findings of the assessing officer and relied on the case CIT *v.* Hynoup Food And Oil Ind. Pvt. Ltd. (2005) 199 CTR 350 (Gujarat).

**12.** In rejoinder, Ld AR objected to the submissions made by the Department representative that assessee received huge excess quantity on imports. He submitted that assessee had sold not only the imported quantity but also purchases indigenous quantity and made the cash sales, further he brought to our notice Page No.20 of paper book to submit that assessee has declared gross profit at the rate of 18.67% for A.Y.2012–13 and 17.10% for A.Y. 2013–14 which is much more than the industry average. Further he submitted that in case the entire unaccounted cash sales is treated as income of the assessee the GP ratio will increase abnormally to the extent of 20.7% for A.Y.2012–13 and 33.08% for A.Y.2013–14. He prayed that authority cannot apply presumptions in determining the earning of actual profit. He prayed that the income offered by the assessee may be sustained.

**13.** Considered the rival submissions and material placed on record. We notice from the records submitted before us that during the course of search it was found that assessee has not disclosed the cash sales to the

extent of ₹.19,41,97,264/- for the period March 2012 to January 2013. When the same was confronted with the assessee and with its employees, they agreed that they have not declared the above said cash sales. When the return filed by the assessee pursuant to notice under section 153A, assessee disclosed the above undisclosed cash sales and offered to tax only the net income after adjusting the pro rata cost of sales. It adopted the profit margin as per the profit determined in this type transaction as per their regular books of accounts. The assessing officer rejected the contentions of the assessee and proceeded to make the addition entire undisclosed cash sales. On appeal preferred by the assessee, the Ld.CIT(A) agreed with the assessee that only profit should be charged to tax instead off entire undisclosed cash sales however we observed that Ld.CIT(A) rejected the net profit declared by the assessee and proceeded to estimate the profit at the rate of 20% of the undisclosed cash sales. He sustained the addition based on estimation to the extent of ₹6,95,760/-. Further we observed that Ld CIT(A) not only sustained 20% of the profit, he also sustained 20% of the expenses claimed by the assessee and also came up with addition of 20% of undisclosed sales as seed capital which assessee must have applied to purchase in order to achieve the undisclosed sales.

**14.** Considered the various decisions of Hon'ble High Courts, we observe that the Hon'ble Jurisdictional High Court in the case of Hariram Bhambhani (supra) held as under:

*8. In any view of the matter, the CIT(A) and Tribunal have come to the concurrent finding that the purchases have been recorded and only some of the sales are unaccounted. Thus, in the above view, both the authorities held that it is not the entire sales consideration which is to be brought to tax but only the profit attributable on the total unrecorded sales consideration which alone can be subject to income tax. The view taken by the authorities is a reasonable and a possible view. Thus, no substantial question of law arises for our consideration."*

**15.** Similar view was expressed by the Hon'ble High Court of Gujarat in the case of Precedent Industries (supra):

*"3. Having perused the assessment order made by the Assessing Officer, the order made BY The Commissioner (Appeals) and the Tribunal, we are satisfied that the Tribunal was justified in rejecting the application under section 256(1). It cannot be a matter of an argument that the amount of sales by itself cannot represent the income of the assessee who has not disclosed | the sales. The sales only represent the price received by the seller of the goods for the acquisition of which it has already incurred the cost. It is the realization of excess over the cost incurred that only forms part of the profit included in the consideration of sales. Therefore, unless there is a finding to the effect that investment by way of incurring cost in acquiring goods which have been sold has been made by the assessee and that has also not been disclosed, the question, whether entire sum of undisclosed sale proceeds can be treated as income of the relevant assessment year answers by itself in the negative. The record goes to show that there is no finding nor any material has been referred to about the suppression of investment in acquiring the goods which have been found subject of undisclosed sales."*

**16.** From the above decisions, it is clear that the total undisclosed sales cannot be regarded as profit of the assessee and the sales only represent the price received by the seller for the acquisition of which it has already incurred the cost. Therefore, in our considered view, the Ld.CIT(A) already acknowledged this fact but he proceeded in a different angle to sustain the addition on the basis of estimation. He came up with the rate of 20% by rejecting the profit percentage declared by the assessee based on the cost incurred by the assessee and adopted the percentage as per books of accounts. We do not agree with the findings of the Ld.CIT(A) that assessee has already disclosed the GP of 18.67%, it is based on the profit disclosed by the assessee and expenditure claimed by the assessee (₹.14,04,000 plus ₹.18,63,000). We observed from the record that assessee has disclosed the net profit in undisclosed sales at ₹.14,04,000/- which is 7.95% of undisclosed sales whereas the actual profit declared by the assessee in the regular books of accounts which is 3.97%(₹.3.20 crores / ₹.80.54 crores). Therefore, in our considered view, Ld.CIT(A) should not have stretched assumption to arrive at the estimated rate of 20% by observing that assessee must have incurred certain administrative and miscellaneous expenditure. Since assessee has already declared the net profit in this transaction, the profit declared by the assessee on this

transaction is reasonable. Accordingly, we direct to retain the profit disclosed by the assessee.

**17.** With regard to other additions proposed by the Ld.CIT(A), in our opinion is excessive. The Ld.CIT(A) came up with the concept of seed capital, which in our view the capital is already exists in the business, the assessee has not brought on new capital to carry on the undisclosed transactions. Therefore, this addition proposed by the Ld.CIT(A) deserves to be deleted and accordingly deleted. With regard to disallowance of 20% of the expenses claimed by the assessee, Ld.CIT(A) proposed the disallowance at the rate of 20% considering the fact that Assessing Officer has made the disallowance of entire expenditure since assessee has not proved the allowability of expenditure under section 40A(3) of the Act. We observed from the record that assessee has purchased timber and other items from the various farmers/cultivators. We observed that the assessing officer has not made any verification on this aspect and Ld.CIT(A) in the interest of equity he proceeded to disallow 20% of the expenditure on estimation basis. In our view, when the Ld.CIT(A) accepts that the net profit/GP has to be charged to tax, he cannot propose to make other disallowances particularly when tax authorities proposed to bring the cash transactions to tax which includes sales as well as

purchase. Therefore, the proposed disallowance of expenditure is accordingly deleted.

**18.** Considering the above discussions, we allow the appeal filed by the assessee and dismissed the appeal filed by the revenue.

**19.** The facts in the A.Y. 2013–14 are mutatis mutandis similar to the facts in A.Y. 2012 – 13, accordingly the decision reached in A.Y.2012–13 are applicable in the other assessment year as well. Accordingly, appeal filed by the assessee is allowed and appeal filed by the revenue is dismissed.

**20.** In the net result, appeals filed by the assessee are allowed and appeals filed by the Revenue are dismissed.

Order pronounced on 23.02.2022 as per Rule 34(4) of ITAT Rules by placing the pronouncement list in the notice board.

Sd/-  
**(PAVAN KUMAR GADALE)**  
**JUDICIAL MEMBER**  
Mumbai / Dated 23.02.2022  
Giridhar, Sr.PS

Sd/-  
**(S. RIFAUR RAHMAN)**  
**ACCOUNTANT MEMBER**

**Copy of the Order forwarded to:**

1. The Appellant
2. The Respondent.
3. The CIT(A), Mumbai.
4. CIT
5. DR, ITAT, Mumbai
6. Guard file.

//True Copy//

BY ORDER

(Asstt. Registrar)  
**ITAT, Mum**