IN THE INCOME TAX APPELLATE TRIBUNAL
[DELHI BENCH : "F" NEW DELHI]

BEFORE DR. B. R. R. KUMAR, ACCOUNTANT MEMBER
AND
SHRI YOGESH KUMAR U.S., JUDICIAL MEMBER

I.T.A. No. 429/DEL/2020 (A.Y 2017-18)

Prem Bhutani, D-124, Preet Vihar, Delhi – 110 092. **PAN No. ADOPB0582D** **(APPELLANT)**	Vs.	DCIT, Central Circle : 1, New Delhi. **(RESPONDENT)**

Assessee by	**Dr. Rakesh Gupta, Adv.; & Shri Somil Agarwal, Adv.;**
Department by	**Shri T. Kipgen, [CIT] - D. R.;**

Date of Hearing	**01.12.2022**
Date of Pronouncement	**16.02.2023**

ORDER

PER YOGESH KUMAR U.S., JM

This appeal is filed by the assessee against the order of the ld. Commissioner of Income Tax (Appeals)-4 [hereinafter referred to CIT (Appeals) Kanpur, dated 28.11.2019 for assessment year 2017-18.

2. The assessee has raised the following substantive ground of appeal:-

"1. The Hon'ble CIT (A) has erred in interpreting provision of Section 69A after considering facts and circumstances of the matter in respect of Undisclosed Income of Rs.10,50,00.000/- alleged from commodity trading on the basis of Rough Loose Sheet of Paper, seized at the time of search operations. Such Rough Loose sheet contained certain writing, which has been presumed as profit from commodity trading, raising the following questions:-

i. WHETHER, the 'Rough Loose Sheet of Paper' is considered as a 'Document' as per Section 32 of the Indian Evidence Act, to make an addition under Section 69A of the Income Tax Act, 1961 even when Hon'ble Supreme Court Opined adversely in:

a. Ramji Oayawala & Sons (P) Ltd. Vs. Invert Import AIR 1981 SC 2085 Held that mere proof of the handwriting and execution of the document would not furnish evidence of the truth of the factor content of the document.

AND

b. Mohd Yusuf (Sir) Vs. O AIR 1968 Born 112 SC Held that Contents contained in document in hearsay evidence unless the writer thereof is examined before the court. The Hon'ble Supreme Court, therefore, held that the attempt to prove the content of the document by proving the signature of the handwriting of the author thereof is to set at nought, the well-recognised rule that hearsay evidence cannot be admitted.

ii. WHETHER, the 'Rough Loose Sheet of Paper' containing certain arbitrary information has an evidentiary value, as per Section 34 of the Indian evidence Act and relevant for making additions under Section 69A of the Income Tax Act, 1961 without the support of any other corroborative evidence, which inferred un-disclosed Income of the appellant?

iii. WHETHER, the 'Rough Loose Sheet of Paper' shall be considered as 'qualifying material' mentioned in the provisions of Section 69A of Income Tax Act, 1961 for making additions?

iv. WHETHER, 'Rough Loose Sheet of Paper' is relevant for recording statement on oath, as per provisions of Section 132(4) of the Income Tax Act, 1961 since the said document may not be (i) any books of account, (ii) documents, (iii) money, (iv) bullion, (v) jewellery to other valuable article or thing in absence of any corroborative evidence?

v. On the basis of Facts of the case, whether the appellant shall correctly be assumed to allege to earn profit from Commodity Trading activity, in absence of any Commodity Trading Account, even when the relevant fact can be tracked from the P AN of the appellant?

vi. WHETHER, the unexplained Income from alleged Commodity Trading, justified to be added under Section 69A even when the same shall be otherwise taxable as per the provisions of specific Section 28 of the Income Tax Act, 1961? "

3. Brief facts of the case are that, a search and seizure operation u/s 132 (1) of the Income Tax Act, ('Act' for short) was carried out in the case of Bhutani Group of Companies on 09/11/2016. Various residential and

business premises of the Director and the Group companies were covered under the search and survey operation. For the purpose of assessment, a notice u/s 142(1) of the Act was issued on 23/01/2018 to the Assessee. In response, the assessee submitted the copy of the e-return of income filed u/s 139 of the Act declaring total income of Rs. 43,55,819/-. The assessment proceedings initiated against the assessee. The assessment order came to be passed on 28/11/2019 by computing the income of the assessee at Rs.23,07,55,850/- as under:-

Total income as per return of income/system			*Rs. 43,55,819*
Add:	*Addition/Disallowance on account of:*		
1	*Addition on account of income surrendered during search as per para 6 discussed above*	*Rs.10,50,00,000/-*	
2	*Addition on account of admitted undisclosed income (Protective basis)*	*12,09,00,000/-*	
3	*Addition on account of unexplained investment in cash as discussed in Para 7 above*	*Rs.2,15,000/-*	
4	*Addition on account of unexplained investment in Jewellery as discussed in para 8 above*	*Rs.2,85,029/-*	*Rs.22.64.00.029/-*
			Rs.23.07,55,848/-
	Total income		
		Or say Rs.23,07,55,85-/-	

4. As against the assessment order dated 31/12/2018, the assessee has preferred an appeal before the Ld.CIT(A). The Ld.CIT(A) vide order dated 28/11/2019 has confirmed the addition of Rs. 10,50,00,000/- made u/s 69A of the Act.

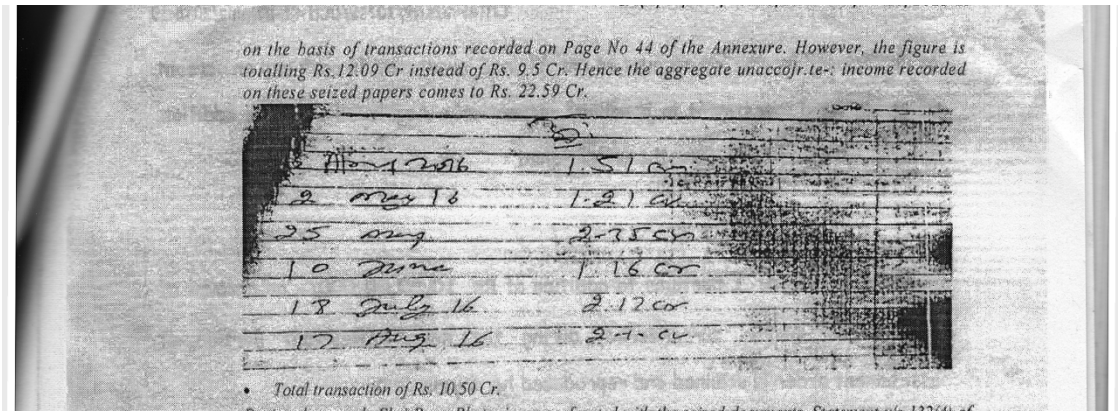
5. Aggrieved by the order dated 28/11/2019 the assessee is before this Tribunal on the grounds mentioned above.

6. The Ld. counsel for the assessee vehemently submitted that, the addition of Rs. 10,50,00,000/- made u/s 69A of the Act has been made on the basis of rough loose sheet of paper seized at the time of search operation which cannot be considered as 'document' as per Section 32 of the Indian Evidence Act to make an addition u/s 69 of the Act, the 'rough loose sheet of paper' has no evidentiary value as per Section 34 of the Indian Evidence Act. Further submitted that the assessee has retracted the statement and takes us through various judicial pronouncements and contended that the jotting on the loose papers cannot be sustained on the basis of dumb documents and sought for allowing of the appeal.

7. Per contra, the Ld. DR submitted that the assessee has admitted the addition and retraction has been made only after the two years and further by relying on the orders of the Lower Authorities, submitted that the grounds of appeal sans merit and the appeal is deserves to be dismissed.

8. We have heard the parties perused the material available on record and gave our thoughtful consideration. The assessee was searched u/s 132 of the Act on 09/11/2016 wherein the bunch of loose papers were found and seized from the corporate office of Bhutani Group. As per the A.O., the said seized document showing the calculation of unaccounted income of the Directors Sh. Anil Bhutani and Sh. Prem Bhutani through commodity trading during Financial Year 2016-17. When the said seized document is confronted with the assessee, the assessee has accepted and disclosed income during the search of Rs. 10.5 crore in the hands at Rs.9.50 crores in the hands of Sh. Anil Bhutani. The Ld. A.O. was of the opinion that the said surrendered amount of undisclosed income of Rs. 10.50 crore was not declared by the assessee in his return. Further the Ld. A.O. was of the opinion that the statement as to the surrender of income made u/s 132 (4) of the Act, had evidentiary value and which was made in the contest of material found during the search. Accordingly, the Ld. A.O. had made the addition of Rs. 10.50 crore. The said order of the Ld. A.O. has been confirmed by the Ld.CIT(A) vide order dated 28/11/2019 which is order impugned before us.

9. It is found that during the search certain material has been seized. The only and entirety seized material during the search and seizure operation is as under:-


on the basis of transactions recorded on Page No 44 of the Annexure. However, the figure is totalling Rs.12.09 Cr instead of Rs. 9.5 Cr. Hence the aggregate unaccojr.te-: income recorded on these seized papers comes to Rs. 22.59 Cr.

16 April 16 1.51 Cr.
2 May 16 1.21 Cr.
25 May 2.35 Cr.
10 June 1.16 Cr.
18 July 16 2.17 Cr.
17 Aug. 16 2.10 Cr.

• Total transaction of Rs. 10.50 Cr.

They typed portion of the above is reads as under:

"16th April 2016	1.51 Cr.
12th May 2016	1.21 Cr.
25th May	2.35 Cr.
10th June	1.16 Cr.
18th July 2016	2.17 Cr.
17th August 2016	2.10 Cr."

Bare perusal of the seized document would does not indicate anything about the nature of the transaction nor does it show whether the figures are in terms as to whether the figures indicated are that of income or expenditure. Therefore no conclusive decision can be drawn from such jottings for computing the income of the assessee. The Reliance for the proposition that such jottings by themselves would not constitute income which has been declared in the judicial decisions CIT vs. S M Agarwal 293 ITR 43 (Delhi), CIT vs, Girish Chaudhary 296 ITR 619 (Delhi), CIT vs. D.K. Gupta 308 ITR 230 (Delhi). The relevant observations made in the case of CIT Vs. S M Agarwal 293 ITR 43 (Delhi) is as under:

"11. In the present case the Assessing Officer has placed reliance on the statement of Smt.Sarla Aggarwal, daughter of the assessed while arriving at the conclusion, that the entries belong to the transactions of the assessed. This statement made by Smt.Sarla Gupta, cannot be said to be relevant or admissible evidence against the assessed, since the assessed was not given any opportunity to cross-examine her and even from the statement, no conclusion can be drawn that the entries made on the relevant page belongs to the assessed and represents his undisclosed income. It is also an admitted fact that the statement of the assessed was not recorded at any stage during the assessment proceedings. The only conclusion which can be drawn about the nature and contents of the document is that it is a dumb document and on the basis of the entry of nothings or figure etc. in this document, it cannot be concluded that this represents the undisclosed income of the assessed.

12. It is well settled that the only person competent to give evidence on the truthfulness of the contents of the document is the writer thereof. So, unless and until the contents of the document are proved against a person, the possession of the document or hand writing of that person, on such document by itself cannot prove the contents of the document. These are the findings of fact recorded by both the authorities, i.e., Commissioner of Income Tax (Appeals) and the Tribunal.

13. In Mahavir Woolen Mills (supra) case, during the course of search and seizure proceedings, certain slips were found, which, the Assessing Officer concluded, contained details of payment beyond those which were made by cheques and drafts and were duly

reflected in the books of accounts. The assessed's stand before the Tribunal was that the documents were 'dumb documents' which did not contain full details about the dates of payment and its contents were not corroborated by any material and could not be relied upon and made the basis of addition. The Tribunal considered this aspect and observed that on comparison of the seized documents and ledger accounts of the parties, the seized documents could not be regarded as 'dumb documents'.

14. While dismissing the appeal, the Apex Court held:

That the Tribunal had come to a certain factual conclusion about the nature of the papers seized. On the question whether the documents did or did not contain the particulars, the tribunal observed that they did contain certain materials which were sufficient to come to a conclusion about cash payments having been made in addition to those made by cheques and drafts. The conclusion was essentially factual. No substantial question of law arose from its order.

15. Similarly, in the present case as already held above, the documents recovered during the course of search from the assessed are dumb documents and there are concurrent findings of Commissioner of Income Tax (Appeals) and the Tribunal to this effect. Since the conclusions are essentially factual, no substantial question of law arises for consideration.

10. It is relevant to mention that there is no corroborative evidence brought in by revenue in the present case, showing that above referred entries in the seized loose papers represented actual transaction leading to undisclosed income of the assessee.

11. It is also noticed by us that the rough loose paper which has been made the basis for the addition is a hand written paper without any corroborative evidence, therefore the statement u/s 132(4) could recorded on oath qua this piece of paper u/s 132(4) of the Act cannot be regarded as sacrosanct with regard to undisclosed income. It has been held in the case Gajjam Chinna Yellapa vs. ITO (2015) 370 ITR 671 (AP) where the statement is retracted, the A.O. has to gather support to the statement for passing the order of the assessment. The relevant portion of the same is as under:-

> *"The Assessing Officer initiated proceedings under Section 148 of the Act by issuing notice. At that stage, the appellants came forward with the plea that the statements were forcibly recorded, and even cheques were taken from them, under duress. That plea was not accepted and the Assessing Officer felt that there are no bona fides in the statement of retraction, and orders of assessment were passed. Those orders were upheld by the Commissioner as well as the Tribunal.*
>
> *The Act empowers the Assessing Officers or other authorities to record the statements of the assesses, whenever a survey or search is conducted under the relevant provisions of law. The statements so recorded are referable to Section 132 of the Act. Sub-section 4 thereof enables the authorities not only to rely upon the statement in the concerned proceedings but also in other proceedings that are pending, by the time the statement was recorded.*

If the statement is not retracted, the same can constitute the sole basis for the authorities to pass an order of assessment. However, if it is retracted by the person from whom it was recorded, totally different considerations altogether, ensue. The situation resembles the one, which arises on retraction from the statement recorded under Section 164 Cr.P.C. The evidentiary value of a retracted statement becomes diluted and it looses the strength, to stand on its own. Once the statement is retracted, the Assessing Authority has to garner some support, to the statement for passing an order of assessment.

In I.T.A.No.112 of 2003, this Court dealt with the very aspect and held that a retracted statement cannot constitute the sole basis for fastening liability upon the assessee."

12. At this stage, we may also point out that on the seized documents, only date and numbers are mentioned and which do not mention its nature as to whether it is revenue or expenditure or loan or investment, and name of the party is also not mentioned therein. Also, this cannot be ignored that the assessee does not have trading account and demat account with any agency or broker. This is also important to take note of this fact that during the course of search, no such cash of the amount purportedly surrendered was found from any of the premises of the group. The assessing Officer too recorded the statement of the assessee on oath u/s 131 dated 06.12.2018 qua such retraction. This statement on oath dated 06.12.2018 reiterating the retraction is also an important piece of evidence and cannot be brushed under the carpet, more so in the light of the nature of such alleged 'seized

document'. Thus, we are of the considered view that no addition made by AO based on such alleged 'seized document' could be made, much less could be sustained in appeal.

13. It is also significant to notice that Assessing Officer invoked section 69A for making the impugned addition and if section 69A is read, it would be clear that none of the conditions of section 69A stand met in this case of the assessee and therefore, we are also of the considered view that section 69A are not applicable and it cannot be said merely on the basis of some loose paper that assessee was owner of money etc. as envisaged in section 69A. Reliance is placed for this proposition on the decision in the case of CIT vs. Ravi Kumar 292 ITR 78 (P&H) and Kantilal Chandulal vs. CIT [(Cal) High Court]. The Hon'ble Punjab & Haryana High Court in the case of CIT vs. Ravi Kumar (Supra) relying on the ratio laid down by the Calcutta High Court in the case of Kantilal Chandulal (supra) held as under:-

> *"5. We have heard learned Counsel for the Revenue.*
>
> *Section 69A of the Act at the relevant assessment year reads thus:*
>
> *69A. Where in any financial year the assessee is found to be the owner of any money, bullion, jewellery or other valuable article and such money, bullion, jewellery or valuable article is not recorded in the books of account, if any, maintained by him for any source of income, and the assessee offers no explanation about the nature and source of acquisition of money, bullion, jewellery or other*

valuable article, or the explanation offered by him is not, in the opinion of the Assessing Officer, satisfactory, the money and the value of the bullion, jewellery or other valuable article may be deemed to be the income of the assessee for such financial year.

6. A Division Bench of the Calcutta High Court in Kantilal Chandulal and Co. v. CIT , while interpreting the provisions of Section 69A of the Act had laid down that two conditions need to be fulfilled before the provisions of Section 69A are applied. The first condition for applying the provisions of Section 69A is that the assessee should be found to be owner of any money, bullion, jewellery or other valuable article and, secondly, the same should not be found recorded in the books of account, if any, maintained by him.

7. In the present case, the assessee was found to be in possession of loose slips and not of any valuable articles or things. Neither the possession nor the ownership of any jewellery mentioned in the slips could prove. In view thereof, the provisions of Section 69A of the Act had rightly not been applied by the Tribunal to the facts of the case in hand. Accordingly, question No. 1 is answered against the Revenue and in favour of the assessee."

14. One more important point also made out by the assessee was that even in the statement recorded u/s 132(4), it was stated by the assessee that the amount has not been received till date. It is seen that section 145(1) of the Act provides that income chargeable under the head profit and business shall be computed in accordance with either cash or mercantile accounting system

regularly applied by the assessee. Therefore, even if it is assumed that the assessee had been carrying on business trading in commodity and this been the only year in which it was alleged that commodity trading has been undertaken, income of this year would be nil as no amount has been received as assessee, as per his contentions raised, would have chosen to follow cash system of accounting. There is no evidence on record to show that such purported profit was received by the assessee, much less during the year under appeal. Hon'ble Gauhati High Court in the case of MKB (Asia) P. Ltd. vs. CIT 294 ITR 655 have held that income tax authority has no option or jurisdiction to either direct the assessee to maintain its accounts in particular manner and the assessee has the option to adopt any recognized method of accounting for his business and income in that case is required to be computed in accordance with such system of accounting. The relevant portion is as under:-

15. Thus, having regard to the totality of facts and circumstances of the present case and as discussed above, we hold that the addition made by AO amounting to Rs. 10.50 Crores was not sustainable and is therefore hereby deleted.

16. Accordingly, the grounds of appeal of the assessee is allowed.

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

Order pronounced in the Open Court on : 16.02.2023.

Sd/-	**Sd/-**
(Dr. B. R. R. KUMAR)	**(YOGESH KUMAR U.S.)**
ACCOUNTANT MEMBER	**JUDICIAL MEMBER**

Dated : 16/02/2023
MEHTA/Sr.N, Sr. PS

Copy forwarded to :

1. Appellant
2. Respondent
3. CIT
4. CIT (Appeals)
5. DR: ITAT

ASSISTANT REGISTRAR
ITAT NEW DELHI

IN THE INCOME TAX APPELLATE TRIBUNAL
[DELHI BENCH : " F" NEW DELHI]

BEFORE DR. B. R. R. KUMAR, ACCOUNTANT MEMBER

AND

SH. YOGESH KUMAR U.S., JUDICIAL MEMBER

I.T.A. No. 429/DEL/2020 (A.Y 2017-18)

Prem Bhutani D-124, Preet Vihar, Delhi-110092 PAN: ADOPB0582D **(APPELLANT)**	Vs.	DCIT, Central Circle-1, New Delhi **(RESPONDENT)**

CORRIGENDUM

It is found that the in the bottom of the paragraph 14 of the order dated 16/02/2023 the relevant paragraph of the judgment of Hon'ble Gauhati High Court in the case of MKB (Asia) P. Ltd. CIT 294 ITR 655 which has been relied by the Bench has been omitted in the final order. Therefore, rectifying the same, the following portion is added at the bottom of Paragraph 14 of the order dated 16/02/2023.

> ***"6. The Revenue, thereafter, took the matter to the Income-tax Appellant Tribunal who set aside the order of the appellate authority and restored the order of the assessing officer, and, hence the present appeals. The substantial question of law formulated by this Court in all the above four appeals reads as follows:***
>
> ***Whether on the facts and circumstances of the case the Tribunal was right in not accepting the valuation of closing work-in-progress in accordance with Accounting standard (As-7) as laid down by the Institute of Chartered Accountants of India and to wok out the profit on the basis of the accounts maintained ?***
>
> ***7. The learned Counsel for the appellant has produced before us the text of accounting standard AS-7 issued by the Institute of Chartered Accountants of India. It shows that this system was introduced in the year 1983 and it was made mandatory in the year 1990. There is no dispute at the bar that this accounting system is an approved system of maintenance of, account applicable to construction works***

contract. Sri Bhuyan learned Counsel for the respondents has submitted that the question raised is more or less academic as in the long run, the assessee is not affected as the liability of tax on the income of the total works contract remains the same and the question is at what stage the tax is to be paid. Mr. Joshi was fair enough to submit that it is not a question of additional liability of tax, but the question is whether the Income-tax department can force the assessee to adopt a particular system of accounting, or whether the assessee has the option. While going through AS 7, we find that the executor of the works contract is required to pay income tax even but on the part completion of the work also, but a formula has been provided for the purpose regarding valuation, etc., keeping in mind the ultimate payment to be received against the entire work.

8. In the present case, the factual part is not under dispute and hence we would confine to the question raised.

9. A similar question had arisen in the case of Commissioner of Income-tax v. Doom Dooma India Ltd. ITR Vol. 200 p. 496 wherein the question of valuation of stock arose as a result of the accounting system. Referring to the provision of Section 145 of the Act this Court held:

> ***"It is for the assessee to adopt any recognized method of accounting for his business. The income shall be computed in accordance with the method of accounting regularly employed by the assessee. In other words, it is open to the assessee to opt for such method of accounting as he deems reasonable and appropriate. He may opt to adopt the manufacturing cost price method***

or the market price method provided the method is followed in regard to both the opening stock and the closing stock. It is not open to him to adopt one method for valuing the opening stock and a different method for valuing the closing stock so as to intentionally suppress the income derived or derivable in the particular previous year. Even where as assessee has adopted a particular method for a period of years, there is no provision of law which prevents him from changing to any other method provided the change-over is not made in the same assessment year.

The proviso to Sub-section (I) empowers the Assessing Officer to compute the income on such basis and in such manner as he determines if the accounts are correct and complete but the method adopted is such that, in his opinion, the income cannot properly be deduced therefrom. The jurisdiction can be invoked where he is of the opinion that the income cannot properly be deduced therefrom. He cannot exercise the jurisdiction merely on the ground that the method adopted, which is otherwise regular or fair is detrimental to the Revenue or advantageous to the assessee. If the Assessing Officer is not satisfied about the correctness or the completeness of the accounts of the assessee, or where no method of accounting has been regularly employed by the assessee, the Assessing Officer may make an assessment in the manner provided in Section 144."

10. In support of the above findings this Court had placed reliance on the following decisions of the Apex Court.

(1) Chainrup Sampatram v. CIT 24 ITR 481.
(2) Investment Ltd. v. CIT. 77 ITR 533 and
(3) A.L.A. Firm v. CIT 189 ITR 285.

11. We may recapitulate the following observations of the hon'be Supreme Court in Investigation Ltd. (supra):

> ***"A taxpayer is free to employ for the purpose of his trade, his own method of keeping accounts, and for that purpose to value his stock-in-trade either at cost or at market price. A method of accounting adopted by the trader consistently and regularly cannot be discarded by the departmental authorities on the view that he should have adopted a different method of keeping account, or of valuation. The method of accounting regularly employed may be discarded only if, in the opinion of the taxing authorities income of the trade cannot be properly deduced there from. Valuation of stock at cost is one of the recognized methods. No inference may, therefore, arise from the employment by the company of the method of valuing stock at cost, that the stock valued was not stock-in-trade."***

12. As stated above, the accounting system AS 7 is an approved system of accounting by the Institute of Chartered Accountants and as such the authenticity of the said accounting system is not under challenge. The assessing firm/appellant being a Private Limited Company was maintaining the account following the said system and the account were duly audited by qualified Chartered Accountant, maintenance of the accounts as well as the valuation of works in progress will not prejudice either side. Admittedly, the particular work control were not completed

and it comes under the category of work in progress. There is also no dispute that the ultimate liability of the Assessee as regards tax will be dependant upon in total (fixed) amount received by the Assessee against the particular work control.

13. We, therefore, hold that the Income tax authority has no option/ jurisdiction to muddle in the matter either by directing the assessee to maintain the account in a particular manner or adopt a different method for valuing the work in progress. We reiterate the decision in Doom Dooma India Ltd. (supra) and hold that an assessee has as the option/ liberty to adopt any recognized method of account for his business and the income shall be computed in accordance with such regularly maintained accounting system.

14. In the result, the substantial question of law is answered in favour of the appellant and against the revenue. The impugned order passed by the Tribunal are set aside and that of CIT (appeals) are restored."

This corrigendum shall read with the final order dated 16th February, 2023 passed by the Bench.

Sd/- Sd/-

(Dr. B. R. R. Kumar) **(YOGESH KUMAR U.S.)**
Accountant Member **Judicial Member**
Date:- 27/06/2023