

आयकर अपीलिय अधिकरण, जयपुर न्यायपीठ, जयपुर  
IN THE INCOME TAX APPELLATE TRIBUNAL, JAIPUR BENCHES,"SMC" JAIPUR

डा० एस. सीतालक्ष्मी, न्यायिक सदस्य एवं श्री राठोड कमलेश जयन्तभाई, लेखा सदस्य के समक्ष  
BEFORE: DR. S. SEETHALAKSHMI, JM & SHRI RATHOD KAMLESH JAYANTBHAI, AM

आयकर अपील सं./ITA. No. 20/JP/2023  
निर्धारण वर्ष/Assessment Years : 2017-18

Sandeep Jain A-53, Shanti Nagar, Gurjar Ki Thadi, Jaipur	बनाम Vs.	Income Tax Officer Ward 6(4), Jaipur
स्थायी लेखा सं./जीआईआर सं./PAN/GIR No.: AFIPJ 7230 A		
अपीलार्थी /Appellant		प्रत्यर्थी /Respondent

निर्धारिती की ओर से / Assessee by : Shri Manish Agarwal (C.A.)  
राजस्व की ओर से / Revenue by : Smt Monisha Choudhary (Addl. CIT)

सुनवाई की तारीख / Date of Hearing : 24/05/2023  
उदघोषणा की तारीख / Date of Pronouncement : 27/06/2023

आदेश / ORDER

PER: RATHOD KAMLESH JAYANTBHAI, AM

This appeal is filed by assessee and is arising out of the order of the National Faceless Appeal Centre, Delhi dated 21/11/2022 [here in after (Id. CIT(A)/NFAC)] for assessment year 2017-18 which in turn arise from the order dated 21.12.2019 passed under section 143(3) of the Income Tax Act, by the ITO, Ward- 6(4), Jaipur.

2. In this appeal, the assessee has raised following grounds:-

1. On the facts and in the circumstances of the case and in law, Id.CIT(A) has grossly erred in confirming the order passed by Id.AO arbitrarily.

1.1. On the facts and in the circumstances of the case and in law, Id.CIT(A) has grossly erred in confirming the order passed by Id.AO and thereby confirming the addition of Rs.26,90,533/- made by applying profit rate of 8% on gross turnover of both the activities, i.e. transport business and liquor business, arbitrarily.

1.2. That, id.CIT (A) further erred in confirming the application of 8% profit rate applied by Id. AO, solely for non-furnishing books of accounts. Appellant prays that during the course of assessment proceedings, it was submitted that books of accounts being bulky could not be uploaded and it was requested to open two three separate tabs so that same can be uploaded in parts, which request was turned down and addition was made. Appellant prays that application of higher profit rate is not sustainable more particularly when no comparable case in the same line of business, was brought on record.

1.3. That, Id.CIT(A) has further erred in not appreciating the past history of the assessee.

2.1. The assessee has also raised following additional grounds in this appeal:-

1. On the facts and in circumstances of the case and in law, Id.CIT(A) has grossly erred in confirming the action of Id. AO in not allowing loss of Rs.1,87,158/- from house property. Appellant prays that home loan statement was furnished during assessment proceedings, therefore disallowance of loss is absolutely arbitrary and deserves to be allowed as claimed.

2. On the facts and in the circumstances of the case and in law, Id.AO has grossly erred in confirming the action of Id.AO in not allowing deduction of Rs. 1,27,347/- claimed u/s 80C without raising any query in this regard and arbitrarily. Appellant prays that deduction claimed

was supported by documentary evidences and therefore deserves to be allowed as claimed.

3. That the appellant craves the right to add, delete, amend or abandon any of the grounds of appeal either before or at the time of hearing of appeal.

Considering the content of the petition so filed by the assessee we admit this additional ground based on the decision of the apex court in the case of the NTPC

3. The fact as culled out from the records is that the case of the assessee was selected for scrutiny for the assessment year under consideration through CASS. The assessee e-filed his return of income declaring income of Rs. 17,22,240/- on 30.10.2017. The assessee declared the income under the head income from business or profession and income from other sources. During the year under consideration, the assessee deposited cash of Rs.3,07,35,630 in the bank account number 20960210003411, maintained with UCO bank, Jaipur. During assessment proceedings for the assessment year under consideration the assessee was asked to explain the source of cash deposited by him in his bank account for the under consideration. The assessee submitted the reply / submission along with the other documents which was duly considered and the same were examined by the

assessing officer, the Id. AO noted that the assessee is engaged in the business of wine and liquor shop in which the assessee declared the turnover of Rs.4,92,12,751/-. The assessee also engaged in the business of Blue shipping in which he declared total sales of service of Rs.88,56,588/-. The assessee declared the net profit of Rs.19,55,014/- adopting the net profit rate, at the rate of, 3.36 %. During assessment proceedings for the assessment year under consideration, the assessee was asked to produce the books of accounts i.e. the case book, ledger, sale, book and purchase, book, stock register, daily book, along with the sales bills and purchase bills and bills/vouchers of the expenses incurred by him during the under consideration but the assessee did not submit the required documents and books of account. It is therefore assumed that the assessee did not maintain the books of account for the assessment year under consideration. In the light of this fact, a show cause notice was issued to the assessee on 07.12.2019, requiring the documents relating to the issue which was got served upon the assessee. In response the assessee filed its reply, but did not produce the books of account for the verification. The assessee declared the net profit of Rs.19,55,014/- adopting the net profit rate at the rate of 3.36 %, not maintaining the books of accounts for the

current year. Hence, the income of the assessee is estimated at the rate of 8% of the total turnover of Rs.5,80,69,339 which comes to Rs.46,45,547/-, applying the provision of section 44 AD of the income tax act. The same added to the total income of the assessee. The assessee claimed the loss of current years of Rs.1,87,558 which was also disallowed due to non-production of books of account. Based on these observations, the assessment was completed.

4. Aggrieved from the order of the assessing officer, assessee preferred and appeal before the Id. CIT(A). A propose to the grounds so raised the relevant finding of the Id. CIT(A) is reiterated here in below:

“5. DECISION

5.1 Briefly the facts of the case are that the appellant is an assessee engaged in the business of Wine & Liquor and logistics services. The assessment in his case was framed u/s, 143(3) vide order dated 21-12-2019. The grievance the appellant is that the AO applied the rate of 8% on gross turnover and thereby made an addition of Rs. 30,05,040/-. The AO on the other hand had made the addition because the assessee did not produce the books of account i.e. cash book, ledger, sale book, purchase book, stock register, daily book along with the sale bills and purchase bills and bills/vouchers of expenses incurred during the year. It is observed that the AO as per the table mentioned in page-2 of the assessment order had afforded multiple opportunity to the appellant over period of 5 months to produce the books of accounts but there was no compliance from the appellant at assessment stage. It is in absence of the relevant books and documents that the AO resorted to applying the net profit rate of 8% as the appellant was not offering the necessary evidence to substantive as to how his net profit rate was 3.36% was correct and sufficient.

5.2 The appellant claims that its books of account are audited and therefore could not have been rejected by the AO it is also claimed that his gross profit rate is 11.62% and is reasonable by any standard. However, the assessing officer is mentioning about the net profit rate.

5.3 It is observed that sufficient opportunity was given by the AO however the appellant did not exercise the option of producing the books and allow the AO to verify the claim of various expenses. He could not give any reason as to what prevented him from producing the books of account. It is observed that AO has issued two show causes to the appellant on 03/12/2019 and 07/12/2019 for the books but the same were not produced. The mere production of audit report is no evidence that the books have been physically maintained unless and until the same are produced for physical verification. There is no explanation from the appellant as to why the income is low at 3.36%. The same could have been demonstrated before the AO but it was not done. This office finds that in the absence of the necessary documents and evidences the AO has resorted to best judgement assessment by applying the rate of net profit of 8% taking a cue from the rate of 8% mentioned in sec 44AD which is a special provision for computing profit and gains of business on presumptive basis. In the absence of co-operation from the appellant that is the best the AO could have done.

5.4 In view of the aforesaid observation the income determined by the AO in the case of the assessee is hereby upheld.

6. In nutshell the appeal of the appellant is dismissed.”

5. As the assessee did not find any favour from the Id. CIT(A) the appeal has been filed before this tribunal on the grounds as reproduced here in above. The Id. AR appearing on behalf of the assessee has placed his written submission which is extracted in below;

“Under instructions from the assessee and in elaboration to the grounds of appeal already taken, following submission is made for your kind and sympathetic consideration.

Brief facts of the case are that assessee is an individual engaged in the activity of providing Transport and Logistics Services in the name of M/S Blue Shipping, a proprietorship concern of assessee. Apart from this, during the

year under consideration, assessee was awarded license from State Government of Rajasthan to run a Wine Shop for the year 2016-17. Return of Income for the year under consideration was filed on 30.10.2017 declaring total income of Rs.17,22,240/- (APB 1-4). During the course of assessment proceedings, various details/explanations were sought from assessee which were furnished from time to time. Also, Id.AO directed to furnish complete books of accounts, i.e. ledger, cash book, stock register, daily book and other relevant documents for verification of facts of the case. In this regard, it is submitted that assessee furnished all the possible details and with regard to through online portal the producing books of account, it was submitted that same could not be uploaded online as these were voluminous and therefore assessee requested to provide an opportunity of producing books of accounts physically for verification by Id AO. However request of assessee was not accepted. AR then requested Id AO to open separate reply TAB during 2-3 days, so that assessee can upload books of accounts. This request was also not accepted. Rather on the same day Id AO. passed the order and applied profit rate of 8% on total turnover of Rs.5,80,69,339/- and computed profit at Rs.46,45,547/- as against Rs.19,55,014/- declared by the assessee only on the plea that books were not furnished Also, deduction claimed by assessee u/s 24(b) of Rs.1,87,158/- and deduction claimed by assessee u/s 80C to the tune of Rs.1,27,347/- were disallowed. Against such order, assessee preferred an appeal before Id.CIT(A) who vide order dated 21.11.2022, confirmed the additions made in assessment order, primarily on the findings of Id.AO. Thus the present appeal has been filed by assessee against the order so passed by Id.CIT(A) before the hon'ble bench.

With this background, groundwise submission is made as under:

Grounds of Appeal No.1 to 1.3:

In these grounds of appeal, assessee has challenged the action of Id.AO in making trading addition of Rs. 26,90,533/- by applying profit rate of 8% as against 3.36% declared by the assessee.

In this regard at the outset, details of turnover of assessee from two activities, i.e. of shipping and of trading in liquor business and their profit is submitted as under:

Nature of Activity	Turnover	Gross Profit	GP Rate
Transportation and Logistics	88,56,588/-	17,74,930/-	20.04%
Liquor trading	4,92,12,751/-	49,71,772/-	10.1%
<b>TOTAL</b>	<b>5,80,69,339/-</b>		

After claiming indirect expenses, net profit was worked out at Rs.19,55,014/-, i.e. 3.36%. During the course of assessment proceedings, Id.AO sought

various details as well as asked to file books of accounts online. Assessee responded all the query letters issued and furnished the details sought, and also filed extracts of books of accounts wherever possible which are tabulated as under:

Date of Submission	Nature of books submitted	Remarks
13.08.2019 (APB 9-11)	Audited Financial Statements	-
	Bank book Statements of all banks	Both activities
	Purchase Register	Transportation Activity
	Purchase Invoices	Transportation Activity
	Sales Register	Transportation Activity
	Sales Invoices	Transportation Activity
	Purchase Ledger	Liquor business (ledger a/c of only supplier i.e Rajasthan State Beverages Corporation Ltd.)
	Creditors' list	-
	Stock register	Transportation business- No stock being service activity  Liquor- since contract was awarded for F.Y. 2016-17- so at the end year stock NIL stock to be maintained
01.11.2019 (APB 71)	Fixed Assets purchase invoices	-

From perusal of above, it is evident that assessee furnished all the books of accounts except cash book, ledger and Daily book which were voluminous and therefore could not be uploaded online and despite of specific request of physical verification (ABP 83), no opportunity was granted to assessee to produce physical copy of books before Id.AO for verification.

It is pertinent to note here that books of accounts of assessee were duly audited without any adverse remarks and also not a single defect whatsoever was pointed out by Id.AO in the financial statements or purchase/sale registers/invoices etc. filed by assessee. It is submitted that so far as transportation activity is concerned, assessee furnished both purchase and

sale register and relevant invoices. Similarly, for Liquor business, assessee furnished Purchase ledger in the books of Rajasthan State Beverages Corporation Ltd., which is state government department, thus purchases is proved beyond doubt. Also, sale price of liquor is fixed by government, thus there is no scope of manipulation. Further so far as stock details are concerned, in transportation activity there are no selffound goods involved and for Liquor business, assessee was allotted license only for F.Y 2016-17 and had to liquidate complete stock thus there was no closing stock as on 31.03.2017. Apart from this, assessee furnished details of creditors as well as other expenses, Fixed Assets etc. Thus in substance all the necessary books of accounts were submitted by assessee. It is further submitted that trading results declared by assessee were rejected *in limine*, without even verifying the details/ comparing the same with industry standards and profit rate of 8% was applied on turnover.

At this juncture, kind attention of the hon'ble bench is invited to the GP rate of assessee in transportation activity for current year and past 3 years which is tabulated (liquor business was started in this year only):

Assessment Year	Turnover	G. P. Rate
2017-18	88,56,588/-	20.04%
2016-17	1,81,18,160	28.19%
2015-16	1,85,66,177	18.29%
2014-15	1,67,80,900	15.54%

From perusal of above, it is evident that there is no much deviation in gross profit rate of transportation activity in comparison to preceding years and marginal deviation is always bound to occur due to any change in volume of business/ change in market conditions. Further assessee is not dealing in any commodity and rather providing mainly overseas shipping transport services where it is not possible to have the static GP in all the years. Moreover, rate of profit declared by assessee is much higher than rate of 8% prescribed under section 44AD, thus there is not a single reason to reject financial results declared by the assessee more particularly when books of accounts are regularly maintained and duly audited without any adverse remarks. It is submitted that provisions of section 44AD come into play only if assessee declares profit rate lower than 8% and does not get accounts audited. In the present case, books have been audited. Also, Id.AO has not pointed any expenses debited in Profit and Loss account, which is not reasonable or not in accordance with the business activities of the assessee. From the perusal of Profit and Loss account (APB 6), it is evident that expenses claimed are most reasonable and incurred out of business expediency.

It is also pertinent to submit that consolidated net profit from both the activities has been worked out after reducing the claim of payment of License fees of Rs. 21,00,000/- paid to state government in liquor business which is a statutory liability and without payment of the same, assessee was not entitled to carry out liquor business and same is paid to the state government thus the same cannot be doubted. Also, assessee has paid service tax of Rs. 22,729.30 and Swach Bharat Cess of Rs.25,220.16, which are also inseparable and unavoidable levy if these expenses, i.e. licence fees, Service tax and Swach Bharat cess are added to the net profit declared, the resultant profit would be Rs. 41,02,963.46 which comes to 7.06% and same is quite reasonable.

It is also submitted that in the case of application of NP rate, deduction for the accepted claims of depreciation of Rs. 5,06,065/- and Finance charges of Rs.82,617/-, i.e. aggregating Rs.5,88,682/- further needs to be added back to arrive at the real profits from the business, which, if added to the profits arrived, the resultant figure would be Rs. 46,91,645.46/- which is 8.08% to the total turnover, and thus same is at par with profit rate applied by Id.AO.

If all the deductions as narrated above are considered the profit rate before claiming such deductions would be as under:

Particulars	Amount
Gross Receipts (both activities)	5,80,69,339.00
Net Profit as declared by assessee	19,55,014.00
Add: Depreciation	5,06,065.00
Interest	82,617.00
Service Tax	22,729.30
Licence Fees	21,00,000.00
Swach Bharat Cess	<u>25,220.16</u>
Profit	<u>46,91,645.46</u>
% of Profit	8.08%

Since the profit rate before considering the statutory deductions such as depreciation, interest and other indirect taxes is 8.08% which is quite reasonable looking to the nature of the business of the assessee and, is not only quite proximate to the rate intended to be applied by Ld. AO but is also slightly higher than that, thus no addition was warranted by Id.AO.

It is also a settled position of law that before proceeding to make trading addition by applying higher profit rate, books of accounts need to be rejected by demonstrating specific defects therein. In the instant case, Id.AO has not pointed any single error/defect in the purchase details invoices, sales, details, financial statements details etc., being part of books of accounts so furnished before AO. Hon'ble Delhi High Court in the case of CIT v. Paradise Holidays [2010] 325 ITR 13 (Delhi), has held that if accounts which are regularly maintained in the course of business and are duly audited, free from any qualification by the auditors, should normally be taken as correct unless there are adequate reasons to indicate that they are incorrect or unreliable. The onus is upon the Revenue to show that either the books of account maintained by assessee were incorrect or incomplete or that the method of accounting adopted by him was such that true profits of the assessee cannot be deduced therefrom. It is also a matter of fact that before estimating the income Id. AO has not misted the income of section 145(3) of the act. In the absence of such finding, the addition cannot be sustained. Even where the books are rejected, the discretion of applying profit rate must be used by the AO judiciously.

Hon'ble Raipur bench of ITAT in the case of Sanjay Agarwal vs DCIT in ITA No. 339/RPR/2016 has observed as under:

*"12. We have perused the assessment order and the first appellate order. Both the orders are totally non-descript and has nothing worth to say for substitution of book results with estimated profits. Noticeably, in the assessment order, the AO has categorically made an averment to the effect that books of accounts have been produced by the assessee and test checked. The AO has not made mention of any material which could questions the correctness and bonafide of the book results declared. The AO is stoically silent on any kind of deficiency in books or excessive claim of any expenses etc. which could substantiate his action. It is incumbent upon the AO to record the inconsistency or incorrectness in the books which prevents the AO to ascertain true income chargeable to tax. The AO has neither rejected the books nor a single voucher was alleged to be unverifiable. In identically placed fact situation, the Hon'ble Calcutta High Court in M/s. Swadeshi Commercial Co. Ltd. vs. CIT ITA No. 219 of 2001 judgment dated 18th December, 2008 concluded that in the absence of rejection of books, the estimation of profit is arbitrary, unreasonable and perverse. In CIT vs. Anil Kumar & Co. (2016) 386 ITR 702 (Kar.), the Hon'ble High Court once again echoed the same view even while framing best judgment assessment. Identical view has been taken in large number of cases quoted on behalf of the assessee and many more. The pre-condition for estimating business income, where the assessee maintains books of account is that the books of assessee should be found to be unreliable or otherwise not realistically capable for demonstrating the income of assessee. Without this first step, the fact that the gross profit/net profit is low cannot by itself be a ground for taking a view that it is open to the AO to make good alleged deficiency in*

profits declared. Thus, the action of the AO requires to be cancelled and set aside on this score alone being devoid of any legitimacy.

13. Adverting further, we find force in the other line of argument that gross profit rate/net profit rate cannot be estimated cursorily and in a routine manner without showing as to how the book results are superfluous. The AO has not brought any material which has any reasonable nexus to the estimation. As rightly stated on behalf of the assessee, even the best judgment assessment cannot be done in a vindictive manner and should be based on reasonable and fair estimations. Needless to say, low profit is neither the circumstance nor the reason to justify the estimation at some higher percentage. A higher profit in the earlier year or in the subsequent year could be deducible based on its own set of facts. An adoption of the net profit rate of some other years is only for the purposes of fair estimate for which objective reasons must be available with the AO. The AO in the instant case has not crossed the barrier to enable it to go into arena of estimation. The estimation is permissible only on showing that the books of accounts are so defective that it is not possible to ascertain the truthfulness of the profits arising therefrom.

14. The co-ordinate bench in ITO vs. Shri Shravan Kumar Arora ITA No. 144/BLPR/2011 has made interesting observation and recorded that 'there is no rule that the gross profit ratio should followed as noted hereunder:

"There is no rule that the gross profit ratio should follow a constant ratio with mathematical precision. We further note that there has been a huge and over 100% increase in the turnover as compared to preceding year. Hence, the explanation that increase in turnover has affected margin cannot be brushed aside. In these circumstances, we uphold the order of the learned CIT(A) and delete the addition of 4.77 lakhs on account of low gross profit."

15. ....

16. ....

17. Hence, on giving due weightage to the peculiar facts and circumstances of the case, we find merit in the plea of the assessee for reversal of its consequent substitution by the actual income as per books as offered. Thus, we reverse the action of the lower authorities and restore the position of the assessee."

Hon'ble Cuttack bench of ITAT in the case of ACIT vs. B. Sujata Subudhi in ITA No. 69/CTK/2020 has held that :

- "10. We have considered the rival submissions. A perusal of the assessment order clearly shows that the provisions of section 145 (3) have not been invoked and the books of account of the assessee have not been rejected. This being so, admittedly, estimation of the assessee's income

*is not permissible. In these circumstances, we find no reason to interfere with the order of the Id CIT(A). Consequently, Ground No.1 of appeal of the revenue stands dismissed.”*

In view of above it is submitted that action of Id.AO in making trading addition without establishing any incorrectness/incompleteness in the books of accounts submitted and audited financial statements, is contrary to the settled legal position.

It is further submitted that profit rate of 8% as prescribed under section 44AD was introduced in Statute book so as to reduce compliance burden for small traders, who do not have much resources/staff and do not maintain regular books of accounts. They can simply keep basic data so as to compute turnover and declare profit @8% on the same. In the event, a small trader not covered by the provisions of compulsory audit, declares profit rate of lower than 8%, books of accounts needs to be audited. Such mechanism in the statute gives weightage to audited financial statements and unless there are any qualification/adverse remarks in audit report, it is implied that claims made by assessee are thoroughly examined and financial statements give a true and fair view of Income, expenditure, assets and liabilities. In the present case, Id.AO has not given a single reason as to why the audited results are not acceptable more particularly when assessee has been regularly maintaining complete books of accounts and furnished all the necessary books required for determining net profit. It is further submitted that in the year under consideration, assessee was awarded with licence of trading in Liquor and there was huge increase in Sales, therefore profit rate cannot be compared with preceding years.

In view of above, it is requested that books of accounts duly maintained and duly audited by independent auditor deserves to be given due cognizance and profit declared by assessee deserves to be accepted.

Additional Ground of Appeal No.2:

In this ground of appeal, assessee has challenged the action of Id.AO in not allowing loss of Rs.1,87,158/- from house property. Though assessee had challenged the amount of addition made on this account while filing appeal before Id. CIT(A), separate ground for this disallowance could not be raised, therefore assessee has filed this as additional ground of appeal alongwith application to admit the same, though technically there is no additional ground.

Facts pertaining to the grounds of appeal are that during the year under consideration, assessee had paid interest on housing loan of Rs.1,87,158/-, in support of which assessee had furnished copy of housing loan statement, however Id.AO rejected the claim of interest simply stating that losses of current year of Rs.1,87,158/- is disallowed due to non production of books of accounts. This issue was not adjudicated by Id. CIT(A). Your honours would

appreciate that interest on housing loan is allowable (which is evident from housing loan statements) even if no books of accounts are maintained. It is therefore requested that interest on housing loan claimed by assessee deserves to be allowed as claimed.

Additional Ground of Appeal No. 3:

In this ground of appeal, assessee has challenged the action of Id.AO in not allowing deduction of Rs.1,27,347/- claimed by assessee under chapter VIA, without raising any query in this regard. Similar to ground of appeal no.2, assessee had challenged the amount of addition made on this account while filing appeal before Id. CIT(A), however separate ground for this disallowance could not be raised. Therefore, assessee has filed this as additional ground of appeal alongwith application to admit the same, though technically there is no additional ground.

Facts pertaining to the ground of appeal are that assessee had claimed deduction under chapter VIA as under:

u/s 80C:

Life Insurance Premium	Rs. 68,198/-
Principal repayment of housing loan	<u>Rs. 52,842/-</u>
	Rs.1,21,040/-
u/s 80TTA: Interest on Saving Bank account	<u>Rs. 6,307/-</u>
	Rs.1,27,347/-

It is submitted that deduction of Rs.1,27,347/- claimed above was fully verifiable as assessee had submitted bank statements and housing loan statement duly reflecting the above payment and interest on saving bank account. It is therefore requested that deduction claimed by assessee under chapter VIA is in accordance with law and deserves to be allowed as claimed.”

6. In addition, the written submission so filed the Id. AR of the assessee so far as regards the ground no. 2 & 3 fairly admitted that the since the details are not made available before the lower authorities the same may be admitted and sent back to the Id. AO

for adjudication on merits of the case. As regards the ground no. 1,1.1,1.2 and 1.3 of the assessee he has relying on the written submission prayed that in the light of the facts on records he is not objecting to the estimation of the profit @ 8% made by the Id. AO but at the same time he has prayed that considering the peculiar business of the assessee for liquor and transportation the statutory deductions for service tax for an amount of Rs. 22,729/-, Licence fees of Rs. 21,00,000/- and Swach Bharat Cess for Rs. 25,220/- may be considered considering the provision of section 43B of the Act and therefore, requested for the necessary direction in the matter.

7. The Id DR is heard who has relied on the findings of the lower authorities and at the same did not objected for remitting back on the ground no. 2 & 3 as the relevant facts were not on record.

8. We have heard the rival contentions and perused the material placed on record including the orders of the lower authorities. The bench noted that as regards the ground no. 1,1.1,1.2 and 1.3 Id. AR fairly accepted the estimation of the profit @ 8% made by the Id. AO but at the same time he has prayed that considering the

peculiar business of the assessee for liquor and transportation the statutory deductions for service tax for an amount of Rs. 22,729/-, Licence fees of Rs. 21,00,000/- and Swachh Bharat Cess for Rs. 25,220/- may be considered and be allowed against the estimation of profit considering the provision of section 43B of the Act and therefore, requested for the necessary direction in the matter so as to verify this claim of the assessee and then finally allow the deduction of these statutory payment if the same is paid by the assessee before the due date of filing the return of income. Considering the peculiar facts and circumstances and considering the special nature of the business of the assessee we deem it consider to allow this deduction and accordingly these grounds of the appeal are allowed partly.

8.1 As regards the grounds of appeal no. 2 relating to the housing loan interest and ground no 3 relating to the deduction u/s. 80 C of the Act we direct the Id. AO to verify the claim of the assessee and allow the claim to the extent the evidence produced by the assessee and the provision of the law. In terms of these observation these grounds of the assessee are allowed for statistical purpose.

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

Order pronounced in the open Court on 27/06/2023

Sd/-

( डा० एस. सीतालक्ष्मी )  
(Dr. S. Seethalakshmi)  
न्यायिक सदस्य / Judicial Member

Sd/-

( राठोड कमलेश जयन्तभाई )  
(Rathod Kamlesh Jayantbhai)  
लेखा सदस्य / Accountant Member

जयपुर / Jaipur

दिनांक / Dated:- 27/06/2023

\*Ganesh Kr.

आदेश की प्रतिलिपि अग्रेषित / Copy of the order forwarded to:

1. अपीलार्थी / The Appellant- Sandeep Jain, Jaipur
2. प्रत्यर्थी / The Respondent- ITO, Ward 6(4), Jaipur
3. आयकर आयुक्त / CIT
4. आयकर आयुक्त / CIT(A)
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, जयपुर / DR, ITAT, Jaipur.
6. गार्ड फाईल / Guard File { ITA No. 20/JP/2023 }

आदेशानुसार / By order

सहायक पंजीकार / Asst. Registrar