



# ॥ आयकर अपीलीय न्यायाधिकरण, नागपुर न्यायपीठ, नागपुर में ॥



IN THE INCOME TAX APPELLATE TRIBUNAL, NAGPUR BENCH, NAGPUR  
BEFORE SHRI PARTH SARATHI CHAUDHURY, JUDICIAL MEMBER

AND

SHRI G. D. PADMAHSHALI, ACCOUNTANT MEMBER

(Through Virtual Hearing from Pune)

आयकर अपील सं. / ITA No. 08/NAG/2020

निर्धारण वर्ष / Assessment Year : 2013-14

Dy. CIT, Circle -3, Nagpur

.....अपीलार्थी / Appellant

बनाम / V/s

M/s. Victrans Engineers,  
C/o. Swapan Datta, 16,  
Vidya Vihar Colony, Pratap Nagar,  
Nagpur – 440 022.  
PAN: AAAFV6800F

.....प्रत्यर्थी / Respondent

## द्वारा / Appearances

Assessee by : None for Assessee

Revenue by : Mr Kailash Kanojiya [‘Ld. DR’]

सुनवाई की तारीख / Date of conclusive Hearing : 21/11/2023

घोषणा की तारीख / Date of Pronouncement : 23/11/2023

## आदेश / ORDER

**PER G. D. PADMAHSHALI, AM;**

This appeal is directed against order of the Commissioner of Income Tax (Appeals)-2, Nagpur [‘CIT(A)’ in short] dt. 18/10/2019 passed u/s 250 of the Income-tax Act, 1961 [‘the Act’ in short] which in turn ascended out of the order or rectification dt. 25/02/2016 passed u/s 154 r.w.s. 144 of the Act by the Income Tax Officer, Ward 3(1), Nagpur [‘AO’ in short].

2. During the course of virtual hearing, the case called twice, despite service of notice none appeared at assessee’s behest. In the larger interest of justice with

the able assistance of Ld. DR we proceeded to adjudicate the matter in terms of rule 25 of the ITAT-Rules, 1963, which empowers this Tribunal to decide the appeal filed by the appellant *ex-parte* on merits in the absence of respondent.

3. The Revenue assailed following grounds in the present appeal;

*“1. Whether on the facts and in the circumstances of the case and in law, the learned CIT(A) was correct in estimating book profit of the assessee at 8% of the total turnover in spite of the fact that the assessee was duty bound to get his books audited u/s 44AB of the Act since his annual turnover was above 1 Crore.*

*2. Whether on facts and in the circumstances of the case and in law, the Ld. CIT(A) was justified in entertaining documentary evidences which were not produced during the assessment proceedings but were produced during the appellate proceedings thus contravening the rule 46A(1) of the Income Tax Rules, 1962.*

*3. On the facts and in the circumstances of the case and in law, the Ld. CIT(A) erred in not giving any opportunity to the AO to examine the evidence or documents as produced by the assessee during the appellate proceedings as envisaged under Rule 46A(3) of the Income Tax Rules, 1962.”*

4. The brief facts of the case are that; the appellant is a partnership Firm filed its return of income for AY 2013-14 declaring NIL total income. The case subjected scrutiny and in the event absence of any representation, the Ld. AO framed the assessment to the best of his judgment u/s 144 of the Act determining total income at Rs. 3,79,43,640/- on account of two bullet addition viz; (1) Rs 2,98,16,640/- as business income & (2) Rs.81,27,000/- towards Long Term Capital Gain [‘LTCCG’ in short].

5. Aggrieved assessee filed an appeal before first appellate authority, wherein the Ld. CIT(A) allowed the appeal of the assessee on the basis of written submission holding as under;

*“3. That it is ass accepted fad that no business is operated without expenses and disallowing whole expenditure is very harsh on Assessee, hence in the interest of justice, it is request to calculate the estimated book profit based on 8% of the Turnover and to allow interest to partners which has been claimed in the return amounting to Rs. 10 Lakhs.”*

*“4. That the Hon’ble Commissioner of income Tax (‘Appeals-2) on the similar circumstance pertaining to the Assessee for the Assessment year 2012-13 have calculated estimated book profit based on 8% of the Sales for the Assessment year 2012-13. The photocopy of the said Order for the Assessment year 2012-13 is enclosed herewith and is marked as “Annexure C”. Hence, to keep parity and consistency same formula may kindly be applied in the current Assessment year as well.”*

6. Without touching merits of the case, the Ld. DR assailed that, in first appellate proceedings the assessee’s grounds were allowed merely on the basis of written submission. Such bald submissions were neither supported by cogent evidences nor were confronted to the Ld. AO. Further the CIT(A) nowhere recorded his satisfaction and reasoning while admitting evidences laid in such written submission. This sidestepping the provisions of rule 46A of IT-Rules, 1962 is bad in law, hence deserves to be set-aside and remanded for *de-nova* adjudication.

7. We have heard the rival contentions of the parties; and subject to provisions of rule 18 of ‘ITAT Rules, 1963’, perused the material placed on record.

8. It is worthy to note here that, in terms of sub-rule (2) of rule 46A (supra) it is for the Ld. CIT(A) to invariably record reasons for admission of additional evidence placed first time before him. Equally before rejecting to admit the same the first appellate authority before proceeding to adjudicate the matter,

in relation to additional evidence brought on record has to record the case does not fall within any of the exception carved out in sub-rule (1) of rule 46A (supra). Any action sidestepping the mandate would be bad-in-law and thus fit for interference.

9. In the present case, we observed that, the respondent neither during the course of original assessment nor in rectification proceedings had adduced any evidence in support of its claim. *Per contra* without first recording the satisfaction in terms of rule 46(2) (supra), the Ld. CIT(A) accepted the claim of the respondent merely on the basis of written submission which were un-supported by cogent & compelling evidence. For the forging reasons we find force in the argument of Ld. DR that the action of Ld. CIT(A) is violative of rule 46A (supra) and deserves to be set-aside for de-nova adjudication in the light of convincing evidences after confronting the same to the Ld. AO. *Ergo* ordered accordingly.

**6. In result, the appeal of the Revenue is ALLOWED FOR STATISTICAL PURPOSES.**

U/r 34 of ITAT Rules, order pronounced in open court on this Thursday, 23<sup>rd</sup> November, 2023.

-S/d-

**PARTH SARATHI CHAUDHURY**  
**JUDICIAL MEMBER**

पुणे/ PUNE ; दिनांक / Dated : 23<sup>rd</sup> day of November, 2023.

**आदेश की प्रतिलिपि अग्रेषित / Copy of the Order forwarded to :**

1. अपीलार्थी / The Appellant.
2. प्रत्यर्थी / The Respondent.
4. The CIT-Concerned (MH-India)
5. DR, ITAT, Nagpur Bench

Ashwini

-S/d-

**G. D. PADMAHALI**  
**ACCOUNTANT MEMBER**

3. The Pr. CIT, Concerned.
6. गार्डफाइल / Guard File.

आदेशानुसार / By Order

वरिष्ठ निजी सचिव / Sr. Private Secretary

आयकर अपीलिय न्यायाधिकरण, पुणे / ITAT, Pune.