

आयकर अपीलीय अधिकरण, जयपुर न्यायपीठ, जयपुर
IN THE INCOME TAX APPELLATE TRIBUNAL, JAIPUR BENCHES, 'A' JAIPUR

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

आयकर अपील सं./ITA Nos. 343 & 344/JP/2024
निर्धारण वर्ष/Assessment Years : 2013-14 & 2014-15

M/s Jhunjhunu Balaji Motors Pvt Ltd., Mandawa Road, Sitsar, Jhunjhunu	बनाम Vs.	ACIT, Circle-Jhunjhunu
स्थायी लेखा सं./जीआईआर सं./PAN/GIR No.: AABCJ 9791 P		
अपीलार्थी/ Appellant		प्रत्यर्थी/ Respondent

निर्धारिती की ओर से/ Assessee by : Sh. Anil Kumar Sharma (CA)
राजस्व की ओर से/ Revenue by : Sh. A. S. Nehra (Addl. CIT)

सुनवाई की तारीख/ Date of Hearing : 29/05/2024
उदघोषणा की तारीख/Date of Pronouncement: 10/07/2024

आदेश/ ORDER

PER: RATHOD KAMLESH JAYANTBHAI, AM

These two appeals are filed by above named assessee and are arising out of the order of the National Faceless Appeal Centre, Delhi dated 23/01/2024 & 22/01/2024 [here in after 'NFAC']] for assessment years 2013-14 & 2014-15 which in turn arise from the order dated 28.12.2017 passed under section 144 r.w.s 147 of the Income Tax Act, by ACIT, Circle, Jhunjhunu.

2. Since the issues involved in these appeals are almost identical on facts and are almost common, except the difference in figure disputed in each year, therefore, these appeals were heard together with the agreement of both the parties and are being disposed off by this consolidated order.

3. At the outset, the Id. AR has submitted that the matter in ITA No. 343/JP/2024 may be taken as a lead case for discussions as the issues involved in the lead case are common and inextricably interlinked or in fact interwoven and the facts and circumstances of other cases are identical except the difference in the amount disputed. The Id. DR did not raise any specific objection against taking that case as a lead case. Therefore, for the purpose of the present discussions, the case of ITA No. 343/JP/2024 is taken as a lead case.

4. Before moving towards the facts of the case we would like to mention that the assessee has assailed the appeal in ITA No. 343/JP/2024 on the following grounds;

"1. Under the facts and circumstances of the case the Id. CIT(A) is not justified in Estimating the Net Profit of Rs. 17095760/- by applying NP rate of 5% on Estimated Gross Receipts of Rs. 341915196/- against net Profit of Rs. 3710130/- as per Audited Profit & Loss Account.

2. *Under the facts and circumstances of the case the Id. CIT(A) is not justified in sustaining the Separate Addition of Rs. 317048/- towards Income from Interest and commission.*

3. *Under the facts and circumstances of the Id. CIT(A) is not justified in sustaining the Separate Addition of Rs. 221800/- Income from Rent.”*

5. Succinctly, the fact as culled out from the records is that since the assessee company had not filed ITR, his case appears in the list of Non-filers under NMS Priority-1. The revenue has also the information that the assessee deposited cash amounting to Rs.3,87,07,178/- in the bank account, received interest, rent and commission or brokerage amounting to Rs. 9,27,658/-. The assessee also received contract receipts amounting to Rs. 24,41,852/- during the F.Y. 2012-13. Based on that information and since the assessee had not filed any ITR a notice u/s 148 of the IT Act, 1961 was issued on 27/09/2016 after recording due reasons and obtaining necessary satisfaction as provided u/s 151(2) of the Act.

5.1 The notice issued u/s 148 of the Act was served upon the assessee. However, the assessee not made any compliance to that notice. Again, upon change of incumbent, notice u/s 142(1) of the Act along with a show cause notice for finalizing assessment u/s 144 of the IT Act, 1961 was issued on 13/12/2017 and final date of compliance was fixed for 18/12/2017 again no response to said notice received from the assessee

by the Id. AO. Meanwhile Id. AO called for information u/s 133(6) of the Act from the bank where the assessee company held its account regarding total amount deposited in the bank accounts of the assessee company. On receipt of this information again vide letter No. 902 dated 22/12/2017 the assessee was given a final show cause notice for assessing the income as per provision of section 144 of the Act, asking the assessee as to why its income may not be estimated and assessed as per the material available and placed on the record by the Id. AO.

5.2 During the course of entire assessment proceedings, neither assessee attended nor was filed any reply. Even, no books of account were produced at any point in time. Moreover, the assessee had neither filed its return of income nor any Audit report for the year under consideration. Thus, Id. AO has no option left but to determine the total income of the assessee company on the basis of material available on record. The Id. AO noted that there is a provision to estimate the income @ 8 % if the assessee do not maintained the books of accounts and following that provision Id. AO applied NP rate of 8%, on gross estimated receipts of Rs. 36,00,00,000/-, as mentioned in the show cause notice as fair and reasonable estimate of income. Accordingly, the net profit of the

assessee's business comes to Rs. 2,88,00,000/- @ 8 % on turnover of Rs. 36,00,00,000/-.

5.3 Besides as per information available on record, the assessee had also earned Income from interest & commission at Rs. 3,17,048/- and Income from rent at Rs. 2,21,800/-, details of which were also not provided by the assessee, the same was also added in the profit so estimated. Accordingly total income of the assessee was determined at Rs. 2,93,38,850/-.

6. The assessee challenged the finding of the assessing officer before the Id. CIT(A). The appeal of the assessee was allowed in part by the Id. CIT(A). The relevant finding of the Id. CIT(A) is reproduced here in below:

“6. DECISION: The order u/s 144 rws 147, statement of facts and the submission furnished by the appellant have been considered.

6.1. The appellant's case was decided by the Commissioner of Income Tax (Appeals)-3, Jaipur vide order dated 28/03/2019. The appeal was dismissed as the appellant had not paid the advance tax payable by the appellant for AY 2014-15. The Hon'ble ITAT observed that the appellant had made tax payment while the appellate proceedings were in progress and such payments were not considered while passing the order. Therefore, the Hon'ble ITAT directed that the on the ground of tax payment made by the appellant supported by tax challans submitted during the proceedings before the Hon'ble ITAT, the appeal by the appellant should be admitted and adjudicated on merits. The tax payment made by the appellant are as under: -

Sr No	Date	Amount (Rs)	Remarks BSR Code/Challan No
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1.	28/01/2014	1,00,000/-	0290179/20232
2.	11/04/2014	2,00,000/-	0290179/20168
3.	05/03/2018	3,00,000/-	6390340/07677
4.	14/03/2018	2,00,000/-	6390340/02995
5.	25/02/2020	5,00,000/-	6910333/51404
	Total	13,00,000/-	

The appellant has submitted copies of the challan for the tax payment. As per the Computation of Income filed by the appellant the tax payable comes to Rs 12,68,985/-. Thus, the tax payment by the appellant exceeds the advance tax payable. Therefore, in compliance of the directions of the Hon'ble ITAT given ITA No 263/JP/2020 on 30/07/2021, the appeal filed by the appellant is adjudicated as discussed below.

6.2. In the case of the appellant, it was seen that return of income for AY 2013-14 was not filed. Information of record showed that appellant had deposited cash amounting to Rs 3,87.07,178/- in its bank account and it was in receipt of interest and commission/brokerage of Rs 927,658/-. The appellant was also found to be having Contract Receipts of Rs 24,41,852/- Thus, the appellant was required to file return of income. Hence, the case was re-opened u/s 147 of the Income Tax Act on 27/09/2016. On going through the assessment order, it is seen that the appellant was issued notice u/s 148 of the IT Act followed up with notices u/s 142(1) of the IT Act and subsequent show cause notice proposing additions and assessment u/s 144 of the IT Act. The assessment order records that the appellant did not comply with any of the notices issued. The appellant has also been subjected to penalty u/s 271(1)(b) of the Income Tax Act for failure to comply with the notices issued. It is mentioned in the order passed that as the appellant failed to submit replies to the questionnaire issued and also failed to produce the books of accounts, the case of the appellant was treated as case with no books of accounts and the Net Profit is assessed @ 8% of the gross receipts. The gross receipts, after excluding rent, interest and commission/brokerage of Rs 5,38,848/- the business receipts deposited in the bank were computed at Rs 34,19,15,196/- However, the gross receipts from business were estimated at Rs 36,00,00,000/- to include any cash receipts which the appellant might not have deposited in the

bank. The business income of the appellant was estimated @ 8% at 2,88,00,000/- and the other income of Rs 5,38,848/- was added to the same. The appellant has raised two substantive grounds of appeal wherein the appellant has averred that there was no justification in estimating the profits @ 8% of the estimated gross receipts and that the net income from interest income & commission was wrongly assessed at Rs 5,38,848/-. The appellant has submitted written submission dated 04/12/2023 on 04/12/2023,

6.3. In the submission dated 04/12/2023, the appellant claims that it was maintaining regular books of accounts which were duly audited. The audited Balance Sheet, Profit & Loss Account and schedules thereto were e-filed as provided under the Companies Act. The appellant has claimed that due to down fall in business and consequent financial hardships, the appellant was unable to pay self-assessment tax. Due to the same the appellant was unable to file the return of income. The appellant has now filed Audited Balance Sheet and Profit & Loss Account alongwith the schedules, receipt for filing of audited statements with the Registrar of Companies and Computation of Income prepared on the basis of the Audited Statements as additional evidence u/s 46A(1)(c) of the Income Tax Act. In the background of the appellant's request, Rule 46A of the Income Tax Rules is reproduced for the sake of clarity: -

46A. (1) The appellant shall not be entitled to produce before the [Joint Commissioner] (Appeals) or, as the case may be, the Commissioner (Appeals), any evidence, whether oral or documentary, other than the evidence produced by him during the course of proceedings before the Assessing Officer, except in the following circumstances, namely -

(a) where the Assessing Officer has refused to admit evidence which ought to have been admitted; or

(b) where the appellant was prevented by sufficient cause from producing the evidence which he was called upon to produce by the Assessing Officer, or (b)

(c) where the appellant was prevented by sufficient cause from producing before the Assessing Officer any evidence which is relevant to any ground of appeal; or

(d) where the Assessing Officer has made the order appealed against without giving sufficient opportunity to the appellant to adduce evidence relevant to any ground of appeal.

(2) No evidence shall be admitted under sub-rule (1) unless the [Joint Commissioner] (Appeals) or, as the case may be, the Commissioner (Appeals) records in writing the reasons for its admission.

(3) The [Joint Commissioner] (Appeals) or, as the case may be, the Commissioner (Appeals) shall not take into account any evidence produced

under sub-rule (1) unless the Assessing Officer has been allowed a reasonable opportunity-4

(a) to examine the evidence or document or to cross- examine the witness produced by the appellant, or

(b) to produce any evidence or document or any witness in rebuttal of the additional evidence produced by the appellant.

(4) Nothing contained in this rule shall affect the power of the [Joint Commissioner] (Appeals) or, as the case may be, the Commissioner (Appeals) to direct the production of any document, or the examination of any witness, to enable him to dispose of the appeal, or for any other substantial cause including the enhancement of the assessment or penalty (whether on his own motion or on the request of the Assessing Officer) under clause (a) of sub- section (1) of section 251 or the imposition of penalty under section 271.

The following issues arise. -

(i) The appellant claims to have been prevented by sufficient cause from producing the evidence which is relevant to any ground of appeal. The sufficient cause is stated to health reasons of the Director of the assessee company and his wife. In this regard, it is noted that the appellant has not produced any evidence whatsoever to prove that the Director who was normally instrumental in the finalisation of books of accounts and financial statements was suffering from an illness which prevented him from filing of return of income from the due date for AY 2013-14 i.e. 31/10/2014 till the completion of the re-assessment proceedings on 28/12/2017. Similarly, no evidence has been produced to substantiate the illness of the Director's spouse. It was also not demonstrated that the Audit Report had been uploaded on the Income Tax Portal. The financial constraints leading to non- payment of self-assessment tax would not prevent the appellant from uploading its Tax Audit Report and the Audited Financial Statements on the Income Tax Portal. Therefore, this explanation given by the appellant is not plausible.

(ii) The appellant has produced copy of Challan dated 25/10/2013 through which an amount of Rs 500/- has been paid as Fee for Form 23AC for financial year ending 31/03/2014 in case of the appellant. The challan by itself cannot be treated as an acknowledgement for filing of the Financial Statements which would get generated on valid filing of the Financial Statements. Therefore, the challan cannot be treated as evidence of the existence of Financial Statements. It is also pertinent to note that appellant did not comply with any of the notices issued to it in the re-assessment proceedings. It neither filed return of income in response to notice u/s 148 of the IT Act nor did it produce the Financial Statements or Books of Accounts. The financial statements are prepared on the basis of the Books of Accounts maintained in the normal course of the business. The Books of Accounts are written on the basis of subsidiary record consisting of sale bills, purchase bills. expense bills/vouchers, cash receipts

issued, record of stock and bank statements. In absence of books of accounts and the subsidiary record, the financial statements have no evidentiary value. Therefore, by themselves the Financial Statements do not constitute evidence or additional evidence as contemplated u/r 46A of the Income Tax Act.

Hence, on the basis of the aforesaid discussion it is found that the appellant has not given any plausible reason for failure to produce any of the documents in the re-assessment proceedings which are now sought to be produced as additional evidence. Furthermore, the appellant has also not submitted any evidence to show that the documents sought to be produced are primary evidence which have any bearing on the computation of income done by the assessing officer on the basis of estimation of the gross turnover and the profit margin or which would dislodge the finding that appellant was not maintaining regular books of accounts on the basis of which the Financial Statements were drawn. Hence, the application of the appellant to submit the documents as additional evidence in terms of Rule 46(1)(c) of the Income Tax Act is hereby rejected.

6.4 The appellant has also taken exception to the estimation of the receipts and net profit. On going through the assessment order, it is seen that it was found that the total deposits from business in the Bank Accounts of the appellant were Rs 34,19,15,196/- i.e. aggregate of deposits in bank account as reduced by the commission and interest received (342454044 - 538848) It has been further observed that, "Considering the circumstances & fact there may have been cash sale which may have not been deposited in the bank a/c. Thus total bank receipts & other receipts are estimated at Rs 36,00,00,000/- in spite of Rs 34,19,15,196/- There is no discussion regarding the circumstances and the facts of the case which lead to the conclusion that there was some cash sale which was not deposited in the bank account. Thus, the estimation on the higher side is on the basis of surmises and conjectures and there is no material on record to support such estimation. It is pertinent to note that case was reopened as there was cash deposit of Rs 3,87,07,178/- in the bank account. Therefore, there exists a reasonable possibility that the cash sale to have been accounted for. In the case of State of Kerala vs C. Velukutty [(1966) 60 ITR 239 (SC)], Justice J Subba Rao, observed. "The limits of the power are implicit in the expression "best of his judgment Judgment is a faculty to decide matters with wisdom truly and legally, but on settled on invariable principles of justice. Though there is an element of guess work in a best judgment assessment, it shall be a wild one, but shall have a reasonable nexus to the available material and the circumstances of each case Though arbitrariness cannot be avoided in such estimate the same must be capricious but should have a reasonable nexus to the available material and the circumstances of the case. The AO has to make estimate but a fair estimate AO has to make guess work but honest guess work. AO has to make assessment not one sided but neutral. AO has to gather the material which he can at best possible Without going through the material, without gathering the material, with reading the material, without giving an opportunity to the assessee without issuing the show cause notice to

the assessee the assessment done is bad in law and spints and at best is made null and void in the court of law. In the circumstances, there is no rationale whatsoever for estimating the gross turnover at Rs 36.00 crores. The appellant's claim that total revenue of the appellant in AY 2014-15 is Rs 31.02.66.644/- is not supported by any evidence like Sales Register. Therefore, the gross receipts are taken at Rs 34,19,15,196/- The estimation of income therefrom has been done @ 8% of the gross receipts. The profit percentage adopted is not based on any analysis or profit in any comparative case or past record of the appellant On going through the past returns filed, it is seen that the appellant had disclosed in AY 2011-12, income of Rs 20,30,871/- on gross receipts of Rs 15.26,10,501/-which comes to 1.33% of the gross receipts. In AY 2012-13 the appellant had disclosed income of Rs 31,56,405/- on gross receipts of Rs 28,48.66,616/-which comes to 1.10% of the gross receipts. Considering the failure of the appellant to justify its claim of expenditure by producing the various details of the expenses claimed and to produce books of accounts along with subsidiaries, the ends of justice would be served by adoption of the net profit @ 5% as against the rate of 8% adopted earlier. Hence, the profit of the appellant is estimated at Rs 1,70,95,760/-. The ground of appeal is decided accordingly.

6.5. In the second ground of appeal raised, the appellant has contested the addition of the commission and interest over and above the estimated profits of the business. It is seen that while estimating the turnover the commission and interest were reduced from the gross deposits in the bank accounts on the premise that the interest & commission received were part of deposits in the bank account. The income of the appellant from the business was computed @ 8% on the turnover estimated at a figure of Rs 25.00 crores. However, the revised computation of the business turnover is the figure of total deposits in bank account as reduced by the receipts from interest & commission. The profit is computed on the balance amount. The appellant has not explained the nature of commission and interest received and the expenses incurred thereon. Therefore, no case is made out for allowing any expenditure against the interest & commission. Hence, the ground raised is rejected.

7. On the basis of the aforesaid discussion the grounds of appeal are decided as under: -

(a) The income from business is held to be Rs 1,70,95,760/- as against the amount of 2,88,00,000/- computed in the assessment order. The appellant gets relief of Rs 1,17,04,240/-,

(b) The income from commission & interest shall be over and above the income from business and no expenses are allowed. The ground of appeal fails.

8. In the result, the appellant's appeal is PARTLY ALLOWED.”

7. As the appeal of the assessee was allowed in part and aggrieved from that order of the Id. CIT(A), the assessee preferred the present appeal before this tribunal on the grounds as stated herein above. The assessee though the Id. AR filed a detailed written submission in support of the grounds so raised, which is reiterated here in below;

“The humble appellant most respectfully bag to submit:

1. The assessee due to an bonafide oversight while preparing the Form No.36 has escaped the following Ground of Appeal, which may kindly be admitted and placed on Record as additional Ground of Appeal:

“Under the facts and circumstances of the case the Id. CIT(A) is not justified in rejecting the Application for Admission of Additional Evidences u/r 46A(1)(c) of IT Rules 1962.”

2. The brief facts of the case may kindly be considered as follows:

1. The appellant is a Pvt Ltd. Company dealing in Automobile Vehicles of Tata Motors Ltd.

2. The assessee got it's Books of Accounts Audited as per relevant provisions of Companies Act, 1956 and IT Act, 1961 and disclosed Net Profit of Rs. 37,10,130/- as appearing in Audited Profit & Loss Account. (PB No.27-40)

3. The assessee filed the Tax Audit Report with the Income Tax Department on 02.09.2013 and Audited Financial Statements before Registrar of Companies on 25.10.2013.

4. The assessee due to Serious Financial hardships could not deposited the self assessment Tax and consequently did not filed return of Income for the relevant A.Y.2013-14.

5. The AO initiated the assessment proceedings u/s 147/144 of IT Act 1961 and the assessee due to unfortunate and adverse circumstance of downfall in business, resulting financial crunch/hardships, illness of himself and his wife, could not could not participated in relevant assessment proceedings.

6. The AO vide impugned assessment order dated 28.12.2017 estimated Net Profit of the assessee by applying NP Rate @8% on estimated Gross Receipts of Rs.36000000/-and made separate Additions towards Interest, Commission and Rental Income and thus assessed Total Income of Rs. 2,93,38,850/-.

7. The assessee preferred appeal before Id. CIT(A)-III Jaipur against the relevant assessment order dated 28.12.2017.

8. The Id. CIT(A)-III Jaipur observed that the assessee has not deposited the Self Assessment/Advance Tax as provided u/s 249(4)(b) of IT Act, therefore vide order dated 28.03.2019 dismissed the appeal of the assessee as un admitted (PB No.5-7)

9. The assessee after depositing the requisite Amount of Tax Equivalent to Advance Tax as provided u/s 249(4)(b) of IT Act 1961, preferred appeal before this Hon. Bench.(PB No.8-12)

10. This Hon. Bench vide order dated 30.07.2021 set aside the matter to the file of the Id. CIT(A) with the directions to verify and consider the payment of taxes towards due discharge of the assessee's liability as per provisions of section 249(4)(b) of the Act and decide the matter on merits. (PB No.13-24)

11. The Id. CIT(A) pursuant to directions of this Hon. Bench issued notice of hearing and the assessee in response of the same submitted following details/documents:

(1) Application for admission of Additional Evidences (PB No.25-26)

(2) Tax Deposit Challans towards Advance Tax Liability as provided 249(4)(b) of IT Act, 1961.(PB No.8-12)

(3) Audited Balance Sheet and Profit & Loss Account and Schedules thereto. (PB No.27-40)

(4) Receipt of E- filing Audited Statements before Registrar of Companies.(PB No.41)

(5) Audit Report in Form No.3CA and 3CD e-filed on Web Site of IT Department. (PB No.42-50)

(6) Computation of Total Income on the basis of Audited Balance Sheet and Profit and Loss Account showing Total Income of Rs.4106750/- (PB No.51)

12.The assessee prayed before CIT(A) to assess/direct the AO to assess at Rs.4106749/- as per computation of Total Income/issue any other directions to the AO/assessee as deemed fit in the interest of justice.

13. The Id. CIT(A) rejected the application for admission of additional Evidences and without appreciating the Audited Financial Statements and corresponding Computation of Total Income and without making any further inquiry either from the assessee or from the the AO estimated the Net Profit of the assessee of Rs.17095760/- by applying NP Rate of 5% on Estimated Gross Receipts of Rs.341915196/.

14. The Id. CIT (A) further directed to make separate addition of Rs.317048/- and of Rs.221800/- towards Income from Interest & Commission and Rent.

Submission:

Additional Ground of Appeal:

1. The Id. CIT(A) has rejected the application for admission of additional Evidences on the ground that:

(i) The assessee has not produced any evidence regarding the illness of Director or his Spouse.

(ii) It has not been demonstrated that the Audit Report has been uploaded on the Income Tax Portal.

(iii) The Challan by itself cannot be treated as acknowledgement for filing of the Financial Statements before Registrar of Companies, therefore the same cannot be treated as evidence of the existence of Financial Statements.

(Page No.13-14 of order of Id. CIT(A))

2. The A/R of the assessee vide application dated 31.07.2017 filed during the course of assessment proceedings drawn attention of the AO towards illness of Director of the company, therefore the same cannot be ruled out.(Para 3 on page No.2 of the assessment Order.)

3. The assessee has submitted the copy of the Audit Report E-filed on 02.09.2013 on the Income Tax Portal (PB No.42-50), therefore relevant finding of Id. CIT(A) is contradictory to documents available on record and perverse.

4. The Challan towards filing Fee of Financial Statements before Registrar of Companies is generated after filing of the relevant documents, therefore the Id CIT(A) is not justified in holding that the same cannot be treated as acknowledgement for filing of the Financial Statements and existence of the same.

5. The additional Evidences submitted by the assessee goes to the root of determination of correct Income of the assessee, therefore Id. CIT(A) is not justified in rejecting the application for admission of the same on technical/perverse considerations.

Ground No.1,2, and 3:

6. The assessee has disclosed Net Profit of Rs. 3710130/- as per Audited Books of Accounts and corresponding Profit & Loss Account incorporating the Business Receipts of Rs.292291705/- and other Receipts of Rs.17974934/- as shown in relevant Schedules of Audited Statements.

7. The Total Income of the assessee for the relevant A.Y.2013-14 comes at Rs.4106749/- including Income from Business & Profession and other Income as per Computation of Total Income.

8. The Id. CIT(A) has assessed Total Income of Rs.17634608/- against that of Rs.4106749/- declared by the assessee as per as per Audited Books of Accounts, Financial Statements and corresponding Computation of Total Income. (Page No.15 of order of Id. CIT(A))

9.The Id. CIT(A) is not justified in assessing the Total Income of the assessee contrary to the Audited Financial Statements and corresponding Computation of Total Income available on record and without any real finding towards any defects therein.

10. Without prejudice to the above the Id. CIT(A) is also not justified in taking NP Rate of 8% against that of 1.33% and 1.10% in preceding A.Y.2011-12 and 2012-13 respectively as observed by the Id. CIT(A) himself.

21.Therefore Your Honour is requested to assess at Rs.4106749/- as per Audited Financial Statements and corresponding computation of Total Income or issue any other directions to the AO/assessee as deemed fit in the interest of justice.”

8. To support the contention so raised in the written submission reliance was placed on the following evidence / records /:

S.No.	Paper/document	Page No.
1.	Written Submission dated 02.12.2023 before Id. CIT(A)	1-4
2.	Order dated 27.03.2019 of Id. CIT(A) in original Appellate Proceedings	5-6
3.	Self Assessment Tax Deposit Challans	7-8
4.	Order Dated 30.07.2021 of this Hon. Bench in original Appellate Proceedings.	9-20
5.	Application u/r 46 A of IT Rules 1962 before Id. CIT(A) in Set aside Appellate Proceedings, for admission of Additional Evidences	21-22
6.	Audited Balance Sheet and Profit & Loss Account along with Schedules.	23-37
7.	Receipt dated 25.10.203 of E- filing of Audited Statements with	38-38

	Registrar of Companies dated 25.10.2013.	
9.	Computation of Total Income on the Basis of Audited Balance Sheet and Profit & Loss Account.	39

S.No.	Paper/document	Page No.
1.	Written Submission dated 02.12.2023 before Id. CIT(A)	1-4
2.	Order dated 28.03.2019 of Id. CIT(A) in original Appellate Proceedings	5-7
3.	Self Assessment Tax Deposit Challans	8-12
4.	Order Dated 30.07.2021 of this Hon. Bench in original Appellate Proceedings.	13-24
5.	Application u/r 46 A of IT Rules 1962 before Id. CIT(A) in Set aside Appellate Proceedings, for admission of Additional Evidences	25-26
6.	Audited Balance Sheet and Profit & Loss Account along with Schedules.	27-40
7.	Receipt dated 25.10.203 of E- filing of Audited Statements with Registrar of Companies dated 25.10.2013.	41-41
8.	Audit Report in Form No.3CA and 3CD e filed on Web Site of IT Department dated 02.09.2013	42-50
9.	Computation of Total Income on the Basis of Audited Balance Sheet and Profit & Loss Account.	51-51

9. The Id. AR of the assessee vehemently argued that the assessee was running in financial difficulty, without payment of the self-assessment tax the assessee was unable to file the return. The assessee filed the additional evidence before the Id. CIT(A) under rule 46A(1)(c) and the same was placed in the paper book filed by the assessee [page 25-26]. As regards the contention that the assessee has not filled any record is incorrect, the

assessee has filed the tax audit report on the portal and the printed copy of the same was filed in the paper book page 42-50. Thus, the assessee has already filed all the details related to their income. While dealing with the appeal of the assessee Id. CIT(A) rejected the application for additional evidence filed by the assessee on the pretext that;

(i) The appellant claims to have been prevented by sufficient cause from producing the evidence which is relevant to any ground of appeal. The sufficient cause is stated to health reasons of the Director of the assessee company and his wife. In this regard, it is noted that the appellant has not produced any evidence whatsoever to prove that the Director who was normally instrumental in the finalisation of books of accounts and financial statements was suffering from an illness which prevented him from filing of return of income from the due date for AY 2013-14 i.e. 31/10/2014 till the completion of the re-assessment proceedings on 28/12/2017. Similarly, no evidence has been produced to substantiate the illness of the Director's spouse. It was also not demonstrated that the Audit Report had been uploaded on the Income Tax Portal. The financial constraints leading to non-payment of self-assessment tax would not prevent the appellant from uploading its Tax Audit Report and the Audited Financial Statements on the Income Tax Portal. Therefore, this explanation given by the appellant is not plausible.

(ii) The appellant has produced copy of Challan dated 25/10/2013 through which an amount of Rs 500/- has been paid as Fee for Form 23AC for financial year ending 31/03/2014 in case of the appellant. The challan by itself cannot be treated as an acknowledgement for filing of the Financial Statements which would get generated on valid filing of the Financial Statements. Therefore, the challan cannot be treated as evidence of the existence of Financial Statements. It is also pertinent to note that appellant did not comply with any of the notices issued to it in the re-assessment proceedings. It neither filed return of income in response to notice u/s 148 of the IT Act nor did it produce the Financial Statements or Books of Accounts. The financial statements are prepared on the basis of the Books of Accounts maintained in the normal course of the business. The Books of Accounts are written on the basis of subsidiary record consisting of sale bills, purchase bills, expense bills/vouchers, cash receipts issued, record of stock and bank statements. In absence of books of accounts and the subsidiary record, the financial statements have no evidentiary value. Therefore, by themselves the Financial Statements do not constitute evidence or additional evidence as contemplated u/r 46A of the Income Tax Act.

Hence, on the basis of the aforesaid discussion it is found that the appellant has not given any plausible reason for failure to produce any of the documents in the re-assessment proceedings which are now sought to be produced as additional evidence. Furthermore, the appellant has also not submitted any evidence to show that the documents sought to be produced are primary evidence which have any bearing on the computation of income done by the assessing officer on the basis of estimation of the gross turnover and the profit margin or which would dislodge the finding that appellant was not maintaining regular books of accounts on the basis of which the Financial Statements were drawn. Hence, the application of the appellant to submit the documents as additional evidence in terms of Rule 46(1)(c) of the Income Tax Act is hereby rejected.

Reciting the above finding of the Id. CIT(A) the assessee submitted that the Id. CIT(A) should have admitted the additional evidence and the matter should have been decided based on that audited accounts placed on record.

10. The Id. DR is heard who relied on the findings of the lower authorities and more particularly advanced the similar contentions as stated in the order of the Id. CIT(A). The Id. DR also submitted that the assessee relies and submit that they have filed the tax audit report on portal, but ongoing through that report the details in the column no. 40 being the details of the turnover, gross profit and net profit were left blank and therefore, the decision of the Id. CIT(A) as well as Id. AO are based on the records available with them and is required to be sustained.

11. In the rejoinder the Id. AR of the assessee submitted the details of the gross profit and net profit that is required to be incorporated in the tax audit report and prayed that the profit is required to be estimated based on the audited accounts and book result declared by the assessee considering the peculiar facts placed on record.

12. We have heard the rival contentions and perused the material placed on record. The bench noted that this is the second round of litigation and in the first round the appeal of the assessee not decided on merits by the Id. CIT(A) as the assessee failed to pay the due tax and has not filed the return of income. The ITAT in the first round considering the fact that where the admitted taxes are paid at a later point of time, the appeal of the assessee should be considered as properly instituted and should be heard and decided by the Id. CIT(A) on merits. In that proceeding the Id. CIT(A) has not considered the plea of additional evidence and the profit which was estimated by the Id. AO @ 8 % was reduced to 5 %.

13. Since this being the second round of litigation and the lower authorities have already considered the estimation of profit, considering the nature of business done by the assessee. As argued by the Id. DR that in

the absence of the details the estimation of the profit was based on the set of facts required to be sustained. On the other we heard the Id. AR saying that the audited accounts and Tax audit report were made available even though the return of income was not filed by the assessee. The reasons for non-filing the return were explained and accepted in the first round of litigation. Now the issue in this round of litigation whether considering the nature of business and activities being carried out the estimation of profit @ 5 % is correct while assessing the income of the assessee or not. As argued by the Id. AR that considering the facts and circumstances of the case and considering the profit of the past the estimation of profit by the Id. CIT(A) is much higher side. The bench considered the overall aspect of the matter, since the dispute relates to the estimation of profit, we have considered the certificate of Chartered Accountant produced, wherein the profit rate is certified based on the records already available in the form of audited accounts for A.Y 2009-10 to 2014-15. The year under dispute relates to A.Y 2013-14, the previous two years net profit declared are more or less similar to the year under consideration. As it is seen that in the A.Y 2012-13, net profit was @ 1.10% whereas in the year under consideration, turn over has increased and net profit shown by the assessee @ 1.19%. Since in the case of the assessee for past years i.e. A.Y 2011-12 & 2012-

13, the profit declared by the assessee was accepted considering the similar set of facts. As it is evident from the first round of litigation that the directors were ill and were passing through severe financial crunch and were not in a position to pay the self assessment tax and thereby the non-compliance and the assessment completed based on estimation of profit. The assessee subsequently when the proceedings were pending before the Id. CIT(A) and that of ITAT paid the taxes and matter was set aside and in that profit in this year profit was estimated @ 5 %. But looking to the past history of profit and assessee's nature of business estimation of profit @ 5 % is on higher side and at the same time since the assessee has not provided the details in assessment proceeding we deem it fit in the interest of justice to considered higher disclosed by the assessee @ 1.33% in the Assessment Year 2011-12, which should be considered as basis for estimating the net profit for the year under consideration. Based on these observations, the ground No. 1 raised by the assessee is partly allowed.

14. As regards ground No. 2 & 3, the Id. AR of the assessee stated that since the interest, commission and rent are part and parcel of books of accounts for which the additional evidence petition was filed before the Id. CIT(A) was not considered but before us considering the facts and

circumstances of the case discussed herein above, we allow that additional evidence and direct the Id. AO to verify whether the assessee has disclosed the income of Rs. 3,17,048/- towards the interest and commission and Rs. 2,21,800/- and thereby the profit is offered no separate addition is called for. Based on these observations, ground Nos. 2 & 3 raised by the assessee are allowed for statistical purposes.

In terms of these observations, appeal of the assessee is partly allowed.

15. The fact of the case in ITA No. 344/JP/2024 is similar to the case in ITA No. 343/JP/2024 and we have heard both the parties and persuaded the materials available on record. The bench has noticed that the issues raised by the assessee in this appeal No. 344/JP/2024 is equally similar on set of facts and grounds. Therefore, it is not imperative to repeat the facts and various grounds raised by both the parties. Hence, the bench feels that the decision taken by us in ITA No. 343/JP/2024 for the Assessment Year 2013-14 shall apply mutatis mutandis in the case of Jhunjhunbalaj Motors Pvt. Ltd. in ITA No. 344/JP/2024 for the Assessment Year 2014-15.

In terms of these observations, both appeals of the assessee are partly allowed.

Order pronounced in the open Court on 10/07/2024.

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:- 10/07/2024

*Ganesh Kumar, Sr. PS

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

1. The Appellant- Jhunjhunbalaji Motors Pvt. Ltd., Jhunjhunu
2. प्रत्यर्थी / The Respondent- ACIT, Circle- Jhunjhunu
3. आयकर आयुक्त / The Id CIT
4. आयकर आयुक्त(अपील) / The Id CIT(A)
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, जयपुर / DR, ITAT, Jaipur
6. गार्ड फाईल / Guard File (ITA Nos. 343 & 344/JP/2024)

आदेशानुसार / By order,

सहायक पंजीकार / Asst. Registrar