

**IN THE INCOME TAX APPELLATE TRIBUNAL**  
**NAGPUR BENCH, NAGPUR**

**BEFORE SHRI V. DURGA RAO, JUDICIAL MEMBER AND**  
**SHRI K.M. ROY, ACCOUNTANT, MEMBER**

**ITA no.88/Nag./2023**  
(Assessment Year : 2020-21)

Dy. Commissioner of Income Tax  
Central Circle-2(2), Nagpur ..... Appellant

v/s

Ajay Vishandas Kamnani  
3, C/o Vishandas Kamnani  
Nagarkhana Chowk, Mahal ..... Respondent  
Nagpur 400 002 PAN – AHJPK5262J

**C.O. no.1/Nag./2023**  
(Arising out of ITA no.88/Nag./2023)  
(Assessment Year : 2020-21)

Ajay Vishandas Kamnani  
3, C/o Vishandas Kamnani  
Nagarkhana Chowk, Mahal ..... Cross Objector  
Nagpur 400 002 PAN – AHJPK5262J (Original Respondent)

v/s

Dy. Commissioner of Income Tax  
Central Circle-2(2), Nagpur ..... Respondent  
(Original Appellant)

Assessee by : Shri Himesh Demle  
Revenue by : Shri Kailash C. Kanojiya

Date of Hearing – 05/08/2024

Date of Order – 02/09/2024

**ORDER**

**PER K.M. ROY, A.M.**

The present appeal has been filed by the Revenue challenging the impugned order dated 27/01/2023, passed by the learned Commissioner of

Income Tax (Appeals)-3, Nagpur, [“learned CIT(A)”], for the assessment year 2020-21.

2. In its appeal, the Revenue has raised following grounds:-

*“1. On the facts and in the circumstances of the case, the Ld. CIT(A) has erred in holding that considering the submission of the appellant and after going through the assessment order he was of the opinion that 5% NP on turnover of Rs.8,92,60,816/-should be reasonable, without appreciating the fact that the AO has arrived at the 8% of NP on unaccounted cash sales which has been discussed in assessment order in length and this unaccounted sale was not the part of the regular books of accounts*

*2. On the facts and in the circumstances of the case, the Ld. CIT(A) has erred in considering the 5% NP as reasonable without appreciating the fact that the 5% NP was shown by the assessee in his regular books after claiming all the expenses, hence, NP from unaccounted sale should be more than the normal NP and therefore, AO has adopted 8% NP very leniently and reasonably.*

*3. On the facts and in the circumstances of the case, the Ld. CIT(A) has erred also in holding that the additional income declared by the assessee of Rs. 75 lakhs covers NP at the rate of 5% without appreciating the fact that the additional income offered was in general nature and the findings of the AO to arrive at the NP at the rate of 8% is based on the incriminating material seized during the search.*

*4. On the facts and in the circumstances of the case, the Ld. CIT(A) has erred in deleting addition of Rs. 78,93,431/- on account of estimated unexplained expenditure holding that one has been estimated by the AO rejecting the books of accounts the source of expenditure relating to such turnover on which income have been offered stands explain and addition made on account of coupons by treating the same as unexplained expenditure tantamount to double additions of the same amount, without appreciating the fact that the addition was made on account of unrecorded cash coupons by going to reverse calculation of turnover and the assessee has already claimed all his expenses in regular books of accounts not related to unexplained expenditure of Rs.78,93,431/-.*

*5. On the facts and in the circumstances of the case, the Ld. CIT(A) has erred in deleting the addition of Rs.3,69,516/- holding that since the AO has extrapolated the sales on the basis of seized material and estimated the NP the addition is unjustified and further the appellant has offered additional income of Rs.1 Crore for A.Y. 2018-19, 2019-20 and 2020-21 without appreciating the fact that the addition was made by considering the unrecorded sales made out of books and cannot be related to additional income offered.*

*6 Any other grounds to be raised at the time of hearing.”*

3. Facts in brief:- The assessee is an individual engaged in trading in kirana items. Search & Seizure action was carried out on 16/01/2020. Pursuant to such action, proceedings under section 143(3) r/w section 153A of the Act have been initiated by the issue of notice under section 143(2) of the Act. The assessee has filed his return of income, including surrendered income of ₹ 75 lakh, declaring a total income of ₹ 1,33,18,580. The Assessing Officer, on perusal of the information and seized material, determined the total assessed income at Rs. 2,87,36,480/- after making a total addition of ₹ 1,54,17,900, on 3 counts – (i) the addition of ₹ 71,54,956, on account of estimated profit @ 8% on unaccounted turnover; (ii) addition on account of the estimated unexplained expenditure of ₹ 78,93,431, under section 69C of the Act, and (iii) profit estimated @ 8% on the deficit in stock physically found vis-à-vis stock as per books of ₹ 3,69,516. Being unsatisfied, the assessee carried the matter before the first appellate authority.

4. Before the learned CIT(A), the assessee submitted as under:

*"1. Assessment order has been framed u/s 143(3) of I.T. Act 1961 by Asstt. Commissioner of Income Tax, Central Circle-2(2), Nagpur determining total income at Rs. 2,87,36,480/- vide order dated 27/09/2021.*

*2. During the concerned A.Y., the Ld A.O. has made the additions to the returned income of the assessee on three counts i.e. (i) Rs. 71,54,956/-being profits estimated at the rate of 8% of the estimated unaccounted turnover; (ii) Rs. 78,93,431/- being estimated unrecorded expenditure and (iii) Rs. 3,69,516/-being profit estimated at the rate of 8% on the difference in stock as per books vis-à-vis physical verification.*

*3. The assessee being aggrieved by the said order has preferred an appeal before your honor challenging the legality as well as the facts on the basis of which the aforesaid additions have been made. The assessee has dealt with the aforementioned additions on grounds as under:*

• *Grounds of Appeal*

*a. That the Order passed under sec 143(3) of the I.T. Act, 1961 by the Ld. A.O. is unjustified and bad in law.*

b. That the Ld. A.O. erred in making addition of Rs. 71,41,345/- at the hands of the assessee on account of dumb documents found in the premises.

c. That the Ld. A.O. erred in making an addition of Rs. 78,93,431/- on account of unexplained expenditure of coupons found, as the said coupons do not impact the determination of income of the assessee because they are reimbursed by the manufacturers.

d. That the Ld. A.O. erred in making an addition of Rs. 3,69,516/- on account of difference in stock physically found in the premises and that recorded in the books as the excess pertains to the ownership of the associate concern Meera Traders.

e. The assessee denies liability to be assessed to interest u/s 234A, 2348 and 234C of income Tax Act 1961. Without prejudice the interest levied u/s 234A, 2348 and 234C is unjustified and unwarranted.

• On Merits and legal points of the Case

7. Ground No 1 & 2: "That the Order passed under sec 143(3) of the I.T. Act, 1961 by the Ld. A.O. is unjustified and bad in law."

"That the Ld. A.O. erred in making addition of Rs. 71,41,345/- at the hands of the assessee on account of dumb documents found in the premises."

During the concerned A.Y. the assessee has indulged in the business of trading kirana items including betel-nut under the trade name Balaji Traders as well as Shiv Traders and has shown a net profit of 3.65% of his turnover. The said books of accounts of the assessee have been duly audited by an accountant referred to under section 288 of the I.T. Act, 1961. Further, the net profit percentage for the last three financial years namely 2016-17, 2017-18, and 2018-19 has been 0.82%, 1.61%, and 3.39% respectively which has been accepted by the revenue authorities/ Ld. A.O. A summary of turnover and profit margins thereon for seven assessment years has been stated under for your consideration:

A.Y.	Purchases	Sales	Net Profit	N.P %
2020-21	175,529,802	195,373,746	7,129,964	3.65
2019-20	184,148,206	187,714,155	6,372,490	3.39
2018-19	221,608,352	241,335,770	3,876,403	1.61
2017-18	299,875,854	318,192,577	2,610,609	0.82
2016-17	244,759,142	246,745,822	2,093,066	0.85
2015-16	207,385,901	226,603,279	1,906,424	0.84
2014-15	102,789,084	76,963,140	1,468,314	1.91

9. The Ld. A.O. ought to have considered the factual dictum of the case, nature of the assessee's business, the net profit margin of the assessee's business over the past years to conclude the net profit percentage to be applied so as to estimate the income of the assessee.

10. There are also number of Judicial Pronouncement regarding, net income to be adopted as shown earlier years on the unaccounted turnover of the assessee:

i. Hon'ble Madhya Pradesh High Court in the case of Man Mohan Sadani vs CIT (2008) 304 ITR 0052 at para 7, wherein it was held/concluded as under

"...net profit rate has to be applied..."

ii. Hon'ble Guwahati ITAT in the case of Sayqul Islam vs ITO (ITAT Guwahati) (ITA No 235/GTY/2019) at para 13, wherein it was held/concluded as under

"Normally, to estimate the profit of any assessee, the previous years' profit ratios are used and not the subsequent years' profit ratio. However, the subsequent years' profit ratios as submitted by the assessee provide us a bird eye and rough idea that what is the earning trend in the assessee's business."

iii. Hon'ble ITAT Cuttak in the case of Bhambra Service centre vs ITO 2018 53 CCH 414 at para 36, wherein it was held/concluded as under

".....the Assessing Officer cannot make a wild guess but has to estimate the income of the assessee on the basis of past accepted results...."

iv. Hon'ble ITAT Agra in the case of DCIT vs Vankhandeshwar construction Co., (2017) 50 CCH 0209 (ITAT Agra) 279/Agra/2014 at para 7 & 8, wherein it was held/concluded as under

".....net profit was to be estimated by applying rate of profit in accordance with rates, applied in case of assessee for earlier years, thus estimation of income arrived at not justified....."

5. Apart from the above, the learned Counsel for the assessee made elaborate submissions which are reproduced vide Para-11/Page-6 to Para-19/Page-17, in the order passed by the learned CIT(A). The learned CIT(A), considering the erudite submissions of the assessee allowed the appeal by deleting the additions made by the Assessing Officer. The relevant findings of the learned CIT(A) are reproduced below:-

"4. Discussion and decision; -

As many as five grounds of appeals have been raised. Ground no. 1 & 5 are being general in nature requires no separate adjudication and are dismissed. Ground no. 2 challenges the addition of Rs.71,41,345/- being estimated on turn over as interpreted by the AO upon analysis of seized

material. The AO after rejecting the books of account the appellant estimated the income on such as accounted turnover at the rate of 8% there by making an addition of Rs. 71,41,345/- to the return income of the appellant. The AO had made aforesaid addition the extrapolating the sum of Rs. 7,06,69,563/- (pertaining to seized material of the period of 9 months) to Rs. 8,92,66,816/-. But the appellant has submitted that the net margin of the goods in which appellant trade does not exceed 3.65% to substantiate his claim. The appellant has submitted the net margin ratio of the preceding six A.Ys. where the net margins range between 0.82 % to 3.65% of the turnover. It is a fact that income tax raid had taken place at the premises of the appellant and his group concerns and documents were seized. Considering the fact that the documents were seized that can be extrapolated. But it is also a fact that the AO arbitrarily applied 8% NP on turnover of 89266816 /- after extrapolating the sum of Rs. 70669563/- (pertaining to seized material of the period of 9 months). Considering the submission of the appellant and after going through the assessment order I am of the opinion that 5% NP on turnover of Rs. 89266816/- should be reasonable. Hence, I confirm NP at the rate of 5% on total turnover of the appellant. The appellant has offered Rs. 75,00,000 /- as additional income which covers NP at the rate of 5% on the total turnover of the appellant. Hence, the above grounds of appeal is allowed.

Further, ground no. 3 challenges the addition of Rs. 78,93,431/- on account of estimated unexplained expenditure made by AO u/s 69C of the IT Act, 1961. I have considered the submission of the appellant I am of the view that one has been estimated by the AO rejecting the books of accounts the source of expenditure relating to such turnover on which income have been offer stands explain. The addition made on account of coupons why treating the same as unexplained expenditure tantamount to double additions of the same amount and accordingly the addition of Rs. 78,93,431/- is hereby deleted. Accordingly, the said ground is allowed.

Further in ground no. 4 the appellant has raised the contention of addition of Rs. 3,69,516 / - on account of difference in stock physically found in the premises and that recorded in the books. I am of the view that since the AO has extrapolated the sales on the basis of seized material and estimated the NP the above addition is unjustified and hence it is deleted. Further the appellant has offered additional income of Rs. 1,00,00,000/- in respect of A.Ys. 2018-19, 2019-20 & 2020-21 and 93,00,000/- for A.Y. 2020-21, 2019-20 and 2014-15 has been offered in case of Shri Ajay Kamnani. Hence considering the above facts, the appeals are disposed of as above.

#### 5. Result:

In the result, the appeals filed by the appellant for A.Y. 2020-21 are treated as "allowed".

6. The Revenue being aggrieved by the aforesaid order of the learned CIT(A), is in appeal before the Tribunal.

7. Before us, the learned Departmental Representative vehemently argued that the Assessing Officer had correctly estimated the profit % 8% based on seized material and the learned CIT(A) had erred in reducing the profit margin.

8. On the other hand, the learned A.R. submitted that the profit ratio in the trading business is not more than 3%. A chart showing the comparative profit ratio declared by the assessee and accepted by the revenue authorities in the past year has been submitted in the paper book by Learned A.R., wherein it can be demonstrated that the assessee has declared average profit percentage not exceeding 3%. It has also been argued that the profits shall be estimated based on comparable profits declared in preceding years, and reliance was placed upon various case laws. In terms of Rule 27 of the ITAT Rules, he submitted that net profit be estimated @ 3% only though he has not filed any cross objection.

9. We have given a thoughtful consideration to the arguments made by the learned Departmental Representative and perused the material available on record. We find that the Assessing Officer, on the aggregate quantum of sale, 8% profit has been calculated on estimate basis. However, the learned CIT(A) reduced it by 5%. It is well-settled that in case of estimate of profit under section 145 of the Act, the Revenue has to make an honest and fair estimate of the income by applying the profit rate declared in the preceding years. Considering that the assessee is engaged in the business of trading in

Kirana items, we are of the opinion that the profit @ 4% which amounts to ₹ 35,70,673, shall meet justice. However, since a sum of ₹ 75 lakh has been offered for taxation as income from business, the additional profit needs to be telescoped with the offer for addition income. No separate addition is required at all in the peculiarity of the circumstances. Hence, grounds no.1, 2 and 3, are dismissed.

10. Ground no.4, relates to addition of ₹ 78,93,431, on account of unexplained expenditure.

11. During the course of proceedings, the learned Departmental Representative heavily relied on the assessment order passed.

12. On the other hand, the learned A.R. invited our attention that once the Assessing Officer has rejected books of accounts and estimated profits on turnover, the same shall take care of the expenses incurred for earning such profits and any addition made with respect to such expenses would tantamount to double addition. He relied upon the order dated 10/03/2021, passed by the Co-ordinate Bench of the Tribunal, Chennai Bench, in ACIT v/s S. Moorthy, ITA no.3091/CHNY/2019 (wherein the Hon'ble J.M. is a part of Corum). The relevant operative portion of the decision of the Tribunal is reproduced below:-

*"8. We have heard both the parties, perused the materials available on record and gone through the orders of the authorities below. It is an admitted fact that the AO has rejected books of account u/s.145(3) of the Act and estimated profit from the business by adopting 12.5% net profit on gross receipts. It is also an admitted fact that once books of account are rejected u/s.145(3) of the Act, no further additions can be made by relying upon same books of account either in respect of cash credits u/s.68 of the Act or unexplained commission expenses u/s.69C of the Act, because in order to invoke provisions of section 68 of the Act, it is essential that credit*

*should be from the books of account of the assessee maintained for that year. Once, the books of account maintained by the assessee is treated as no longer in existence by rejecting those books u/s.145(3) of the Act, then for all purposes including for the purpose of section 68 of the Act, said books of account ceased to exist and hence, those books cannot be relied upon to make addition towards unexplained credit u/s.68 of the Act. This legal position is supported by the decision of Hon'ble High Court of Rajasthan in the case of CIT vs. G.K. Contractor, supra, where it was clearly held that "AO having estimated the profit by applying a higher net profit rate to total contract receipts after rejecting assessee's books of account by invoking the provisions of section 14(3), no separate addition can be made on account of cash credit u/s.68, even though the assessee has failed to discharge its onus of proof in explaining the amount shown in the books of account". The Hon'ble High Court of Punjab and Haryana, in the case of CIT vs. Aggarwal Engg. Co., (2008) 302 ITR 0246 had considered an identical issue and held that "no separate addition on account of cash credit and on account of unexplained payments for purchases made outside the books can be made once the net profit rate is applied on contract receipts of an assessee for estimating his income from contract work". The Hon'ble High Court of Allahabad in the case of CIT vs. Banwarilal Banshidhar, (1998) 229 ITR 0229 had taken a similar view and held that "where income is assessed at G.P. rate by rejecting the books of assessee u/s.145(3), no disallowance can be made separately u/s.40A(3) of the Act". Therefore, from the above, it is very clear that to make additions u/s.68 or 69 of the Act, the essential condition is books of account should be maintained by the assessee for the relevant financial year. If books of account of the assessee are rejected and income is estimated by applying certain profit rate, it would take care of all expenses necessarily to be incurred for earning profit and hence, when profit is estimated no separate addition can be made towards unexplained commission u/s.69 of the Act. The Id.CIT(A) after considering relevant facts has rightly held that the AO is erred in making addition towards cash credit u/s.68 of the Act and unexplained commission u/s.69C of the Act, when the books of account were rejected u/s.145(3) of the Act."*

13. We have given a thoughtful consideration to the arguments made by the learned Departmental Representative and perused the material available on record. While going through the order passed by the Assessing Officer, we find that Assessing Officer has rejected the books of account and estimated profit on sales from the business. At the rate of 8% of the turnover, the learned CIT(A) deleted the addition stating the reason that once the books of accounts are rejected and the profit percentage has been estimated, no separate addition can be made towards unexplained expenditure under section 69C of the Act. Further, it is manifest that such expenditure has been

estimated by a nebulous mathematical calculation as below, culled out from Para-10.2 of the assessment order. The submission furnished by the assessee has been carefully perused and considered. However, the same is not completely acceptable. It cannot be ruled out that the cash coupons are exchanged by the retailers/ customers with the goods sold by the assessee and business concerns of Kamnani Group. On the other hand the contention of the assessee that the assessee and the business concerns of Kamnani group are not paying cash for scratched coupon with denomination displayed in the coupons can't be accepted in toto. As the books of accounts of the assessee already rejected as discussed above, the expenditure on coupons is estimated as under:-

<i>The additional income offered by the assessee and Shri Manoj Kamnani</i>	<i>₹ 1.50 crore</i>	
<i>Less: Income in relation to un-reconciled turnover of Shiv Grugh Udyog</i>	<i>₹ 1.00 crore</i>	
<i>Balance</i>	<i>₹ 0.50 crore</i>	
<i>Reverse Calculation of Turnover on the balance income on the basis of gross profit returned by the assessee @ 5%</i>		<i>10,00,00,000</i>
<i>Add: Turnover estimated on unreconciled sales (as per Para-9.1)</i>		<i>8,92,66,816</i>
<i>Total estimated turnover of sales</i>		<i>18,92,66,816</i>
<i>Less: Estimated expenditure on coupon (20% of turnover)</i>		<i>3,78,53,363</i>
<i>Less: unscratched New Coupons</i>		<i>1,15,41,925</i>
<i>Balance Scratched Coupons</i>		<i>2,63,11,438</i>
<i>30% of scratched coupon is estimated as unrecorded cash paid to retailers / customers</i>		<i>78,93,431</i>

14. The expenditure on account of unrecorded cash coupons works out at ₹ 78,93,431/- as detailed at table above is treated as unexplained expenditure and assessed under section 69C of the Act and the same is taxed at maximum marginal rate of 60% under section 115BEE of the Act, 1961. There is no scope for estimation of unexplained expenditure because the same is a deeming provision and actual incurring of expenditure is must. The addition itself is fragile and is based on pure surmise and conjunctures. The basic invocation of section 69C of the Act is uncalled for merely on estimates. The learned CIT(A) has appropriately decided which needs no interference at our end. Thus, though on a different line of logical line of thinking, we uphold the order passed by the learned CIT(A) by dismissing the ground no.4.

15. Insofar as ground no.5, is concerned, the additional income declared by the assessee of ₹ 75 lakh covers the addition based on 4% net profit estimated on the turnover.

16. Before us, the learned Departmental Representative stated that the income declared is general in nature and is not to be set off against the addition based on estimated profit on turnover.

17. On the other hand, the learned A.R. brought to the notice of the Bench that the said additional income has been declared under the head "*Business and Profession*", considering the discrepancies, unreconciled transactions, errors, and omissions involuntarily occurring in writing books of accounts, to avoid protracted litigation and buy peace of mind. The same has been duly reflected in the return of income under the head "*Business and Profession*" and taxes thereon have been duly paid at the time of filing return of income.

18. We have heard the rival arguments, perused the material available on record and gone through the orders of the authorities below. We find that the Learned CIT(A) has recorded that the appellant has offered ₹ 75 lakh, as additional income, which duly covers the profit @ 4% on the total turnover. Thus, we find that the Learned CIT(A) has correctly considered the additional income and our interference is not called for.

19. The ground no.6, is concerned, the addition of ₹ 3,69,516, on account of profit estimated @ 8% on the difference in the stock physically found vis-à-vis as appearing in books of accounts.

20. The learned Departmental Representative heavily relied on the assessment order passed.

21. On the other hand, the learned A.R. brought to our attention that once the assessing officer has rejected books of accounts and estimated profits on turnover, no addition on account of a shortage of stock is required. The profit estimated on the turnover subsumes the shortage in the stock physically found as compared to stock as appearing in the books. Any addition made with respect to such shortage in stock found would tantamount to a double addition. The Learned A.R. relied upon the judgement of M/s Saber Paper Ltd vs DCIT in ITA no.663, 664 and 773/CHD/2017.

22. We have given a thoughtful consideration to the arguments made by the learned Departmental Representative and perused the material available on record. It is admitted that the Assessing Officer has rejected books of account and estimated turnover and profit on sales from the business. The

learned CIT(A) deleted the addition stating the reason that once the books of accounts are rejected and the profit percentage has been estimated, no separate addition is called for the shortage found in stock. The same can also be telescoped with the additional income offered for ₹ 75 lakh. Therefore, the learned CIT(A) has correctly decided to delete the addition. As such, we decline to interfere in his rock solid findings. Accordingly, we uphold the order passed by the learned CIT(A) by dismissing the ground no.5, raised by the Revenue. In effect, all the additions proposed by the Assessing Officer as modified by the learned CIT(A) is quashed. The returned income of ₹ 1,33,18,580, is sacrosanct and no addition may be made thereafter in view of the additional income offered for ₹ 75 lakh which has already suffered tax.

23. In the result, appeal filed by the Revenue is dismissed.

**C.O. no.1/Nag./2023**  
(Arising out of Revenue's  
Appeal being ITA no.88/Nag./2023  
Assessment year : 2020-21

24. At the time of hearing, the learned A.R. submitted that upon instructions from his client, he does not want to press the grounds for cross objection. Accordingly, cross objection is dismissed.

25. In the result, cross objection filed by the assessee is dismissed.

Order pronounced in the open Court on 02/09/2024

**Sd/-**  
**V. DURGA RAO**  
**JUDICIAL MEMBER**

**Sd/-**  
**K.M. ROY**  
**ACCOUNTANT MEMBER**

**NAGPUR, DATED: 02/09/2024**

Copy of the order forwarded to:

- (1) The Assessee;
- (2) The Revenue;
- (3) The PCIT / CIT (Judicial);
- (4) The DR, ITAT, Nagpur; and
- (5) Guard file.

Pradeep J. Chowdhury  
Sr. Private Secretary

True Copy  
By Order

Sr. Private Secretary  
ITAT, Nagpur