

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

डॉ. 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. 494/JPR/2024
निर्धारण वर्ष/Assessment Years : 2016-17

Kiran Infra Engineers Ltd. B-141, Road No. 9-D, V.K.I. Area, Jaipur.	बनाम Vs.	The Asstt. Commissioner of Income Tax, Circle-4, Jaipur.
स्थायी लेखा सं./जीआईआर सं./PAN/GIR No.: AACCK8188N		
अपीलार्थी / Appellant		प्रत्यर्थी / Respondent

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

सुनवाई की तारीख / Date of Hearing : 22/08/2024
उदघोषणा की तारीख / Date of Pronouncement : 29/08/2024

आदेश / ORDER

PER: RATHOD KAMLESH JAYANTBHAI, AM

This is an appeal filed by the assessee against the order of the National Faceless Appeal Centre, Delhi [for short "CIT(A)], dated 19.02.2024 for the assessment years 2016-17 in the case of the above named assessee. That of the Id. CIT(A) in turn arise because the assessee challenged the order dated 30.12.2018

passed under section 143(3) of the Income Tax Act, 1961 (here in after “ Act”), by the ACIT, Circle-4, Jaipur.

2. The assessee has raised the following grounds: -

“1. On the facts and in the circumstances of the case, the Ld. CIT(A) has grossly erred in confirming the action of Id. AO in rejecting the books of accounts and invoking the provisions of section 145(3) of Income Tax Act, 1961 arbitrarily.

2. On the facts and in the circumstances of the case, the Ld. CIT(A) has grossly erred in upholding G.P. rate of 7% on turnover from entire receipts (including manufacturing and contracting) without appreciating the fact that Hon'ble ITAT in assessee's own case for A.Y. 2012-13 has accepted the GP rate declared by assessee, thus the application of GP rate of 7% deserves to be struck down and the GP declared by assessee deserves to be accepted.

3. On the facts and in the circumstances of the case, the Ld. CIT(A) has grossly erred in allowing recomputation of turnover declared by assessee by incorporating therein turnover of assessee's branch situated at Srilanka of Rs.4,72,66,291/- and estimating net profit by applying 7% of turnover even on such turnover (when the assessee had already incorporated net profit from such branch in its profit & loss account) by grossly ignoring the fact that rate of 7% as applied to business run in India and therefore could not be applied on branch run outside India, thus the action of Id. CIT(A) in upholding the enhancement of the gross receipts and applying net profit rate of 7% deserves to be held bad in law and consequene addition deserves to be deleted. ☆

3.1. That, the Id. CIT(A) has further erred in not appreciating the fact that turnover from business activities at Sri Lanka had reduced by 63% as compared to previous year and therefore the net profit from business activity at Sri Lanka was bound to reduce drastically and therefore the action of Id. CIT(A) in applying net profit rate of 7% on gross receipts deserves to be held bad in law and consequent addition deserves to be deleted.

4. 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.”

3. The brief fact as culled out from the records are that the assessee company filed its e-return on 13.10.2016 thereby declaring total income at Rs. 2,71,32,290/-. The case was selected for scrutiny on a manual basis. According notice u/s 143(2) of the Act, was issued through ITBA portal on 26.09.2017 by fixing the case on 29.09.2017.

Further, to complete assessment proceeding in this case, notice u/s 142(1) of the Act, along with questionnaire was issued on 08.10.2018 and in response thereto, the Ld. AR of the assessee company submitted part reply.

On perusal of the reply of the assessee, the Assessing Officer noted that during the year under assessment that the assessee company has shown total contract receipts of Rs. 81,77,01,489.88/- in its audited final accounts and gross profit thereon of Rs. 4,90,33,003.45/- giving a GP rate of 5.99%.

Ld. AO on perusal of Form 26AS for the year under consideration observed that the assessee received contract receipts of Rs. 82,99,48,240.20/- and total TDS of Rs. 1,68,42,866/- was also deducted u/s 194C of the Act by the concerned deductors.

Whereas on perusal of profit & loss account submitted by the assessee, it is noticed that the assessee has shown "sale of service contract receipts less by Rs. 1,22,46,750.32/- and assessee was asked to show cause as to why the contract receipts shown in Form 26AS of Rs. 82,99,48,240.20/- shall not be treated as assessee real turnover / receipts. Failing to file explanation on issue the difference amount of Rs. 1,22,46,750.32 shall be added to the total contract turnover for the year under consideration and taxed accordingly.

3.1 In response to the above show cause notice, the assessee submitted written reply on 24.12.2018 stating that the different is on account of receipts of Rs. 4,00,52,739/- which is received from IRCON towards the work executed by the assessee at Sri Lanka through its overseas branch. The entire receipts from this project stood credited to the respective branch who had executed the work and declared the receipts in its balance sheet at Srilanka, copy of that audit report was placed on record.

Further, the assessee has credited the profits from the Srilanka Branch in its profit & loss account at Rs. 12,82,233.64. If

this amount of receipt of Rs. 4,00,52,739/- is excluded from the gross receipts as per form 26AS at Rs. 82,99,48,240.20, the resultant receipts would be less than the receipts declared by the assessee at Rs. 81,77,01,489.88. It is because in some cases TDS has not been deducted through work executed by assessee company and consequent receipts are included in the gross receipts declared.

3.2 The Id. AO noted that the assessee has declared total contract receipts of Rs. 81,77,01,489/- in its P&L account (excluding work done with IRCON at Sri Lanka) however, in form 26AS the assessee has received total contract receipts of Rs. 82,99,48,240/-, which also includes receipts of Rs. 4,72,66,291/- which were received from IRCON International Ltd. and TDS u/s 194C of the I.T. Act, was also deducted thereon by IRCON International.

When assessee was asked to show cause, vide notice dated 19.12.2018 about the differences between contract receipts shown in audited final accounts and contract receipts reflecting in form 26AS. On perusal of reply filed by the assessee on this issue in

reply, it is noted that the contract receipts of Rs. 4,72,66,291/- received from IRCON International Limited was not included by the assessee in the contract receipts of Rs. 81,77,01,489/- shown in P&L account.

As per assessee the above contract receipts of Rs. 4,72,66,291/- was related to contract work done at Sri Lanka with IRCON and net profit of Rs. 12,82,234 came there from had already been declared separately in P & L account in the year under consideration.

Hence, the same was not included in the total contract receipts of Rs. 81,77,01,489/- related to contract work done in India, this is hereby admitted but in other hand it was also asked to the assessee vide above same show cause notice to provide detailed note and complete books of accounts of contract work done at Sri Lanka. In response thereto assessee has submitted only following written reply which is reproduced for the sake of brevity:-

“Brief Note on Contract done at Sri Lanka

The assessee company has awarded a contract by IRCON for execution of work of signaling/telecom at Sri Lanka. For the proper and effective execution of the work awarded assessee company has opened a branch at Sri Lanka under the name and style as "M/s Kiran Infra Engineers Ltd." in terms of certificate of registration granted by the

competent authority at Sri Lanka on 04.10.2012 as an overseas company. The office of the company is located at Viyaser Road, Thanikal, Vanuniya (Sri Lanka). The books of accounts, vouchers, bill as statutorily required for the branch office are maintained and kept at branch office and the accounting of the branch is done in accordance with the prevalent law of Sri Lanka and the same are duly audited by a firm of Chartered Accountants in Sri Lanka. The financial results of the branch office are incorporated in the books of accounts of the head office at Jaipur and are reflected as Balance with branch (in Assets) and investment in branch (in Assets) accordingly. Further the Balance Sheet of branch duly audited by firm of chartered accountant in Sri Lanka which is enclosed herewith for your kind perusal and record.

With regard to the stock register, as has already been submitted assessee has not maintained day to day stock records and goods purchased are directly charged to revenue which is also reported by the auditors in the report. Further the stock lying at the yearend is physically verified and the same is declared in actual verification.

The site wise records of expenses claimed are tendered herewith alongwith the other bills and vouchers of the expenses claimed of more than Rs. 10.00 in the P&L account. Also produced muster rolls for your kind verification"

The above reply has been considered carefully by the Id. AO, however, it is not found satisfactory as the assessee could not provide complete books of accounts in regard to contract work done at Sri Lanka with IRCON.

The assessee simply said in its reply dated 24.12.2018, that "the receipts of Rs. 4,00,52,739/-received from IRCON toward the work executed by the assessee at Sri Lanka through its overseas branch". Thus, from the above mismatch of receipts it was seen between assessee's reply and form 26AS, related to work done at

Sri Lanka with IRCON that the assessee does not maintain books in proper manner of contract work done at Sri Lanka so Id. AO relies on information available on records.

3.3 Thus, Id. AO noted that there are discrepancies and he invoked the provisions of section 145(3) of the IT Act and he concluded that the entire books of accounts of the assessee including contract work done at Sri Lanka with IRCON, are hereby rejected by invoking provisions of section 145(3) of the LT. Act. Thus, the total contract receipts of Rs. 4,72,66,291/- reflecting in form 26AS regarding contract work done with IRCON International at Sri Lanka, is also included in the total contract turnover of Rs. 81,77,01,489.88 declared in P&L account by the assessee. The total turnover / receipts of the assessee come to Rs. 87,38,24,258/- which includes contract work done at India of Rs. 81,77,01,490/- & contract work done with IRCON International Pvt. Ltd. at Sri Lanka of Rs. 4,72,66,291/- and turnover of manufacturing activities of Rs. 88,56,4771-. Since the assessee did not provide complete books of accounts regarding above business activities, thus, looking to the nature of assessee's

business and many discrepancies noticed the profit was estimated by invoking the provisions of section 145(3) of the Act, @ NP @8% is worked out which comes to Rs. 6,99,05,941/- which also includes profit of Rs. 12,82,234/- of contract work done with IRCON at Sri Lanka. Thus, after reducing the above profit the net Profit comes to Rs. 6,86,23,707/- (6,99,05,941-12,82,234) against Net profit declared by the assessee of Rs. 3,05,38,227/- (in which assessee has already taken benefit of allowable depreciation as per I.T. Act and interest expenses), accordingly a trading addition of Rs. 3,80,85,480/- (Rs. 6,86,23,707-3,05,38,227) was made and added back to the total taxable income to the assessee for the year under consideration.

4. Aggrieved from that order of the assessing officer, assessee preferred an appeal before the Id. CIT(A). Apropos the ground so raised by the assessee and the relevant finding of the Id. CIT(A) reads as under :

“5. Decision:-

5.1 I have perused the assessment order, grounds of appeal, statement of facts and submissions of the appellant. On perusal of the assessment order, it is noted that the case was selected in scrutiny and the appellant was issued statutory notices as per law. The appellant is engaged in contractual and manufacturing activities during the relevant

financial year and the AO has compared the GP Rate and figures of the turnover and gross profit of preceding two assessment years with the instant assessment year. The AO issued notice u/s.142(1) of the Act to furnish details of expenditures debited in the P&L A/c, but the appellant failed to furnish complete details. The AO issued show cause notice dated 19.12.2018 requesting for reconciliation of receipts shown in ITR vis-à-vis receipts shown in Form 26AS, production of complete stock register, bills and vouchers of site wise expenses, books of accounts and details regarding contract work done at Sri Lanka, muster roll of labour works and bills and vouchers of expenses incurred above Rs.10 Lakh of each head of P&L A/c. The AO was not fully satisfied with the submissions made by the appellant as mentioned in para 2.5 of the assessment order and pointed out that the bills and vouchers, books of accounts were not produced and no details of opening and closing stock were produced, other discrepancies as mentioned in para 2.5 of the assessment order. As mentioned in para 2.6 of the assessment order, based on the above discussion the AO referred to the provisions of Section 145(3) of the Act and concluded that the expenditure incurred in the P&L A/c. is not fully verifiable and after the discussion held it to be a fit case for invoking the provisions of Section 145(3) of the I.T. Act and therefore rejected the books of accounts of the appellant and also referred to the past history of this case in this regard. The AO pointed out that since the GP and NP rate is not verifiable and acceptable, therefore the same is required to be estimated. As per the AO, the appellant had given its written consent for arriving at a fair and reasonable estimation of income and turnover based on earlier years. Accordingly, the AO has applied the net profit rate of 8% to the entire business activities of the appellant including manufacturing and contract activities subject to allowability of depreciation and interest as mentioned in para 2.6 of the assessment order. As mentioned in para 2.7 of the assessment order, the turnover of contract work done at Sri Lanka with IRCON was Rs.4,72,66,291/- and the net profit was Rs. 12,82,234/-. The AO has pointed out that the appellant has not provided complete books of accounts with respect to contract work done at Sri Lanka and the AO concluded that books of accounts in a proper manner of contract work done at Sri Lanka was not maintained by the appellant and these books of accounts of contract work done at Sri Lanka were rejected. Therefore, 8% rate was applied by the AO in the concluding paragraph 2.7 of the assessment order thereby making total addition of Rs.3,80,85,480/-.

5.2 In its submissions filed before the NFAC, the appellant has referred to earlier assessment orders and appellate orders passed in its case. On perusal of assessment order for A.Y. 2015-16, it is noted that in this year also the books of accounts of the appellant were rejected by the AO and the GP rate of 8% had been applied on the total receipts of the appellant. As per the CIT(A) order dated 05.11.2018 filed by the appellant, learned CIT(A) in para 2.3 has held that considering the past history of the case, the action of the AO of rejection of books of accounts is upheld. The learned CIT(A) relied upon decision of Hon'ble ITAT in A.Y. 2009-10 and 2012-13 and since the appellant had continued with the same line of business, based on the substantial reduced turnover in the instant assessment year as compared to earlier year, learned CIT(A) sustained the addition to the extent of Rs. 12 lakhs for contractual receipts and Rs. 1 lakh for trading receipts. The appellant has relied upon the past appellate history in its case in the submissions made before the NFAC. It is noted that Hon'ble ITAT has not disagreed with the AO / CIT(A) as regards rejection of books of accounts, in A.Y. 2009-10-ITA No.712/JP/2012 dated 26.04.2013, para 14 of order of Hon'ble ITAT, Jaipur, but reduced the quantum of profits estimated and partly allowed the appeal of the assessee/Revenue. Similarly, in A.Y. 2012-13 also, as per Hon'ble ITAT order ITA No.897/JP/2015 dated 28.11.2016, the facts were as per earlier years and there is no change in position. Further, in para 5.4 of this order, it has been specifically mentioned that "the books of accounts rejected u/s.145(3) are not in dispute. The limited issue for our consideration relates to estimation of GP rate in relation to the appellant's contractual activities undertaken for Indian Railway. No appeal before Hon'ble ITAT has been filed by the appellant against estimated addition sustained by learned CIT(A) in A.Y. 2014-15 and A.Y. 2015-16. From the above, it is noted that the claim of the appellant that books of accounts have been wrongly rejected by the AO as raised in Ground No.1 is not supported by appellate orders on similar facts in earlier years. It is noted that the appellant has not maintained proper details regarding contractual activities and when contract wise receipt details were requested with break up from the appellant by the NFAC along with complete details and reconciliations, the appellant has not submitted full details. It has only been argued by the appellant that the turnover shown by it (after excluding the Sri Lanka Project whose profits are directly offered to the P&L A/c.) is more than the receipts

declared as per Form 26AS. Similarly, it is noted that even though the NP rate of Sri Lanka project is substantially lower of around 2.71% $[(12,82,234 \times 100) / 4,72,66,291]$, the appellant has made general claims in its letter dated 06.12.2023 filed before NFAC on being requested to submit reasons for very low profit rate with details. Even before the AO, no details with respect to Sri Lanka project had been submitted. The appellant has merely claimed that the rate of 8% cannot be applied to an overseas project without submitting any supporting details. The reason supplied by the appellant refers to reduction in revenue, whereas the issue raised is regarding low profit rate. In absence of any details, the onus of the appellant cannot be said to be discharged. Similarly, for other projects also no details of project wise opening stock, work-in-progress, stage of completion, method of valuation of work-in-progress, conformity to AS-7 have been submitted and expenses claimed have not been substantiated at all by furnishing supporting documents as requested by the AO. Therefore, the arguments made by the appellant regarding justification of net profits claimed by it is not found correct. Based on the above discussion, the rejection of books of accounts made by the AO citing specific defects as mentioned in the assessment order is found correct. It is noted that estimation of profits after rejecting books of accounts has been upheld in earlier years by learned CIT(A) and Hon'ble ITAT also. Accordingly, ground No.1 filed by the appellant is dismissed.

5.3 As regards the submissions of the appellant where it has been pointed out that the addition sustained by the appellate authorities is not 8% but a lower figure, it needs to be clarified that facts of every year are not exactly similar and for estimation of profits, every year has to be examined separately. Since the appellant has failed to submit necessary evidences before the AO/NFAC despite repeated opportunities and simply relied upon its own ledger accounts and did not reconcile its stock details, did not furnish expenditure evidences above Rs. 10 lakhs and other necessary details in support of the claims of GP rate / NP rate, it is held that the addition made by the AO with respect to the NP rate be restricted to 7% instead of 8% as adopted by the AO after going into the parts of the instant assessment year. Furthermore, the appellant has submitted in its submission dated 02.06.2023 that there is a mistake in calculation of trading addition for which the petition u/s.154 of the Act has already been made before the AO on 22.01.2019, copy of which filed before DCIT, Circle-4, Jaipur

has been submitted before NFAC. The appellant has claimed that the AO has categorically mentioned on page 8 of the assessment order (para 2.6) that the NP rate of 8% is being applied to the entire business activity of the assessee subject to allowability of depreciation and interest. However, the appellant has pointed out that the AO has not excluded the figures of depreciation and interest while making the impugned additions. As per the appellant, the net addition on account of trading should be Rs.1,34,77,652/- after excluding depreciation and interest. The claim made by the appellant is found prima facie correct and the AO is directed to allow depreciation and interest as per law. Therefore, the AO is directed to adopt the NP rate of 7% on the total turnover of the appellant (both contractual and manufacturing activities and including contractual turnover of Sri Lanka project subject of allowability of depreciation and interest) as held by him in para 2.6 of the assessment order (while holding that NP rate of 8% was to be applied, which now stands modified to 7%) as directed above. Based on the above discussions, grounds of appeal No.2, 3, 4 & 5 are considered as partly allowed.”

5. As the appeal of the assessee was partly allowed by the Id. CIT(A), the assessee has preferred the present appeal before this tribunal. To support the grounds so taken by the assessee, the Id. AR for the assessee has submitted his written submission and the same reads as under:-

“Brief facts of the case are that assessee is a closely held public limited company incorporated under part 9 of The Companies Act, 1956 in the year 2006 and during the year under consideration it continued as Railway Contractor and its job mainly relates to the conversion of old traditional signalling system to the Modern Colour Light Signalling System for various divisions of Indian Railways besides having a small manufacturing unit engaged in the construction of signalling goods. It is pertinent to mention that entire sales / contract works has been done for Indian Railways. Also in the year under appeal assessee has executed certain work of similar nature through its overseas branch at Sri Lanka as sub-contractor for IRCON - a government of India

undertaking engaged in the installation and operation of railway track system. The said work was awarded to the assessee in the preceding assessment years where majority of the work was executed and income received was declared. Apart from this, assessee also owned two Wind Mill plants installed at Jaisalmer where electricity generated is sold to state owned electricity Boards.

Return of Income for the year under appeal was filed declaring total income at Rs.2,71,32,290/- after claiming deduction 80IA at Rs.52,40,124/- on the Wind Mill income and assessment was completed u/s 143(3) at Rs.6,52,17,770/- after making trading addition of Rs.3,80,85,480/- by invoking the provisions of section 145(3) of the Income Tax Act, 1961.

Against this order passed by Id.AO, assessee decided to file an appeal before CIT(A) wherein Id. CIT(A) erred in confirming the rejection of the assessee's books of accounts and invoking the provisions provided u/s 145(3) of the Income Tax Act, 1961 (hereinafter referred as the 'Act'). However, in the order passed by Id. CIT (A) u/s 250 of the Act, the expenses of depreciation and interest as requested in the application filed u/s 154 are allowed and reduced the NP rate to 7% applicable on the total turnover of the appellant (both contractual and manufacturing activities and including contractual turnover of Sri Lanka project subject of allowability of depreciation and interest). This action of Id. CIT(A) in upholding the G.P. rate of 7% on turnover from entire receipts without appreciating the fact that the Hon'ble ITAT in assessee's own case for A.Y. 2012-13 has accepted the G.P. rate declared by the assessee. Furthermore, Ld. CIT(A) has grossly erred in allowing recomputation of turnover declared by assessee by incorporating therein turnover of assessee's overseas branch situated at Sri Lanka of Rs.4,72,66,291/- and estimating net profit by applying 7% of turnover even on such turnover (when the assessee had already incorporated net profit from such branch in its profit & loss account) by grossly ignoring the fact that rate of 7% as applied to business run in India and therefore could not be applied on branch run outside India while also ignoring the fact quantum of income declared from Sri Lanka branch is subject matter of Sri Lankan Tax Authorities and merely because the assessee has included the profit from its overseas branch and paid the taxes, the reasonableness of such profit could be examined by the Indian Tax authorities.

Aggrieved of the aforesaid order of CIT(A), assessee decided to file the present appeal before the Hon'ble bench.

Ground of appeal No.1:

In this ground of appeal, the assessee has challenged the action of the CIT(A) in upholding the rejection of the assessee's books of accounts and invoking the provisions u/s 145(3) of the Act.

In this regard it is submitted that assessee since beginning of the proceedings has explained the entire process of procuring and applying the material at the work sites which the lower authorities has failed to appreciate. Assessee had submitted that the procedure of procurement and allocation of the stock required for carrying out work on a daily basis was much more complex than anticipated by the Id. AO due to the intense engagement of the Indian railways in the process. As per this procedure, the material which is going to be utilized was firstly delivered to the Railway Authorities who conducted a thorough inspection for ensuring the quality and quantity check, it was then stored in the railways stock yards for subsequent release to assessee for execution of work as per the daily requirements at the work sites on a daily basis. this Thus, establishing that the assessee had no role in maintenance and storage of the stock required for executing the daily work requirements of the railways as per the contracts and also provides for the verifiability and accountability of all the purchases and consumption of all the major items due to the railway authorities' interference in the process. Moreover, the practice of physical verification of the stock remaining unutilized at the end of the year in the stock yards being also declared on actual verification proves for the accountability of the assessee and the Railway authorities in the case at hand.

For the failure of assessee to provide the muster roll of labourers working at their sites, assessee had earlier explained the difficulties posed by the nature and the geographical limitations of the work sites for non-employment of permanent labourers and the need for the engagement of contract labourers for undertaking the works carried out for the Indian railways in remote areas having lack of access to basic human necessities of food, water and a place to stay making it inefficient and impractical to employ permanent labourers. Sothe works assigned to the assessee's company had been completed by hiring of local labourers who are not only accustomed to the local conditions but also costed less as compared to the permanent labour due to the transportation and local stay arrangements required by the permanent labourers which would have been the additional costsfor the assessee making it very inefficient. Therefore, proving that the work had to be completed by engaging local labour not just by choice but due to the conditions of work carried out. This absence of permanent labourers of the assessee made it very difficult for the assessee to maintain the records of labourers and the expenditure incurred at sites as the payment for the engagement of local labourers was made by the site

in-charge for which the amounts on lump sum basis had been transferred to the work sites which was being utilised accordingly. Since these precise details of the expenditure incurred at sites were not available, auditors had put the remarks in their audit report.

Assessee had explained these reasons at every juncture but they were ignored and adverse inference was drawn against the assessee for upholding the rejection of the assessee's books of accounts and invoking provisions u/s 145(3) of the Act. In view of the above, it is further submitted that the non-submission of muster rolls and certain daily records/stock register was owed to the peculiar features of the business of assessee as stated above, and no adverse view may be taken and trading results declared by assessee may be accepted in the present circumstances.

With respect to the non-submission of books of accounts of contract work done by Sri Lanka Branch of the assessee, it is submitted that the books of accounts pertaining to this overseas branch were maintained at Sri Lanka and therefore, could not be furnished before the Id. AO in India, however, a copy of the audited financial statements of the relevant year under assessment was submitted by the assessee and the profit derived from such audited books of accounts had also been incorporated in the consolidated financial statement of the company and therefore, there was no reason for the Id. AO to doubt the same for exclusion from the assessee's income for tax purposes. Moreover the domain to verify the correctness and completeness of the books of accounts maintained at the branch at Srilanka are subject matter of Srilankan Tax Authorities and assessee is eligible for claim of credit of the taxes paid in Srilanka on such profits as per the DTAA executed between India and Sri Lanka. However, in the instant case the assessee has not claimed any credit for the taxes paid on such profits in Sri Lanka and the action of Id. AO doubting the completeness and correctness of the books of accounts of the branch at Srilanka is outside the scope the Indian Tax authorities.

Grounds of Appeal No. 2& 3:

In these grounds of appeal, the assessee had challenged the action of Id. CIT(A) in upholding the G.P. rate of 7% on turnover from entire receipts (including manufacturing and contracting and also of the contract work executed by the overseas branch at Sri Lanka) without appreciating the fact that Hon'ble ITAT in assessee's own case for A. Y. 2012-13 has accepted the GP rate declared by assessee. Id. CIT(A) has further erred in allowing re-computation of turnover declared by assessee by incorporating therein turnover of assessee's branch situated at Srilanka of Rs.4,72,66,291/- and estimating net profit by applying 7% of turnover even on such turnover (when the assessee

had already incorporated net profit from such branch in its profit & loss account) by grossly ignoring the fact that he can estimate the profits of a business run in India and therefore as submitted above, could not be applied on branch run outside India.

As illustrated in ground of appeal no. 1, the Id. AO and Id. CIT(A) had erroneously rejected the assessee's books of accounts and invoked the provisions of s. 145(3) of the Act and thereafter Id. AO had re-computed the turnover from the contractual activity by incorporating turnover of Sri Lanka branch and had proceeded to apply net profit rate of 8% on entire turnover, resulting into trading addition of Rs. 3,80,85,480/-. The Id. CIT (A) though has allowed the deduction towards depreciation and interest however, has upheld the NP rate at 7% as against 8% applied by Id.AO and 5.99% declared by the assessee.

Contract receipts of Sri Lanka Branch

The Id. CIT (A) in his direction, had erred in not accepting the rate declared by the assessee and provided for inclusion of contractual turnover of Sri Lanka project as the turnover was re-computed on the observation that assessee had declared turnover from contract receipts at Rs.81,77,01,489/- in Profit & Loss a/c as against turnover of Rs.82,99,48,240/-, which also includes turnover of Rs.4,72,66,291/- received from IRCON International and TDS u/s 194C was also deducted. In this regard, during the course of assessment proceedings vide letter, it was explained that net profit of Rs.12,82,234/- was earned on contract executed by Sri Lanka branch for which the payment made by IRCON is reflected in 26AS and since the net income earned by assessee from the Sri Lanka branch is separately credited in the books of the assessee at head office, and also separately disclosed in Profit & Loss a/c thus receipts from IRCON as appearing in 26AS statement in any circumstances be included in the total turnover declared. Since the payments have been made by IRCON in India though the work is executed in Sri Lanka and further the incidence of earning of such income arisen in Sri Lanka only, the same was treated as the turnover of the Sri Lanka branch by the assessee and the net profit from such branch was included in the total profit by crediting the same in the Profit & Loss account. It was also submitted that if the corresponding receipts from IRCON is excluded out of the total receipts as per form 26AS, the remaining figure of contract receipts would be even less than the gross contract receipts declared by the assessee in its Profit & Loss account from Indian operations. For such negative difference it was explained that in some cases TDS has not been deducted though work is executed by Assessee Company and consequent receipts are included in the gross receipts declared. Id. AO has failed to appreciate this fact and wrongly included the receipt of Sri Lanka branch for making

estimation of profit which action is confirmed by Id. CIT(A) by fully ignoring the fact, as submitted above, that the turnover of overseas branch cannot be included in the total turnover for taxing the income earned from Indian operation by the assessee company.

Moreover, while making the estimation of income by including the contract receipts of overseas branch at Sri Lanka, Id.AO as well as Id. CIT(A) has failed to appreciate one more important fact that assessee itself has included the net profit from Sri Lanka branch in the Total income declared by crediting the same in its P&L account, thus again computing the profit on the said contract receipts tantamount to multiple taxation of an income, *First* at the point of occurrence of such income i.e. in Sri Lanka under the relevant Act of that country, *Secondly* by the assessee itself by including the same in its total income and not claiming any tax credit as available to it under DTAA with Srilanka and *Thirdly* by the Id.AO and Id.CIT(A) by including the turnover of the Srilankan branch in gross contract receipt for estimation of income by applying a certain profit percentage. It is therefore humbly prayed that the action of the Id. AO and Id. CIT(A) of including the contract receipts of Sri Lanka branch in the total turnover deserves to be held bad in law and the same deserves to be directed to be reduced from the gross turnover for applying the profit percentage.

Application of Profit rate

In this regard at the outset it is submitted that solely for the lower G.P. any deviation in the same could not be justified as has been laid down by the Hon'ble Rajasthan High Court in the case of "MalaniRamjivanJaggannath Vs. ACIT reported in 316 ITR 120" wherein it was held that merely on the basis of a lower G.P. rate or mere deviation in G.P., trading addition was not justified.

It is an established principle of law that when the books of accounts are rejected and the profit has to be estimated, it should be based on some cogent material and it must be something more than mere suspicion and the same must not be capricious but should have a reasonable nexus to the material available and circumstances of the case as well as the past history of the case. Therefore, without admitting and in the alternative, it is submitted that in the event hon'ble bench is proceeded to confirm the application of the provisions of section 145(3) of the Income Tax Act, 1961, it is humbly prayed that a reasonable profit rate may kindly be applied for which the past history of the assessee's own case may kindly be considered as it is an established principle of law that past history of the assessee is the best guide.

For looking into the past history of the assessee, settled proceedings of the previous years with facts corresponding to the present case in the ruling laid down by Hon'ble Jaipur bench of ITAT, in assessee's own

case for A.Y.2013-14, in ITA No. 571/JP/18 may be looked into wherein it has been held partly in favour of the assessee that:

13. *We have heard the rival contentions and perused the material available on record. It is a settled legal proposition that once the books of accounts have been rejected and have not been disputed as in the instant case, the Assessing Officer is required to estimate the N.P rate in the hands of the assessee. In the instant case, the assessee company has reported segmental results in respect of its manufacturing as well as contract activity wherein it has reported NP rate of 6% in respect of its manufacturing activities and 5.42% in respect of its contractual activities. The AO has applied NP rate of 8% across both the segments and Id CIT(A) has reduced it to 7% in respect of manufacturing activities and has done a lump sum disallowance of Rs 25 lacs in respect of contractual activities. Further, the Id AR has relied upon the decision of the Tribunal in assessee's own case for AY 2009-10 and AY 2012-13 where lumpsum disallowance was sustained at Rs 10 lacs in respect of contractual activities. However, we find that both the Id CIT(A) and the Tribunal have not gone into the issue of reasonable and proper estimate by applying average NP rate based on past history as held by the Hon'ble Jurisdictional High Court in case of CIT vs Gupta K N Construction 116 DTR 377 as well as in various other decisions wherein it has been held that the best guide in the case of fair estimation is the past history of profit rate declared by the assessee which can be applied by the Assessing Officer for estimating such profits in absence of any third party comparable. For the purposes, past one or two year results are not determinative rather the average of the NP rate for the past at least three years which has been accepted or has attained finality is required to be determined and which can act as an appropriate basis for estimating the NP rate for the year under consideration. Given that the assessee has maintained segmental results in respect of its manufacturing and contract activities, we, therefore, direct the Assessing Officer to verify the NP rate for the past years separately for both the segments which has been accepted or has attained finality and compare the same with the segmental NP results declared for the year under consideration and determine the variance. Where the NP rate declared by the assessee is lower than the average NP rate for the past years, apply the average NP rate so determined. In case the NP rate declared by the assessee is higher than the average NP rate for the past years, the NP rate so declared by the assessee should be accepted. In the result, the ground is allowed for statistical purposes.*

Furthermore, the Hon'ble ITAT in A.Y. 2009-10 vide order dated 26.04.2013 in ITA No. 712/JP/12 (Departmental Appeal) and CO No. 01/JP/13 filed by the assessee has though upheld the rejection of books of accounts however, sustained lump sum amount of Rs. 10.00 Lac after considering the defects in the books of accounts as against profit rate of 8% applied by Ld. AO. Further appeal by department against such order of Hon'ble tribunal was dismissed by Hon'ble High Court and sustained the findings of the hon'ble ITAT. In A.Y.2012-13 also, as against trading addition made by Id.AO by applying G P rate, lump sum disallowance of Rs.30 lacs was confirmed by Id. CIT(A). Matter travelled upto ITAT and Hon'ble ITAT, vide order dated 28.11.2016 in ITA No.897 and 997/JP/15 confirmed the disallowance at Rs.10 lacs. The facts and the circumstances as existed in the preceding assessment years and in the year under appeal are the same, and neither the mode nor the manner of maintaining the books of accounts by the assessee has changed, as also the principal i.e. Indian Railway have remained the same. Therefore, Id.CIT(A), while passing orders for A.Y.2014-15 & 2015-16 has also sustained certain ad hoc additions and deleted the balance additions.

Further reliance is placed on the following decisions:

65 DTR 196 CIT V/s. Amrapali Jewels (P) Ltd. (Raj.)
Appeal (High Court). Substantial question of law. Estimation of income and GP rate. It is essentially for the taxing authorities to decide as to what should be percentage rate of GP that should be applied on particular turnover of the assessee. It is a matter of discretion to be exercised on settled practice world. Once the Tribunal accepted the factual explanation of assessee and accordingly, deleted the additions in question made by AO in exercise of its appellate discretionary powers, then it would not involve any substantial question of law.

316 ITR 125 Inani Marbles (Raj.)
That in case of profit application past year history of the assessee is best guide.

99 TTJ 164 Ajay Goyal Vs. ITO (Jd.)
Accounts – Rejection – GP rate – Best guide for estimation of the trading results after rejecting the books is either the past history of the assessee or any other comparable case – The past history of the assessee takes preference over a comparable case – Assessee having declared higher GP rate than the preceding year, its trading results require acceptance and trading addition requires deletion.

With this background, it is submitted that in the assessments completed u/s 143(3) for various previous assessment years also,

provisions of section 145(3) were invoked and income was estimated, which were challenged in appeal and outcome thereof is tabulated as under:

Manufacturing Activity

A.Y.	Declared by Assessee	Applied by AO	Applied by CIT(A)	Applied by ITAT
2007-08	5.91%	7.00%	7.00%	No Appeal
2008-09	6.00%	No Assessment	U/s 143(3)	
2009-10	3.65%	7%	4.25%	4.25%
2012-13	6.76%	8.00%	8.00%	Rate declared by assessee accepted
2013-14	6.00%	8.00%	7.00%	ITAT directed AO to compare average NP rate of preceding 3 years and NP rate declared and to apply higher of the two
2014-15	6.00%	8.00%	50,000/-	No appeal
2015-16	6.00%	8.00%	1,00,000/-	No appeal
2016-17	6.19%	8.00%	Present Appeal	-

Contract Activity

A.Y.	Declared by Assessee	Applied by AO	Applied by CIT(A)	Applied by ITAT
2007-08	6.00%	8.00%	7.00%	7.00%
2009-10	6.01%	8.00%	7.00%	10.00 Lacs Lumpsum out of expenses)
2012-13	5.98%	8.00%	30.00 Lacs (lumpsum out	10.00 Lacs Lumpsum out of

			of expenses)	expenses)
2013-14	6.00%	8.00%	25.00 Lacs	ITAT directed AO to compare average NP rate of preceding 3 years and NP rate declared and to apply higher of the two
2014-15	5.87%	8.00%	10.00 Lacs	No appeal
2015-16	5.75%	8.00%	12.00 Lacs	No appeal
2016-17	5.99%	8.00%	Present Appeal	-

From the perusal of the above tables, it is clear that GP rate for both the activities is in consonance with preceding year. Furthermore, the expenditures incurred by the assessee on the various work sites are most reasonable and moderate looking to the nature of work which are duly supported by the relevant invoices and vouchers maintained for the expenditure claimed. The allegations of the Ld. AO regarding the maintenance of books of accounts are general in nature and no specific defect has been brought on record in support of the allegations made by the Ld. AO. It is thus submitted that the results declared deserves to be accepted and the additions made by applying profit rate of 7% deserves to be deleted.

6. While hearing, the Id. AR of the assessee in addition to the written submission so filed vehemently argued that profit of Sri Lanka project is already reflected in the profit and loss account already on record. There cannot be any further addition on estimation to that profit and turnover already reflected in the accounts. The income so disclosed and the related facts placed on record has not been appreciated by the lower authorities. The

Id. AR of the assessee also submitted that in past also the books of accounts of the assessee were rejected and in respect of the contract receipt, the profit were estimated. That profit so estimated if compared with the current year profit then the assessee has shown the better results. To explain that aspect of the matter he relied upon the following chart;

A.Y.	Declared by Assessee	Applied by AO	Applied by CIT(A)	Applied by ITAT
2007-08	6.00%	8.00%	7.00%	7.00%
2009-10	6.01%	8.00%	7.00%	10.00 Lacs Lumpsum out of expenses)
2012-13	5.98%	8.00%	30.00 Lacs (lumpsum out of expenses)	10.00 Lacs Lumpsum out of expenses)
2013-14	6.00%	8.00%	25.00 Lacs	ITAT directed AO to compare average NP rate of preceding 3 years and NP rate declared and to apply higher of the two
2014-15	5.87%	8.00%	10.00 Lacs	No appeal
2015-16	5.75%	8.00%	12.00 Lacs	No appeal
2016-17	5.99%	8.00%	Present Appeal	-

The Id. AR of the assessee submitted that in the last order of the ITAT last three-year average is accepted by the revenue and therefore, the same may be directed to apply to remain to the

consistent on the finding of the co-ordinate bench in the case of the assessee. Based on this argument, the Id. AR of the assessee submitted that book result declared by the assessee is required to be accepted and no further addition is required to be made in the year under consideration.

7. Per contra, the Id. DR submitted that the assessee has not provided the correct information/ details to the lower authorities. Therefore, there is no force in the arguments of the assessee and based on this contention Id. DR relied upon the orders of the lower authorities.

8. We have heard the rival contentions, perused the material placed on record and gone through the submissions made along with the oral arguments advanced at the time of hearing of the present appeal. The bench noted that the ground no. 2, 3 & 4 related to the issue of estimation of the percentage of profit that is to be applied in the case of the assessee based on the facts that the assessee has disclosed the turnover which is not matching with that of the form no. 26AS. The Id. AO applied the profit at the rate of 8 %, Id. CIT(A) considering the past order in the case of the

assessee estimated at 7 %. Whereas before us the Id. AR of the assessee submitted that the similar issue of estimation of the profit has been decided by the co-ordinate bench in the case of the assessee in ITA no. 571/JP/2018 wherein the co-ordinate bench held as under :

13. We have heard the rival contentions and perused the material available on record. It is a settled legal proposition that once the books of accounts have been rejected and have not been disputed as in the instant case, the Assessing Officer is required to estimate the N.P rate in the hands of the assessee. In the instant case, the assessee company has reported segmental results in respect of its manufacturing as well as contract activity wherein it has reported NP rate of 6% in respect of its manufacturing activities and 5.42% in respect of its contractual activities. The AO has applied NP rate of 8% across both the segments and Id CIT(A) has reduced it to 7% in respect of manufacturing activities and has done a lump sum disallowance of Rs 25 lacs in respect of contractual activities. Further, the Id AR has relied upon the decision of the Tribunal in assessee's own case for AY 2009-10 and AY 2012-13 where lumpsum disallowance was sustained at Rs 10 lacs in respect of contractual activities. However, we find that both the Id CIT(A) and the Tribunal have not gone into the issue of reasonable and proper estimate by applying average NP rate based on past history as held by the Hon'ble Jurisdictional High Court in case of CIT vs Gupta K N Construction 116 DTR 377 as well as in various other decisions wherein it has been held that the best guide in the case of fair estimation is the past history of profit rate declared by the assessee which can be applied by the Assessing Officer for estimating such profits in absence of any third party comparables. For the purposes, past one or two year results are not determinative rather the average of the NP rate for the past at least three years which has been accepted or has attained finality is required to be determined and which can act as an appropriate basis for estimating the NP rate for the year under

consideration. Given that the assessee has maintained segmental results in respect of its manufacturing and contract activities, we, therefore, direct the Assessing Officer to verify the NP rate for the past years separately for both the segments which has been accepted or has attained finality and compare the same with the segmental NP results declared for the year under consideration and determine the variance. Where the NP rate declared by the assessee is lower than the average NP rate for the past years, apply the average NP rate so determined. In case the NP rate declared by the assessee is higher than the average NP rate for the past years, the NP rate so declared by the assessee should be accepted. In the result, the ground is allowed for statistical purposes.

On being consistent to the finding so record we direct the Id. AO to apply last 3-year average rate which in this case is computed as under

2013-14	6.00%
2014-15	5.87%
2015-16	5.75%
Average	5.87 %

As the assessee has already disclosed @ 5.99 % there is no need to further add the estimation of profit and moreover the profit of the Sri Lanka project for which the dispute is raised the profit of which is also forms part of the total profit declared by the assessee. Based on this observation ground no. 2, 3 & 4 raised by the assessee is allowed.

Ground no. 1 challenges the rejection of the book results and applying the provision of section 145(3) of the Act. Since we have allowed the appeal of the assessee on merits, ground no. 1 become educative in nature. Ground no. 4 being general in nature does not require any adjudication.

In the result the appeal of the assessee is allowed.

Order pronounced in the open Court on 29/08/2024.

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:- 29/08/2024.

***Santosh**

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

1. अपीलार्थी / The Appellant- Kiran Infra Engineers Ltd., Jaipur.
2. प्रत्यर्थी / The Respondent- ACIT, Circle-4, Jaipur.
3. आयकर आयुक्त / CIT
4. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, जयपुर / DR, ITAT, Jaipur.
5. गार्ड फाईल / Guard File { ITA No. 494/JPR/2024 }

आदेशानुसार / By order,

सहायक पंजीकार / Asst. Registrar