

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

**Before Shri Waseem Ahmed, Accountant Member &  
Shri Soundararajan K, Judicial Member**

ITA No.348/Coch/2024 :Asst.Year2013-2014  
ITA No.349/Coch/2024 :Asst.Year2014-2015  
ITA No.350/Coch/2024 :Asst.Year2015-2016  
ITA No.360/Coch/2024 :Asst.Year2016-2017  
ITA No.361/Coch/2024 :Asst.Year2017-2018

Centre of Science and Technology for Rural Development Costford, Ayyanthole Thrissur – 680 003. <b>PAN : AAACC9140L.</b>	v.	The Income Tax Officer Ward 1(1) Thrissur.
(Appellant)		(Respondent)

Appellant by:Sri.Vipin K, CA  
Respondent by: Sri.Sanjit Kumar Das, CIT-DR

<b>Date of Hearing : 03.10.2024</b>	<b>Date of Pronouncement : 21.10.2024</b>
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**ORDER**

**Per Bench :**

This bunch of five appeals by the assessee arise out of the orders of the CIT(A)/NFAC, Delhi, all dated 28.02.2024 (except for A.Y. 2014-15, which is dated 29.02.2024) in the proceedings u/s.147 r.w.s. 144 of the Income-tax Act, 1961; in short “the Act” hereinafter, in respect of assessment years 2013-2014 to 2017-2018, respectively.

2. Since identical issues are involved in these appeals, they were heard together and are being disposed of by this consolidated order, for the sake of convenience and brevity.

**First, we take up ITA No.348/Coch/2024 for the Asst.Year 2013-14**

3. In the present case, the Assessing Officer based on the AIR information found that the assessee has carried out various financial transactions but has not filed any income-tax return u/s139 of the Act. Thus, the AO initiated the proceedings u/s148 of the Act vide notice dated 29<sup>th</sup> March 2021. Subsequently, a notice u/s142(1) was issued on 15<sup>th</sup> November 2021 to the assessee for furnishing necessary details. The assessee in response to such notice has made necessary compliances by furnishing the bank passbook, bank statement and books of accounts. However, the AO found that the assessee has neither maintained proper books of account nor got them audited from a qualified Chartered Accountant. As such, the books of account were prepared and audited on 15<sup>th</sup> March 2022 only after issuance of notice u/s142(1) of the Act. The AO also found that the assessee has not furnished the computation of income in response to the notice issued u/s142(1) of the Act. According to the AO, it was also not discernable about the activities carried out by the assessee including the source of funds and its deployment. Accordingly, the AO rejected the books of accounts under the provisions of sec.145(3) of the Act by observing that the profit

of the assessee cannot be determined from the books of accounts. Thus, the AO treated the entire receipt of Rs.20,08,52,765 as unexplained income u/s69A of the Act and added the same to the total income of the assessee.

4. Aggrieved, assessee preferred an appeal to the learned Commissioner of Income-tax (Appeals), who has also upheld the rejection of books of account as made by the AO. However, the Id.CIT(A), after rejecting the books of accounts, has estimated the income at the rate of 10% of the gross receipts. Thus, ground of appeal of the assessee was partly allowed.

5. Being aggrieved by the order of the Id.CIT(A), the assessee is in appeal before us.

6. The learned AR before us filed a brief note explaining various grounds raised before the ITAT, which was supported by various documents along with audited financial statements. The learned AR further contended that the books of accounts were duly audited by the qualified Chartered Accountant as on 30<sup>th</sup>September, 2013, but the same were not uploaded on account of technical issues with the PAN of the assessee, and consequently, the return of income was not filed.

7. It was also submitted that none of the authorities below has pointed out any specific defects in the books of account, which was mandatory before invoking the provisions of sec.145(3) of the Act. As per the Id.AR, the AO, and the

ld.CIT(A) have adopted different basis for rejecting the books of account. As such, the AO formed a belief that the books of account were prepared and got them audited only after issuance of notice u/s142(1) of the Act ignoring the fact that the returns were not filed on account of technical lapses in PAN of the assessee. But the accounts were duly prepared and audited before time.

7. The learned AR further submitted that the ld.CIT(A) rejected the books of account of the assessee in the absence of certain confirmation letters as pointed out by the auditor in his report. According to the ld.AR, in the absence of confirmation letters from the bank, creditors, debtors, that cannot be a basis for rejecting the books of account. Likewise, the ld.AR also contended that the Revenue in the assessment year 2004-2005 has accepted the method of accounting of the assessee being percentage completion method, which is placed at pages 51 to 56 of the details filed by the ld.AR of the assessee. Accordingly, the mismatch between the TDS statement vis-à-vis the income shown in the books of account was mainly on account of method of accounting adopted by the assessee. In view of the above, the ld.AR submitted that the books of account of the assessee should not be rejected, and the assessment should be framed after considering the same. Thus, the ld.AR prayed to restore the issue to the file of the AO for fresh adjudication as per the provisions of law after considering the books of account and audited financial statement of the assessee.

8. On the other hand, the learned Departmental Representative did not raise any objection if the matter is set aside to the file of the AO for fresh adjudication as per the provisions of law.

9. We have heard the rival contentions of both the parties and perused the materials available on record. From the preceding discussion, we note that the income of the assessee has been estimated at the rate of 10% of its receipts after rejecting the books of account under the provisions of sec.145(3) of the Act. The first controversy for our adjudication arises whether the rejection of the books of account in the instant case is proper and within the provisions of sec.145(3) of the Act. As per the provisions of section 145(3) of the Act, the AO is empowered to reject the books of accounts of the assessee and make best judgment assessment in the manner as specified under section 144 of the Act if he is not inter-alia satisfied with the completeness or correctness of the books of accounts of the assessee. Generally, the instances for the rejection of books of account include when entries in respect of certain transactions are altogether omitted or incorrect or where the accounts show an abnormally low rate of profit or where there is an inherent lacuna in the system of accounting. However, the AO cannot use this power as a tool to reject the books of accounts merely due to non-maintenance of the stock register, variation in gross profit and non-furnishing of certain vouchers or its explanation or non-confirmation of sundry creditors. Anyway, before rejecting the books of accounts, the AO must record the

specific reasons for rejecting the books of accounts. Such satisfaction has to be established and substantiated based on facts and figures, which further depends on the circumstances of each case. Mere minor mistakes/typological errors/absence of stock registers/ lower GP may not *ipso facto* amount to incorrectness/incompleteness of accounts in terms of section 145(3) of the Act. But the case would be different where the above-mentioned mistakes are coupled with other findings. However, in the given case, on perusal of the findings of the AO, the books of account were rejected without pointing out any specific infirmity. Merely the books of account were prepared and got them audited on a later date cannot be a ground for rejecting the books of account.

10. Regarding the observations made by the Id.CIT(A), we reiterate that in the absence of confirmation letter from the parties cannot be a ground for rejecting the books of account of the assessee. Likewise, the assessee is a civil contractor and following percentage completion method, which has also been accepted in the assessment year 2004-2005 in the assessment framed u/s143(3) of the Act. The relevant extract from the assessment order for the assessment year 2004-2005 is reproduced as under:

*“Method of Accounting: Service charge on contract work is calculated on percentage of completion method except in the case of works which are funded by Member of Parliament or Member of Legislative Assembly and some other government works allotted by local self governments for which no service charge*

*is eligible. In such cases, profit or loss is recognized when the work is completed.”*

11. In view of the above, prima facie, it appears that the books of account have been rejected by the authorities below without pointing out any infirmity in the so-called books of account and the audited financial statements, except making certain irrelevant bald observations.

12. Nevertheless, at the time of hearing, the learned AR before us submitted that the books of account were rejected by the authorities below without giving proper opportunity to the assessee. Considering the argument of the ld.AR of the assessee and concession extended by the ld. DR of the Revenue, we are inclined to set aside the issue to the file of the AO for fresh adjudication as per the provisions of law. It is directed to the assessee to prepare all the documentary evidence in support of its claim and the assessee should not seek any adjournment without just cause. Hence, the grounds of appeal of the assessee are hereby allowed for statistical purposes.

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13. Since the issues involved in these appeals and the facts and circumstances are *mutatis mutandis* similar to that of ITA No.348/Coch/2024, we set aside the orders of the lower authorities for these years as well and restore the issue to the

file of the Assessing Officer for fresh adjudication, in the above terms.

14. In the result, all the appeals filed by the assessee are allowed for statistical purposes.

Order pronounced on this 21<sup>st</sup> day of October, 2024.

**Sd/-  
(Soundararajan K)  
JUDICIAL MEMBER**

**Sd/-  
(Waseem Ahmed)  
ACCOUNTANT MEMBER**

Cochin ; Dated : 21<sup>st</sup> October, 2024.  
Devadas G\*

Copy to :

1. The Appellant.
2. The Respondent.
3. The CIT Concerned.
4. The DR, ITAT, Cochin.
5. Guard File.

Asst.Registrar/ITAT, Cochin