

आयकर अपीलिय अधिकरण, 'सी' न्यायपीठ, चेन्नई।
**IN THE INCOME TAX APPELLATE TRIBUNAL
'C' BENCH: CHENNAI**

श्री एबी टी. वर्की, न्यायिक सदस्य एवं
श्री जगदीश, लेखा सदस्य के समक्ष

**BEFORE SHRI ABY T. VARKEY, JUDICIAL MEMBER AND
SHRI JAGADISH, ACCOUNTANT MEMBER**

आयकर अपील सं./ITA Nos.282 to 287/Chny/2024
निर्धारणवर्ष/Assessment Years: 2014-15 to 2019-20
&
Cross-Objection Nos.20 to 25/Chny/2024
निर्धारणवर्ष/Assessment Years: 2014-15 to 2019-20

The ACIT, Central Circle-1, Madurai-625 002.	v.	M/s. Alba Industries Ltd., No.32/2, Halls Road, Egmore, Chennai-600 008.
		[PAN: AABCB 5758 J]
(अपीलार्थी/Appellant)		(प्रत्यर्थी/Respondent / Cross-Objector)
Department by	:	Mr. R. Clement Ramesh – Kumar, CIT
Assessee by	:	Mr. S. Sridhar, Advocate
सुनवाईकीतारीख/Date of Hearing	:	04.09.2024
घोषणाकीतारीख /Date of Pronouncement	:	26.11.2024

आदेश / ORDER

PER ABY T. VARKEY, JM:

These appeals preferred by the Revenue and the cross-objections by the assessee are arising out of the appellate orders passed by the Learned Commissioner of Income Tax (Appeals)-19, Chennai [in short 'CIT(A)'] in relation to the assessment orders all dated 27.08.2021 passed u/s 143(3)/153A of the Income-tax Act, 1961 [in short 'the Act'] for the Assessment Years [in short 'AY'] 2014-15 to 2018-19 and the assessment



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order dated 02.09.2021 passed u/s 143(3) of the Act for AY 2019-20. Since the issues involved are common, all the appeals have been heard together. Both the parties also raised similar arguments on these issues. Accordingly, we dispose off all these appeals by this consolidated order for the sake of convenience.

2. Briefly noted the facts of the case are that, the assessee firm is engaged in the business of mining, processing and refining of beach minerals. A search action u/s 132 of the Act upon the assessee and its group concerns on 25.10.2018. In the course of search, several documents & electronic material were found and seized pursuant to which the AO inter alia initiated proceedings u/s 153A of the Act for the relevant AYs 2013-14 to 2018-19. The case of AY 2019-20 being the searched year was selected for scrutiny u/s 143(3) of the Act. From the electronic material seized during the course of search viz., tally data, it was noted that, the assessee was maintaining two sets of accounts, one titled "ori" and other titled "IT". Upon enquiry, the accounts manager of the assessee affirmed in his statement recorded u/s 132(4) of the Act that, the assessee was maintaining parallel sets of accounts for banking & financial purposes and other for income-tax purposes. The AO in the course of assessment inferred that, the accounts maintained under the title "IT" was in form of suppression of income by inflating expenses in the tally data. After calling for explanation from the assessee, the AO observed



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that, the assessee had inflated the expenses and several expenses were not supported by documentary evidences and therefore made disallowances out of several heads of expenses in AYs 2014-15 to 2018-19. The AO also found instances of suppressed turnover in AYs 2017-18 to 2019-20, which was also added to the total income. The summary of additions impugned before us are as follows:-

Asst Year	Disallowance under several heads of expenses	Addition on account of cash expenditure	Addition on account of unaccounted sales
2014-15	29,29,72,070	-	-
2015-16	19,88,67,560	-	-
2016-17	13,33,20,265	-	-
2017-18	38,50,96,064	-	5,91,54,500
2018-19	-	90,00,000	18,92,22,500
2019-20	-	-	9,34,67,388

3. Being aggrieved by the order of the AO, the assessee preferred appeals before the Ld. CIT(A). Having considered the contentions of the assessee in light of the findings of the AO, the Ld. CIT(A) took a view that, the books of accounts of the assessee was not reliable and that the assessee was unable to support the expenses with proper bills and vouchers. The Ld. CIT(A) accordingly rejected the books of accounts. At the same time, according to Id. CIT(A), the disallowance of entire expenses made by the AO was excessive as it was resulting in abnormally



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high profits which was held to be not appropriate in assessee's line of business. Following the order passed by the coordinate bench of this Tribunal in the case of assessee's sister concern M/s Beach Minerals Company for AY 2013-14, which was also engaged in the same line of business, the Ld. CIT(A) estimated the profits of the assessee for the relevant AYs at 2.21%. The Ld. CIT(A) further noted that, the AO's predecessor had made disallowance out of expenses in the original assessments completed u/s 143(3) of the Act for AYs 2014-15 & 2015-16 due to non-verification. He held that, since the income estimated was in excess of the disallowances made in these years, the disallowances made in the assessments u/s 143(3) of the Act stood subsumed and therefore directed that the addition made on account of estimated profits be reduced to the extent of disallowances already made in the original assessments for AYs 2014-15 and 2015-16. The Ld. CIT(A) also deleted the addition made by way of cash payments u/s 69C of the Act. On the issue of suppressed sales, the Ld. CIT(A) directed that the same be added to the reported turnover of the assessee and that the profits of 2.21% be computed on such increased turnover. The Ld. CIT(A) accordingly partly allowed the appeals of the assessee for all the AYs before us. Aggrieved by the Ld. CIT(A)'s order, both the assessee and Revenue are in now in appeal before us.



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4. Assailing the action of the Ld. CIT(A), the Ld. CIT DR primarily reiterated the findings of the AO. He submitted that, the search enquiries had revealed that, the assessee was maintaining parallel sets of accounts, one set of accounts reflecting the actual receipts & expenses and another set of accounts maintained for tax purpose. According to Ld. CIT, DR the expenditure booked in accounts maintained for tax purposes was higher than the original set of accounts resulting in the net profit to be lower. He contended that, by inflating expenses, the assessee was generating unaccounted funds which were used for on-money payments in relation to property purchases. He pointed out that, the assessee was unable to furnish supportings for these expenses and therefore the AO rightly held that these expenses were not genuine. He therefore supported the AO's action of not rejecting the books of accounts but making separate additions based on inflation of expenses, on the basis of seized material. He further submitted that, if the Ld. CIT(A)'s action of rejecting the books of accounts is upheld, then the profits ought to be estimated at 53% viz., the profitability of another assessee, M/s Industrial Minerals Company, which according to AO, was comparable to the assessee. The Ld. CIT, DR further argued that, the Ld. CIT(A) having rejected the books of accounts, ought to still have adjudicated the merits of the disallowance of expenses, which according to him, was made on different footings. Overall therefore, he prayed that the order of Ld. CIT(A) be reversed and the AO's order be



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restored. The Ld. CIT, DR also furnished a written synopsis of his arguments, which has been taken on record.

5. Per contra, the Ld. AR for the assessee supported the order of Ld. CIT(A) and urged that order of the Ld. CIT(A) estimating the profits at 2.21% be upheld. The Ld. AR also filed a written note rebutting the arguments raised by the Ld. CIT, DR. In this written note, the assessee has separately objected to the validity of the income-tax assessment framed u/s 153A of the Act on the ground that, there was no incriminating material unearthed in the course of search.

6. We have heard both the parties, perused the findings of the lower authorities and considered the material placed before us. The legal plea raised by the assessee in all the AYs before us was that, in absence of any incriminating material found in the course of search, the assumption of jurisdiction u/s 153A of the Act by the AO was invalid rendering the impugned orders to be void ab initio. As noted earlier, search was conducted u/s 132 of the Act upon the assessee on 25.10.2018, pursuant to which the AO had reopened income-tax assessments for AYs 2013-14 to 2018-19 u/s 153A of the Act. It is not in dispute that, the assessee was maintaining two sets of books of accounts, which was found in the course of search and also affirmed by the accounts manager in his statement recorded u/s 132(4) of the Act. According to the Revenue, the receipts



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and expenses maintained in tally data titled 'ori' was the actual results of the assessee and that the accounts maintained under title 'IT' was where expenses were inflated to arrive at suppressed profits for income-tax purposes. According to assessee however, the tally data titled 'ori' contained unaudited, incomplete data whereas the tally data 'IT' was finalized on the basis of complete audited data gathered from all locations/sites of the assessee. The fact however remains that, there were two parallel sets of books of accounts being maintained by the assessee which was unearthed in course of search and which suggested discrepancies and also raised prima facie doubt regarding correctness of the books of accounts. Further, evidence regarding suppression of sales was also unearthed from the seized electronic material. According to us therefore, these seized electronic material coupled with the statement given by the accounts manager u/s 132(4) of the Act constituted incriminating material unearthed in the course of search and hence, the preliminary plea of the assessee objecting to the validity of jurisdiction assumed by the AO u/s 153A of the Act for want of incriminating material in all the AYs before us, is hereby rejected.

7. We now come to the merits of the case before us. We first take up the issue regarding the disallowance made out of several heads of expenses by the AO in the AYs 2014-15 to 2017-18 before us. It is noted that, the assessee is engaged in the business of mining, processing and



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refining beach minerals. The books of accounts in relation to this business is noted to have been maintained in the tally software. The assessee however was found to have been maintaining two sets of books of accounts in tally software viz., 'ori' & 'IT'. Upon analysis of the entries found in these parallel books of accounts maintained in the tally software, the AO noted that the expenses debited in the tally accounts maintained for income-tax purposes i.e. 'IT', was comparatively higher than the books maintained under the title 'ori'. The AO also noted that several expenses did not have proper narration or payment details, which led him to believe that they were bogus in nature. Before the Ld. CIT(A), the assessee is noted to have explained that, the books of accounts titled 'ori' were incomplete and unaudited accounts and that the books of accounts titled 'IT' was the complete audited accounts prepared on actual data. The assessee had explained that, due to shortage of proper accounting staff and lack of proper knowledge, the accounting staff would not pass the entries on a day to day basis or would make the entries under wrong ledgers and that the Chartered Accountant would assist in updating the books of accounts in the Tally software and pass the finalization entries only at the fag-end of the statutory time for filing the return of income. The assessee tacitly acknowledged the accounting anomaly in maintaining the books of accounts but contended that these accounting anomalies cannot be treated as inflation of expenses. The assessee is also noted to



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have brought on record several factual aspects regarding the entries passed in the parallel books of accounts, which according to it, showed that there were only accounting anomalies in the books titled 'ori', which were corrected in the final audited books of accounts titled 'IT'. It is noted that, the Ld. CIT(A) took cognizance of the explanation furnished by the assessee and found it to be acceptable. At the same time, the Ld. CIT(A) however noted that, the assessee was still required to reconcile the discrepancies between these parallel set of books of accounts and that such exercise could not be avoided due to various constraints and practical difficulties being faced by the assessee. The Ld. CIT(A) was accordingly of the view that the books of accounts was unreliable and therefore rejected the same. The relevant findings of Ld. CIT(A) taken note of by us in AY 2014-15 (which is verbatim same in AYs 2015-16 to 2017-18), is as under:-

"7.5.8 The undersigned has duly examined the submission made by the AR. There exists no doubt about the maintenance of two sets of books of accounts by the Appellant Company. The AO on the basis of the statement recorded during the course of the search from the Accounts Manager has identified that one is titled as "ori" and another is "IT" which denotes that "Original" and "Income Tax". The AO in the assessment order has made a finding that in the accounts maintained under the title "ori" is the original books of accounts where all the receipts and expenditures have been duly reflected. In the accounts under the title "IT" is the accounts where expenditures have been inflated and the net income is arrived to disclose the same in the return of income filed. However, the Appellant during the course of Appellate proceedings has contended that terming the "original" and "IT" is wrong and the appropriate term is "audited" and "unaudited". The undersigned has considered that the terming is inappropriate to arrive a meaningful



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decision in respect of various issues raised by the Appellant in the grounds of appeal.

7.5.9 The Appellant during the course of Appellate proceedings has submitted a detailed reason for the incomplete and erroneous manner in which the books of accounts were maintained. The main reason for the poor maintenance of accounts was the capturing of primary accounting data in the tally accounts by the operational staff who were not well versed in accounting and the absence of qualified accounting staff at multiple remote locations where the processing plant and warehouses of the Appellant Company is situated. The multiple tally accounts found during the search was due to the fact that making accounting entries at multiple locations. The non-availability of accurate information regarding the transactions at the time making the entries in the tally accounts and omission to make accounting entries contemporaneously led to either absence of narration or incorrect / erroneous narration for the entries made in the books of accounts. The AR also explained that entries were wrongly made by crediting the ledger accounts of group companies while debiting the relevant expenditure account in the books of the Appellant Company in cases where the payments were made by the Appellant Company itself from the borrowings made from such group companies. The AR also explained that while crediting the ledger account of group companies, mistakes occurred in adopting the name of the group company due to similarity in the names of various group companies. The AR also explained that it was unable to reconcile the discrepancies pointed out by the AO during the course of assessment proceedings and also unable to furnish the bills and vouchers in support of the expenditure genuinely incurred by it, in view of passage of time, frequent changes in the staff handling accounts and multiplicity of group companies.

7.5.10 The undersigned has carefully examined the submissions adduced by the AR to substantiate the maintenance of multiple accounts. At the outset there exists no dispute about the turnover returned by the Appellant by both the AO and the Appellant.

7.5.11 In the instant case of the Appellant Company, the undersigned is of the view that the reasons explained by the AR for the discrepancies that occurred in the books of accounts as identified by the AO in the assessment order are reasonable and acceptable having regard to the nature of the business, the remote locations where the business operations are carried out, non-availability of skilled accounting staff in such remote locations, multiplicity of group companies with similar sounding names and frequent intergroup company transactions. Notwithstanding the same, once the discrepancies in the books of accounts have been identified by the AO and the Appellant Company



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was confronted with the same, the Appellant is required to reconcile the said discrepancies and produce bills and vouchers in support of the expenditures in respect of such discrepancies were pointed out by the AO. In cases where the discrepancies were explained to be arising from the crediting of ledger accounts of a wrong group entity instead of the correct group entity while debiting the expenditure incurred by a group entity on behalf of the Appellant, it is necessary on the part of the assessee to identify the name of the correct group entity which incurred the expenditure on behalf of the Appellant and adduce evidence to show that the corresponding entry for the same is found in the ledger account of the Appellant in the books of such correct group entity.

7.5.12 In cases where the discrepancy has been explained to be arising from the erroneous crediting of the ledger account of a group entity while debiting the expenditure account though the expenditure has been met by the Appellant itself out of received on transfer through banking channel from the group entity, it is necessary on the part of the Appellant to identify the relevant transactions of transfer of funds through bank from the group entity and incurring of expenditure by the Appellant from such funds by withdrawing the same from the bank. Moreover, in both the categories of discrepancies, it is necessary for the Appellant to produce the bills and vouchers in support of the relevant expenditure in respect of which the corresponding credit entries were erroneously made in the books of accounts.

7.5.13 In this regard, the Appellant has brought out various constraints being faced by it in carrying out such reconciliation and furnishing the supporting bills and vouchers in the written submission by stating that it is unable to do so at present in view of the passage of time and frequent changes in the accounting staff working with the Appellant. It is considered that the said submission of the Appellant cannot be disregarded in view of the genuineness of the practical difficulties expressed by the Appellant. At the same time, it is also not possible to accept the correctness of the claims in the books of account unless the discrepancies pointed out in the Assessment Order are subjected to necessary reconciliation.

7.5.14 In this context, it is pertinent to observe that this is not a case where the Appellant is attempting to give incorrect reasons for its inability to produce the supporting bills and vouchers. Having regard to the discussion made in the preceding paragraphs, it needs to be observed that there is no dispute regarding the fact that the books of account of the Appellant for the assessment years under consideration are erroneous and inaccurate. Though the Appellant is unable to reconcile the discrepancies / inaccuracies by furnishing the correct details of the relevant transactions along with the supporting bills and



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vouchers the same cannot be taken as a reason to disallow the expenditure when the turnover is not disputed.

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7.5.17 In this background, it is considered that the books of accounts of the Appellant Company, which are inaccurate, do not facilitate arriving at true and correct profits of the Appellant Company and they are required to be rejected by invoking the provisions of Section 145(3) of the Act. Accordingly, the books of accounts of the Appellant Company for the FY 2013-14 are hereby rejected. Thus, having rejected the books of accounts, the business income of the Appellant Company is required to be estimated under the said provisions, consequent to rejection of the books of accounts."

8. After holding so, the Ld. CIT(A) is noted to have analyzed the profitability of the assessee and noted that, if the entire disallowance made by the AO is upheld, then it would give an incongruous picture in as much as the profitability from this business would be abnormally high which may range from as 32% to 45%, which was not appropriate in the facts and circumstances of the case. He thus held that, although there would indeed be discrepancies in the books of accounts as highlighted by the AO but that cannot result in assessee actually making profit in excess of 32% of the turnover. The Ld. CIT(A) is noted to have accordingly estimated the profits at 2.21% of the turnover of the assessee. The relevant findings taken note of by us is as under:-

"7.5.15 Even though the claims of the Appellant in the books of account cannot be accepted in toto in the face of the discrepancies brought out by the AO in the Assessment Order, making disallowance of the major portion of expenditure in respect of which such discrepancies were noticed is also not appropriate to the facts of the case. On making disallowance of entire expenditure in respect of which the discrepancies were found as sought to be done by the AO in the Assessment Order,



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the total income of the Appellant was assessed at Rs.29,31,66,835/- for the AY 2014-15 as against the turnover Rs.70,41,20,426/- for the FY 2013-14 relevant to the AY 2014-15.

7.5.16 The said assessment has resulted in impliedly considering the net profit of the Appellant at 41.64%, for the FY 2013-14, which is abnormally high in the line of business of the Appellant Company and not appropriate to the facts and circumstances of the case. It may be appreciated that the said abnormality in the profit margin is indicative of the fact that the discrepancies in the accounts pointed out by the AO cannot be considered to be arising wholly from wrong claims of expenditure by the Appellant. As per the provisions of section 250 and 251 of the Act, the Commissioner of Income Tax Appeals, is entitled to make such enquiry as he thinks fit and may pass such other order in Appeal as he thinks fit. Thus, the undersigned while disposing of the appeal u/s 250 of the Act is entitled to enter into the shoes of the Assessing Officer and decide the issue.

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7.5.18 Now, the issue before the undersigned is that, what can be the reasonable profit that can be attributable to the Appellant Company in conduct of business. The Appellant Company in the return of income filed has admitted an amount of Rs.1,94,766/- for the FY 2013-14, relevant to the AY 2014-15 which is a mere 0.03%.

7.5.19 At this juncture it is significant to bring on record that in such circumstance, my predecessor in the case of the Appellant's Sister concern M/s. Beach Mineraals Company vide Appellate Order in ITA No. 669/2021-22 dated 27.02.2023 for the AY 2013-14 where the facts and circumstances were similar, has held that 30% of the turnover can be the appropriate income of the Appellant Firm. The said order was taken up before the Hon'ble ITAT Chennai both by the assessee and the revenue. The Hon'ble ITAT, Chennai vide its order in ITA No 366/Chny/2023 dated 09.08.2023 has upheld the decision of my predecessor in rejecting the books of accounts and restricted the net profit ratio @ 2.21% on sales turnover for estimating the same while determining the total business income of the sister concern i.e. M/s. Beach Mineraals Company.

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7.5.23 The undersigned to have the judicial discipline, by respectfully following the decision of the Hon'ble ITAT Chennai in the case of M/s. Beach Minerals Company for the AY 2013-14, (which is a sister concern of the Appellant's Company and in same line of business), the net profit



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ratio of the Appellant Firm is taken @ 2.21% on the sales turnover in determining the business income of the Appellant Company for the year under consideration. Accordingly, the AO is hereby directed to compute the business income (Net Profit) of the Appellant @ 2.21% of the turnover for assessment year under consideration.

7.5.24 Further the AO while determining the taxable income of the Appellant Company is directed to consider the interest receipts and commission receipts credited to the P&L account separately for assessment year 2014-15 respectively. Thus, the various grounds raised upon these issues are treated partly allowed.”

9. Having perused these findings in light of the facts on record, it is noted that, identical facts and circumstances were also involved in the case of assessee's sister concern, M/s Beach Minerals Company, which was also in the same line of business and was also searched along with the assessee. Like the assessee, two parallel books of accounts were unearthed from the electronic data viz., tally software titled 'ori' and 'IT'. Upon comparison, the AO noted that, the accounts titled 'IT' were the accounts maintained for income-tax purposes wherein the expenses debited were higher than the expenses found debited in the books maintained in 'ori' and therefore made disallowance on account of inflated expenses. On appeal, the coordinate bench of this Tribunal upheld the Ld. CIT(A)'s action of rejecting the books of accounts holding it to be unreliable but estimated the profits from this business at 2.21% as opposed to 0.47% returned by the assessee. The relevant findings taken note of by us is as under:-



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"14. Having heard the rival contentions, carefully considered the submissions, and perused the material placed on record. The case of the assessee firm for the Ay 2013-14 was assessed by the department u/s 143(3) vide order dated 08.03.2016, thereafter upon a search action u/s 132 of the Act on BMC Group on 25.10.2018 the same was reassessed u/s 143(3) rws 153A vide order dated 26.08.2021. During the course of search, it was found that the assessee firm was maintaining parallel sets of accounts. Evidences were gathered by the search team in the form disks, laptops. Loose sheets pertaining to unaccounted receipts/payments, deposition of key persons etc. Statement of Shri P Senthil Muthu Kumar, Accounts Manager of the assessee firm were taken, according to the said statements Modus Operandi of accounting of the assessee firm was scripted by the Ld AO. Exhaustive workings a/w screen shots of the ledger accounts were produced in the Assessment Order by the Ld AO and disallowances were made. Aggrieved by the additions, the assessee agitated on the issues before the Ld CIT(A). Ld CIT (A), without touching the merits of individual additions, have observed that the reasons explained by the appellant for the discrepancies that occurred in the books of accounts as identified by the AO in the assessment order are reasonable and acceptable having regard to the nature of business, the remote locations where the business operations are carried on, the non-availability of skilled accounting staff in such remote locations, multiplicity of group companies with similar sounding names and frequent inter-group company transactions. It is further noticed by the Ld CIT(A) that various discrepancies as have been identified by the AO and the appellant was confronted with the same, the appellant is required to reconcile the said discrepancies. However, since the appellant has brought out various constraints in carrying out such reconciliation and furnishing the supporting bills and vouchers in the written submission by stating that it is unable to do so at present in view of the passage of time and frequent changes in the accounting staff working with the appellant. It is considered by the Ld CIT(A) that the said submission of the appellant cannot be disregarded in view of the genuineness of the practical difficulties expressed by the appellant. At the same time, it is not possible to accept the correctness of the claims in the books of account unless the discrepancies pointed out in the Assessment Order are subjected to necessary reconciliation. Ld CIT(A) decided the appeal with the following observations:

43. In this context, it is pertinent to observe that this is not a case where the appellant is attempting to give incorrect reasons for its inability to produce the supporting bills and vouchers. The case of the appellant for the instant Assessment Year was subjected to regular scrutiny assessment u/s 143(3) vide order dated 08.03.2016. As evident from the contents of the said Assessment



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Order, the AD required the appellant to produce the bills and vouchers in support of the expenditure debited towards mining production and processing and other expenses during the course of the said Assessment proceedings. The appellant produced the supporting bills and vouchers before the AO in response to the same. The AO stated in the Assessment Order that he carried out the verification of the said bills and vouchers and he found that the vouchers to the extent of Rs.2.80 Crores were beyond proper verification and that the claim of the appellant to the said extent was not fully proved. The AD therefore made disallowance of production and processing expenses to the tune of Rs.2.80 Crores in the original Assessment Order. The facts narrated in the said Assessment Order clearly bring out the fact that the appellant maintained the bills and vouchers in support of the expenditure debited to the P&L Account and that the same were verified by the AO during the original Assessment proceedings.

44. Having regard to the discussion made in the preceding paragraphs, it needs to be observed that there is no dispute regarding the fact that the books of account of the Appellant for the Assessment Year under consideration are erroneous and inaccurate. Though the appellant is unable to reconcile the discrepancies/ inaccuracies by furnishing the correct details of the relevant transactions along with the supporting bills and vouchers, the furnishing of the bills and vouchers and their verification by the AO during the original assessment proceedings cannot be lost sight of. Though the claims of the appellant in the books of account cannot be accepted in toto in the face of the discrepancies brought out by the AD in the impugned Assessment Order, making disallowance of the entire expenditure in respect of which such discrepancies were noticed is also not appropriate in the facts of the case keeping in view the verification made during the original Assessment proceedings. On making disallowance of entire expenditure in respect of which the discrepancies were found as sought to be done by the AO in the impugned Assessment Order, the total income of the appellant was assessed at Rs.104.73 Crores as against the sales turnover of Rs.183.35 Crores. The said assessment has resulted in impliedly considering the net profit of the appellant at 57.12%, which is abnormally high in any line of business. The said abnormality in the profit margin itself is indicative of the fact that the discrepancies in the accounts pointed out by the AO cannot be considered to be arising wholly from wrong claims of expenditure by the appellant.

45. In view of the said reasons, it is considered that the books of accounts of the appellant, which are inaccurate, do not facilitate



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arriving at true and correct profits of the appellant and they are required to be rejected by invoking the provisions of Section 145(3) of the Act. It is held that the business income of the appellant is required to be estimated under the said provisions, consequent to rejection of the books of account.

46. For the purpose of estimating the business income, it is considered that the business income admitted by the appellant itself in its return of income for AY 2011-12 before claiming exemption of the said income u/s.108 of the Act constitutes a fair, logical and reasonable indicator of true and correct profits of the appellant. Since the appellant claimed exemption u/s.108 in the said Assessment Year, it is reasonable to infer that the business income disclosed in the return of income for the said Assessment Year represents the correct profits of the appellant for the said year. The said assessment year is the last year of claiming exemption u/s 108 by the appellant and there is only one intervening year between the said assessment year and the instant assessment year. Having regard to the same, I am of the considered view that the net profit margin of 29.77% disclosed by the appellant in the said AY 2011-12 is a reliable indicator of the true profits of the appellant for the instant assessment year also. Hence, I consider it appropriate to estimate the net profit margin for the instant Assessment Year at 30% of the sales turnover for the purpose of estimating the business income of the appellant. The AO is accordingly directed to determine the business income of the appellant at 30% of the sales turnover of Rs.183.35 crores. Since the business income is being determined on estimate basis, it is held that the individual additions made to the income in the original Assessment Order dated 08.03.2016 get subsumed in the said estimated business income and the same not required to be considered separately. The AO is directed to consider the interest receipts of Rs.14,11,587/- and commission receipts of Rs.6,91,482/- credited to the P&L account separately apart from the estimated business income while determining the total income. The relevant grounds of appeal are therefore partly allowed."

15. On perusal of the aforesaid observation of the Ld CIT(A), it is evident that the case of the assessee was subjected to assessment for the instant year under section 143(3) of the act and that all the necessary vouchers documents and submissions pertaining to expenditure debited towards mining, production and processing and other expenses during the course of the said Assessment proceedings were submitted by the assessee as required by the Ld AO. Such evidence were duly verified by the AO, thus have made a disallowance of Rs. 2.80 Crore under the head production and processing expenses in



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the original Assessment Order. It is therefore well established that the appellant had maintained the bills and vouchers in support of the expenditure debited to the P & L Account and that the same were verified by the AO during the original Assessment proceedings. It is further observed by the Ld CIT(A) that in spite of the fact that the assessee was unable to reconcile the discrepancies/ inaccuracies by furnishing the correct details of relevant transactions along with the supporting bills and vouchers, no dispute with regard to books of accounts maintained by the assessee were noticed by the Ld AO. In such a situation, considering the additions made by Ld AO the total assessed income of the assessee was computed at Rs. 104.73/- Crores, whereas the total sales turnover, which was untouched and remain undisputed was Rs. 183.25 Crores, thus the resultant % of Net Profit was arrived at 57.12%, this % was considered as absolutely abnormal and high by the Ld CIT(A). Ld CIT(A) has very rightly commented that such a huge profit margin is abnormally high in any line of business and thus indicative that the discrepancies pointed out in the accounts by the Ld AO cannot be considered to be arising wholly from the wrong claims of expenditure by the assessee/appellant. Ld CIT(A) thus after considering the books of accounts of the assessee firm, as inaccurate which do not facilitate to arrive at true and correct profit of the appellant have rejected the same by invoking the provisions of section 145(3) of the Act. Under the facts of the present case, we approve the observation of Ld CIT(A) relating to rejection of the books of assessee and uphold the same. Ld CIT(A) consequently, estimated the profit of the firm @30% of the sale turnover, the basis for 30% was returned income of AY 2011-12, wherein the assessee has earned a profit of 29.77% before claiming exemption u/s 10B of the Act. On perusal of the order of Ld CIT(A), it is not transpired that while estimating the profit taking the base year as AY 2011-12 (FY 2010-11), whether this fact was confronted to the assessee firm or not to submit their objections or confirmation on the same. However, to demonstrate the actual ratio of profit and its comparability with the year under consideration (FY 2012-13, AY2013-14), Ld AR of the assessee firm had submitted a chart of production for the financial years 2010-11 to 2016-17, the same extracted as under:-

BEACH MINERALS COMPANY

June 2023

Financial Year	Garnet		Ilmenite		Total	
	Qty	Value	Qty	Value	Qty	Value
2010-11	24500	158152677	0	0	24500	158,152,677
2011-12	57856	408896991	23184	332034863	81040	740,931,854



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2012-13	84091	837603370	60190	995980129	144281	1,833,583,499
2013-14	55288	659312080	40992	514625364	96280	1,173,937,444
2014-15	52550	504126598	41500	518636498	94050	1,022,763,096
2015-16	43000	374261914	19800	247445847	62800	621,707,761
2016-17	3312	28831737	12600	157465539	15912	186,297,276

16. On perusal of the aforesaid chart, it is evident that the ratio of profit for the AY 2011-12 (FY 2010-11/base year) is not comparable with the relevant AY 2013-14 (FY 2012-13/relevant year), since there was a mismatch in the production mix (quantity of minerals extracted) for the FY 2010-11 and FY 2012-13, wherein quantity of "ilmenite" is "O"(zero) in the base years as compared to 60190 units in the relevant year. It is the submission of Led AR that the rate of profit is different for different minerals extracted by the firm. When the basis for reasonableness i.e. the profit of the AY 2011-12, which was considered as reliable indicator by the Ld CIT(A) itself is incomparable for the reason that the production mix for the base year is different than that of the years under consideration. Now the question arises is that, what is the reasonable and correct ratio, which should be applied while estimating the profit when books of accounts are rejected. In our thoughtful consideration, we find it to be most suitable and reasonable to apply the average profits earned by the assessee itself in the comparable years under which the business activities of the assessee firm were identical. We, therefore, are of the considered opinion that average percentage of profit for the FY 2011-12 to 2016-17 (except FY 2012-13) which comes to 0.57% (average of $0.91+0.09+0.37+0.68+0.81$) shall be the most reasonable percentage of profit to be applied on the sales turnover of the assessee for AY 2013-14. However, since the assessment u/s 143(3), wherein certain additions were made, resulting the profit of the assessee assessed at Rs. 4.04 crore i.e. 2.21% of total sales turnover of Rs. 183.35 Crores. We find it appropriate to apply the rate of 2.21% on the sales turnover of the assessee firm to estimate its net profit margin from business of assessee for the AY 2013-14. Income from Interest and commission to added separately as directed by the order of Ld CIT(A).

17. In terms of our aforesaid observations, we find no infirmity in the order of Ld CIT(A) apart from rate of profit adopted for estimation of net profit margin while rejecting books of accounts u/s 145(3) of the



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Act, thus, we modify the order of Ld CIT(A) by scaling down the percentage of net profit margin to 2.21% on sales turnover for estimating the same while determining the total assessable income. Ld AO is directed to work out the estimated income from business accordingly. In the result appeal of the assessee is partly allowed.”

10. Having perused the above, we find that the Ld. CIT(A) had rightly followed the ratio decidendi laid down in the above decision (supra) for rejecting the books of accounts and estimating the profits of the assessee at 2.21%, as the facts involved were similar. Accordingly, we do not see any reason to take a different view in the present case before us. Likewise, the argument of the Ld. CIT, DR urging that the net profit rate ought to be adopted at 53% instead of 2.21% as estimated by this Tribunal in assessee’s sister concern (supra) cannot be countenanced. Also, we note that, the entity viz., Industrial Mineral Company urged by the Revenue to be comparable to the assessee, was demonstrated before us to be in different line of business and hence, this entity identified by the Revenue is held to be not comparable.

11. The Ld. CIT, DR had further additionally urged that, even if the books of accounts are rejected, the disallowance of items of expenses ought to be separately adjudicated and decided upon as to whether it is to be separately added to the estimated business income. According to us however, once the books of account are rejected by invoking the provisions of section 145 of the Act and the income is estimated to the



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best of judgment as per the provisions of section 144 of the Act, the said estimate is made in substitution of the business income that is to be computed in accordance with the provisions contained in sections 30 to 43D as laid down in section 29 of the Act. Consequently, all the deductions which are referred to in sections 30 to 43D of the Act are deemed to have been taken into account while making such an estimate. Useful reference in this regard may be made to the decision of Hon'ble Andhra Pradesh High Court in the case of **Indwell Constructions Vs. CIT (232 ITR 776)** and Hon'ble Allahabad High Court in the case of **CIT vs Banwari Lal Banshidhar (229 ITR 229)**. For these reasons, we do not agree with this plea of the Revenue.

12. Another argument of the Ld. CIT, DR was that, the income estimated upon rejection of books of accounts ought to be added over and above the addition/disallowance already made in the original assessments which were completed u/s 143(3) of the Act in AYs 2014-15 & 2015-16. From the facts placed before us, it is noted that the AO's predecessor had made ad-hoc disallowance of Rs.90 lacs & Rs.40 lacs out of expenses for want of verification in AYs 2014-15 and 2015-16 respectively. In the preceding paragraphs, we have already upheld the Ld. CIT(A)'s action of rejecting the books of accounts for being unreliable and upheld the estimation of the total income with reference to the turnover of the assessee. Having done so, we find that the Ld. CIT(A) had



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rightly held that, the total income so estimated ought to subsume the disallowances made in the original assessment and if the disallowance made in original assessment is added to the total income so estimated, then it would effectively amount to double addition. In our considered view also, the net addition to be made to the income originally assessed is to be quantified in such a manner to ensure that the total income so computed upon making such addition shall result in the same figure as estimated upon rejection of the books viz., 2.21% of the turnover, in the facts of the present case. For these reasons, this plea of the Revenue is also rejected.

13. In light of the above, we do not see any infirmity in the order of the Ld. CIT(A) in rejecting the books of accounts and estimating the total income of the assessee. We accordingly uphold the same. Since this issue involved in the lead case of AY 2014-15 is common across AYs 2015-16 to 2017-18, our foregoing findings shall be followed mutatis mutandis in the appeals for AY 2015-16 to 2017-18 as well.

14. Now we take up the remaining two issues impugned before us, being addition on account of unaccounted sales and unexplained expenditure. Since both these issues are inter-related, they are being taken up together. The relevant facts as noted by us are that, the AO had unearthed details of unaccounted sales in the electronic material seized in



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the course of search. According to the assessee, these sales related to their group entity, M/s Blue Metal Company Pvt Ltd, who had accounted the same in their books of accounts. The AO however recorded a categorical finding that these sales were not found credited in the books of M/s Blue Metal Company Pvt Ltd. The AO therefore held that, these amounts represented the unaccounted sales of the assessee which was not offered to tax and accordingly added the entire sum to the total income of the assessee in the respective AYs 2017-18 to 2019-20. The AO further noted from the seized material that, the assessee had also incurred unaccounted expenses aggregating to Rs.90,00,000/- which was paid in cash to M/s Tulsyan NEC Ltd towards packing expenditure in AY 2017-18. The aforesaid sum was separately added by way of unaccounted expenditure. Aggrieved by these additions, the assessee went in appeal before the Ld. CIT(A) who partly deleted the same. Against such action of Ld. CIT(A), both the assessee and Revenue are in appeal before us.

15. Heard both the parties. We find that, the Ld. CIT(A) took note of the above narrated facts and found that, the assessee was unable to dislodge the AO's finding that, the sales in question were neither recorded in the books of assessee or M/s Blue Metals Company Pvt Ltd. Before us also, the assessee was unable to bring any material to record to disprove the AO's case that, these were unaccounted sales. In light of the foregoing, the limited issue in dispute before us whether the entire sales value has



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to be considered as income or only the profit element embedded therein ought to be taxed. Having already rejected the books of accounts of the assessee, it is noted that the Ld. CIT(A) directed the AO to increase the reported turnover by the impugned unaccounted sales and estimate the profit at the rate of 2.21% on such increased turnover. We find this action of the Ld. CIT(A) to be supported by the decision of the Hon'ble Gujarat High Court in the case of **CIT Vs President Industries (258 ITR 654)** wherein it was held that the amount of receipts/ sales by itself would not represent the income of the assessee. For this, we gainfully rely on the following findings of the Hon'ble High Court :-

"3. Having perused the assessment order made by the Assessing Officer, the order made by the Commissioner (Appeals) and the Tribunal, we are satisfied that the Tribunal was justified in rejecting the application under section 256(1). It cannot be a matter of an argument that the amount of sales by itself cannot represent the income of the assessee who has not disclosed the sales. The sales only represent the price received by the seller of the goods for the acquisition of which it has already incurred the cost. It is the realisation of excess over the cost incurred that only forms part of the profit included in the consideration of sales. Therefore, unless there is a finding to the effect that investment by way of incurring cost in acquiring goods which have been sold has been made by the assessee and that has also not been disclosed, the question, whether entire sum of undisclosed sale proceeds can be treated as income of the relevant assessment year answers by itself in the negative. The record goes to show that there is no finding nor any material has been referred to about the suppression of investment in acquiring the goods which have been found subject of undisclosed sales."

16. We also gainfully refer to the decisions of the Hon'ble Gujarat High Court in the cases of **PCIT Vs. Anupam Organiser (2020) (9) TMI**



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973 & CIT Vs. Abhishek Corporation (158 CTR 374) and Hon'ble Bombay High Court in the case of **CIT Vs Sumer Builders (ITA No. 1849 of 2011)**. In all these decisions, it was held that the entire unaccounted sale proceeds cannot be brought to tax but only the profit element embedded therein. On this aspect, it is noted that the coordinate Bench of Tribunal in the case of **ITO Vs. Anand Builders**, on similar circumstances had held that, only the profit element of the unaccounted sales could be taxed in place of the entire unaccounted receipts since there is always the unaccounted payments. The above decision of this Tribunal is noted to have been upheld by the Hon'ble Gujarat High Court and the SLP filed against the judgment before the Supreme was also dismissed and reported in 265 ITR 37. The relevant findings of Hon'ble Apex Court is noted to be as follows:

"Dismissed the special leave petition filed by the Department against the judgment dated January 21, 2002 of the Gujarat High Court in ITA No. 52 of 2002 whereby the High Court dismissed the Department's appeal on the ground that no substantial question of law arose. The question of law raised in the appeal before the High Court was whether the Appellate Tribunal's finding while directing the Assessing Officer to tax only 8 per cent of the unaccounted on money receipt instead of fully taxing it, in the absence of any evidence of expenditure, could not be stated to be perverse."

17. Following these decisions (supra), we do not see any reason to interfere with the Ld. CIT(A)'s finding directing the AO to assess the profit element of 2.21% embedded in these unaccounted sales.



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18. Apropos the addition made on account of unexplained expenditure, the AO had observed that, the packing expenditure in question was not found debited in the books of accounts. Hence, the inference which emanates is that, the cash payment in question was made outside the books of accounts. The Ld. AR of the assessee explained to us that, if it is held that the payment was made outside the books of accounts, then the unaccounted sales aggregating to Rs.1892.22 lacs identified by the AO for the relevant year ought to have been telescoped by way of source of such unaccounted expenditure. Having considered the foregoing, we find ourselves in agreement with the Ld. AR that, the unaccounted sale proceeds could be telescoped towards the source of such unaccounted expenditure and therefore no separate addition on this account was permissible. This view is supported by the decision of **ITO Vs Anand Builders (supra)** wherein the Hon'ble Apex Court approved the findings of the Tribunal that, the assessee would incur unaccounted payments out of unaccounted receipts and that instead of entire sum being added, it is the profit element from this unaccounted business which is to be brought to tax. In the facts of the present case, we have already upheld the estimation of profits from the unaccounted business above, i.e., net of sales and purchases/expenses, and thus the unexplained expenditure in question stands subsumed in the estimation exercise. In our considered view therefore, no separate addition on this count was warranted. For



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these reasons, we uphold the Ld. CIT(A)'s action of deleting the impugned addition.

19. Since the issue raised by the assessee and revenue in captioned cross appeals under various grounds have been dealt with, in terms of our observations herein above, contentions, if any, which were not argued or dealt with became academic and is thus not adjudicated separately.

20. Accordingly, having regard to our above findings, all the appeals of the assessee and Revenue stands dismissed.

Order pronounced on the 26th day of November, 2024, in Chennai.

Sd/-

(जगदीश)

(JAGADISH)

लेखासदस्य/**ACCOUNTANT MEMBER**

Sd/-

(एबी टी. वर्की)

(ABY T. VARKEY)

न्यायिक सदस्य/**JUDICIAL MEMBER**

चेन्नई/Chennai,

दिनांक/Dated: 26th November, 2024.

TLN, Sr.PS

आदेश की प्रतिलिपि अग्रेषित /Copy to:

1. अपीलार्थी/Appellant
2. प्रत्यर्थी/Respondent
3. आयकरआयुक्त/CIT, Chennai / Madurai / Salem / Coimbatore.
4. विभागीयप्रतिनिधि/DR
5. गार्डफाईल/GF