

**IN THE INCOME TAX APPELLATE TRIBUNAL  
JODHPUR BENCH (Virtual) JODHPUR**

**BEFORE SHRI RAJPAL YADAV, HON'BLE VICE PRESIDENT AND  
DR. MITHA LAL MEENA, HON'BLÉ ACCOUNTANT MEMBER**

**ITA No. 638 & 639/Jodh/2024  
(Assessment Year 2018-19 & 2019-20)**

<b>Rais Ahmed Mewafarosh, H-28, RIICO Industrial Area, Dungapur – 314001. PANNo. AKFPM6205J</b>		<b>DCIT, Central Circle-2, Udaipur.</b>
<b>Assessee by</b>	<b>Shri Shrawan Kumar Gupta, Advocate.</b>	
<b>Revenue by</b>	<b>Shri Karni Dan, Addl. CIT-DR.</b>	
<b>Date of Hearing</b>	<b>01.05.2025.</b>	
<b>Date of Pronouncement</b>	<b>27 .05.2025.</b>	

**ORDER**

**PER DR. MITHA LAL MEENA, A.M.:**

Both these appeals by the assessee, are directed against the orders of the learned Commissioner of Income Tax, Appeal Udaipur -2 [hereinafter referred as “the CIT(A)”] even dated 26/06/2024 in respect with Assessment Year 2018-19 and 2019-20.

2. There are common issues raised on identical facts in both these appeal by the assessee, regarding rejection of books of account by invoking section 145(3) of the Act in contrary to provisions of law, trading addition by applying abnormal higher G.P. rate of 20.92% as against 12.24% shown by the assessee ignoring the settled principles of law, and that charged tax at higher rate u/s 115BBE of the



Act. Therefore, both these appeals were heard together and adjudicated by this common order for brevity.

3. Briefly the facts as per record are taken from ITA No. ITA No. 639/Jodh/2024 in respect with Assessment Year 2019-20 as a lead case. The assessee is engaged in the wholesale business of fruits trading of Mango, grapes, banana etc.. He has filed his return of income declaring the total income of Rs. 17,50,540/- on 31.10.2019. Subsequently, in the case of assessee, a survey u/s 133A of the Act was carried out on 31.10.2018. Consequent thereto the case was selected for scrutiny and notice u/s 143(2) was issued on dt. 29.09.2020 and 142(1) was issued on 24.12.2020 and 05.02.2021. The AO has passed the assessment order under section 143(3) of the Income Tax Act 1961 by determining the total income at Rs. 87,70,350 with an addition of ₹70,19,808/- on account of undisclosed income and invoking provisions of section 115 BBE of Income Tax Act 1961.

4. Being aggrieved with the assessment order, the appellant has preferred appeal before the ld. CIT appeal who has confirmed the addition by endorsing the finding of the AO by observing that during the assessment proceedings, the assessee has failed to produce the books of account and details even after given final opportunity of being heard in the form of show cause notice dated 11/02/2021. Therefore, the books results shown by the assessee is not reliable and true and correct and hence same is rejected under section 145(3) of the Act. As



regards to applicability of GP rate of 20.92%, the CIT (A) observed that the case of the son of the assessee been taken as comparable case and accordingly addition made by applying the aforesaid higher GP rate has been upheld.

5. The Ld. Counsel for the assessee has submitted that the Ld. CIT (A) was not justified in confirming the action of AO in Invoking the provisions of section 145(3) of the act, being in contradiction to the provisions of law and facts of the case. He further submitted that the Ld. CIT (A) erred in confirming the trading addition of ₹70,19,808/- by applying the higher GP rate of 20.92% as against 12.24% shown by the assessee by not considering the real facts, material available record and written submissions. Thus, the impugned order passed by the Ld. CIT(A) is completely contrary to the provisions of law, facts of the case and as such, it is not in conformity with the law. The AR submitted that there was no incriminating material found from the business premises of the assessee either during the course of the survey u/s 133A or post survey enquiries or even no material has been brought on record by the AO to point out any discrepancy in the books of accounts for invoking provisions of section 145(3) of the act or applicability of alleged higher Gross Profit rates during the course of scrutiny assessment. The AR contended that the addition has been made by the AO and confirmed by the Ld. CIT (A) based on presumption and assumption which is bad and illegal in the eyes of law. In support of its contentions, the AR has filed a paper book to support trading results shown by the assessee, comprising of the



statement of trading results, past history and citations of 50 pages which is placed on record. He pleaded that in the interest of justice, the trading result shown by the assessee may be accepted.

6. Per contra, the Ld. DR stands by the impugned order.

7. Heard both the sides, perused material on record, impugned order and written submission filed before us. Admittedly, the department did not find any incriminating material during the course of survey u/s 133A of the Act. It is seen that even the AO failed to point out any discrepancy either in the books of account maintained by the assessee or any valid reason for adopting higher GP rate ignoring the trading result based on past history of the assessee or any comparable case in terms of comparable such as volume of Turn Over, and type & nature of fruits traded, by way of bringing any information on record, either in the post survey enquiries or verification during the course of assessment proceeding.

8. In the present case, the AO has invoked Section 145 (3) based on the misconception of law without appreciating the facts and pointing out any discrepancy in the books of account. The provisions of section u/s 145 stood amended by the Finance Act 1999-00 w.e.f. Assessment Year 2000-01 where under the amended law u/s 145(3) of the Act, the AO is required to satisfy three conditions to Invoke the said provisions as follows:



- (i) Where the AO is not satisfied about the correctness/completeness of the accounts
- (ii) where the method of accounting provided in Sub Sec. (1), is not followed or
- (iii) the Accounting Standards as notified u/s 145(2) have not been followed by the assessee.

8.1 It is not disputed that the assessee has maintained complete books of accounts with sales and purchase vouchers and expenditure details which are duly audited u/s 44AB of the Act. The assessee filed audit report in which auditor did not point out any defects. The AO has made general observation without pointing out specific error or deficiency either in the books of account or bill, vouchers etc.. Meaning thereby that the correctness of book result has not been challenged by the department by pointing out any specific mistake/deficiency in the books of account or by the AO that the profits and gains cannot be properly deduced from such book of account.

8.2 On similar facts, in the case of Madnani Construction (P) Ltd v/s CIT 296 ITR 45 (Gau), it has been held that Low profit in a particular year is itself cannot be a ground for invoking the powers of best judgment assessment without support of any material on record-AO relied upon a part of a transaction for the preceding year while rejecting the other. This is not



permissible in law. Without pointing out any error in the P&L a/c and the audited report, the powers of best judgment assessment could not be invoked.

8.3 On similar facts, the Honble Raj. High Court in the case of Malani Ram Jivan Jagannath vs ACIT (2007) 207 CTR 19 (Raj) held that quantum and value of purchase and sales were not disputed in as much as they were found to be fully vouched. Value of opening stock cannot be disputed as it came from closing stock of previous year. The inventories of closing stock cannot be found incorrect. That is to say actual stock position was not in dispute. The previous year books of account were not found incorrect. In doing so, it had ignored all admitted facts in the face of which there was no occasion for the AO to have resorted to estimated method. There being no dispute about the sales and purchases. Mere deviation in G.P. rate cannot be a ground for rejecting the books of account and entering realm of estimate and guesswork. Neither the rejection of books of account was justified nor resort to substitution of estimated GP by rule of thumb merely for making certain additions. When all the data and entry made in trading account were not found incorrect in any manner, there could not have been any other result except what has been shown by the assessee in the books of account.

8.4 Following the Hon'ble Rajasthan High Court in the case of Malani Ram Jivan Jagannath vs ACIT (Supra), we hold that Mere deviation in G.P. rate cannot be a ground for rejecting the books of account of the assessee for



entering in realm of estimate and guesswork. In our view, the Ld. AO/ CIT (A) decision was not in conformity with law in involving the provisions of section 145(3) of the Act. Accordingly, this ground of appeal is allowed.

9. To ascertain the applicability of the correct GP/NP rate, we need to make a reference, to the trading results as per books of account and Comparative GP and NP rate chart of last five years and same is reproduced here under:

Assessment Year	Turnover	Cross Profit (G.P.)	G.P. Rate (%)	Net Profit (N.P.)	N.P. Rate (%)
2013-14	3,73,85,064/-	41,25,133/-	11.03	8,69,882/-	2.33
2014-15	4,37,93,728/-	54,20,760/-	12.38	9,56,413/-	2.18
2015-16	4,93,92,963/-	50,88,999/-	10.30	5,24,975/-	
2016-17	6,34,1,436/-	89,76,434/-	14.16	5,91,282/-	0.93
2017-18	5,81,26,519/-	97,48,211/-	16.77	6,27,449/-	1.08
2018-19	6,30,77,725/-	93,09,597/-	15.28	6,31,600/-	1.00
2019-20	8.0873368/-	96,41,120/-	12.24	8,12,635/-	1.00
Average of 2013-14 to 2018-19			13.32		1.43%

- 9.1. The trading results tabulated as above are based on final audited accounts filed by the assessee with the return of income which have been accepted by the revenue over the years. In the year under consideration, the assessee has shown the Gross Profit of 12.24% which is comparatively lower than to the above average GP rate and past history.
- 9.2. As regards to the comparable case of Mohd. Amir Khan who has declared the G.P. rate 20.92% in the A.Y. 2018-19 as against assessee's 15.28% but the AO and the Ld. CIT (A) ignored the vital fact that in the Assessment Year under consideration i.e. 2019-20 Mr. Mohd, Amir Khan has declared the G.P. rate of 13% and 14.22% as against assessee's G.P rate of 12.24% and that Mr. Amir Khan is dealing in retail sale of fruits in which he sells directly to the consumers whereas the assessee is a wholesaler of Fruits. For comparing, it is required to address the history, trading result and comparable in terms of kinds of fruits dealt with and their magnitude of turn over. In our view, the GP rate of 12.24 % declared by the assessee is reasonable, in comparasion to the case of Mr. Mohd, Amir Khan who is being a retailer of fruits, for applicability of GP/NP rate in the given peculiar facts and past history of authentic trading results of the assessee.
- 9.3 On similar facts, in the case of M/S Inani Marbles 316 ITR 125(RaJ. High Court) and Ms. Action Electrical 258 188 (Delhi High Court), held that



past history of the assessee's case is most reliable guidelines for best judgment assessment.

9.4 Respectfully following the Hon'ble jurisdictional High Court (Supra) and considering factual matrix and past history of the assessee, it would be just fair and reasonable to apply a G.P. rate of 15.5% for estimation of the Income of the assessee for the year under consideration in parity to the trading results considering its past history. Thus, this ground of appeal is partly allowed.

10. Admittedly, the AO has rejected the books of accounts by invoking provisions of section 145(3) and made trading addition by adopting GP/NP rate for estimation of income of the assessee for the year under consideration. In our view, where any trading addition is made, section 115 BBE is not applicable because the provisions of section 115BBE are specific provisions which are applicable only in the instances where additions have been made either under section 68 or 69 of the Income Tax Act, 1961. We find that in the present case the AO has not even issued any show cause notice to the assessee before invoking the provisions of 115BBE of the Act. In our view, the section 115 BBE of the Income Tax Act, is charging section to charge income tax at the higher rate and therefore it cannot be applied directly without giving any show cause notice when the issue is disputed on examination of whether the higher rate of tax is applicable? And whether the alleged income computed by the AO does fall under the purview of section 68 or 69 of the Act. In the present



case, the AO has even not applied the provisions of section 68 or 69 of the Act and therefore, in our view, in the present case, the provisions of section 115BBE of the Act, are not applicable to the income estimated by way of applying GP/NP rate.

10.1 Accordingly, we hold that the income of the assessee estimated by applying GP/NP rate shall be chargeable to tax at the normal tax rates of 30%. Thus, this ground of appeal is allowed.

11. The issues and facts in ITA No. 638/Jodh/2024 are similar to that of ITA No. 639/Jodh/2024 and therefore, our observation and finding given in ITA No. 639/Jodh/2024 shall be applicable to the appeal in ITA No. 638/Jodh/2024, in *mutatis mutandis*, ordered accordingly.

12. In the result both these appeals are partly allowed.

Order pronounced on...27.../05...../2025 in open court.

Sd

(RAJPAL YADAV)  
VICE PRESIDENT

Dated : 27.../05./2025

Sd

(DR. MITHA LAL MEENA)  
ACCOUNTANT MEMBER

Copies to :

- (1) The appellant.
- (2) The respondent.
- (3) CIT
- (4) CIT(A)
- (5) Departmental Representative
- (6) Guard File

Assistant Registrar