

आयकर अपीलीय अधिकरण, इंदौर न्यायपीठ, इंदौर
IN THE INCOME TAX APPELLATE TRIBUNAL
INDORE BENCH, INDORE
BEFORE SHRI B.M. BIYANI, ACCOUNTANT MEMBER
AND
SHRI PARESH M JOSHI, JUDICIAL MEMBER

ITA Nos.857/Ind/2024 (AY: 2017-18)

ACIT-1(1), Indore	<u>बनाम/</u> Vs.	Anant Commodities Pvt. Ltd, 3A, Ratlam Kothi, A.B. Road, Indore (PAN:AAGCS8795K)
(Appellant/Revenue)		(Respondent/Assessee)
Assessee by	S/Shri S.S. Deshpande & Ashok Khasgiwala , ARs	
Revenue by	Shri Ashish Porwal, Sr.DR	
Date of Hearing	15.07.2025	
Date of Pronouncement	21.07.2025	

आदेश / O R D E R

Per Paresh M Joshi, J.M:

This is an appeal filed by the assessee Under Section 253 of the Income Tax Act, 1961 (hereinafter referred to as the “**Act**” for sake of **brevity**) before this Tribunal. The Revenue is **aggrieved** by the order bearing No.ITBA/NFAC/S/250/2024-25/1069510246(1) dated 08.10.2014 passed by the Ld. CIT(A) u/s 250 of the Act which is hereinafter referred to as the “**Impugned**”

order". The relevant Assessment Year is 2017-18 and the corresponding previous year period is from 01.04.2016 to 31.03.2017.

2.

FACTUAL MATRIX

2.1 That as and by way of **an assessment order** passed u/s. **143(3) r.w.s. 144B of the Act**, the assessee's **total income was computed and assessed at Rs.2,07,17,064/-**. The assessee had filed its Return of Income showing **total income of Rs.16,38,620/-**. The case of the assessee was selected for **complete scrutiny through CASS** mainly on the basis of (1) Capital Gain loss on the sale of property and (2) Foreign remittance. The assessee company is engaged in merchant export of agri-commodities mainly **soyabean meal** and **Indian yellow maize**. The assessee has also exported commodities like Rape seed meal, sugar etc. The assessee company procures these commodities from the **local market** and **exports the same**. The account of the assessee company are **audited** and **tax audit report (TAR) is filed**. The **addition of Rs.1,90,78,444/-** has been made to the Returned income of **Rs.16,38,620/-**. The total income **exigible to tax comes to Rs.2,07,17,064/- (Rs.**

16,38,620/- + 1,90,78,444/-). The **addition** is on account of **low Gross Profit**.

2.2 That during the course of the assessment proceedings the Ld. A.O asked to the assessee to **show cause** as to why there is a fall in Gross Profit from **13.1%** to **0.23%**. Various queries were raised and the assessee replied every query and explained the reasons **for fall in Gross Profit**. The major submissions were made vide letter dated **01.04.2021** and **03.05.2021**. That it suitably explained to the Ld. A.O that the assessee is dealing in the **export** of agro based commodities and that the **international prices fluctuate very often**. Thus owing to this fact the **margin of profit cannot be the same from year to year**. It was also pointed out to the Ld. A.O that during the earlier year (Page 66 of paper book) there was a credit of service tax of Rs.85,17,314/- and that **duty drawback** was of Rs.17,16,997/- which is **not there** (absent) during the year under consideration. It was also explained to the Ld. A.O (page 69 of paper book) that **major sale** during the year under consideration was that of **wheat of Rs.17.61 crores** while in the earlier years there was **no sale of wheat**. The sale on account of **soya bean** stands **reduced** from

Rs.18.31 crores to Rs.97 lakhs only. In brief it was explained to the Ld. A.O by the assessee company through their replies dated 01.04.2021 and 03.05.2021 (Page 66 and 69 of paper book) that there **was indeed a difference in the sale of commodity** and no **comparison** of gross profit can be made for **sale of the different commodities**. It was also asserted and explained to the Ld. A.O that there was a cancellation of a contract and increase in exchange rate, **a loss of Rs.1,07,02,222/- was incurred** and on that account there is a **reduction in the gross profit**. **That above all proper books of accounts are maintained which are audited and all the purchases and sales are fully accounted for and vouched**. The Ld. A.O's assessment order bears No.ITBA/AST/S/143(3)/2021-22/1032781337(1) and that same is dated 05.05.2021 which is hereinafter referred to as the **"impugned assessment order"**. In the said assessment order gross profit of average of **last 3 years** which was calculated @8.23% per annum was estimated and the addition of **Rs.1,90,78,444/-** was made to the Return of Income.

2.3 That the assessee being aggrieved by the aforesaid **"impugned assessment order"** prefers first appeal u/s 246A of

the Act before the Ld. CIT(A) who by the "**impugned order**" has allowed the appeal of the assessee on the grounds and reasons stated therein. The **core** ground for **allowing** the first appeal of the assessee company can be summed up as under:-

(1) That the gross profit ratio is **not much less** than compared to the earlier year. The net profit has been reduced to **0.51%** from **0.67%** which is **0.16%**.

(2) That the assessee is maintaining books of accounts which are audited.

(3) Merely because GP margin is lower as compared to the preceding year which cannot be a ground for addition to the income unless the assessing officer points out to particular defect or discrepancies in the books of accounts maintained by the assessee. In order to reject the books, the AO should bring out that there has been a clear infringement of any accounting standard or accounting principles and prove the same by way of concrete and material evidence and not merely on the basis of some assumptions and presumptions. The law is clear that **suspicion however strong** cannot take place of **evidences** and **proofs** and

addition can be made on the basis of relevant material and concrete evidence.

2.4 That the revenue being aggrieved by the **“impugned order”** has preferred the instant appeal before this Tribunal and has raised following grounds of appeal in Form No.36 **against** the **“impugned order”** which are as under:-

“1. Whether on the facts and in the circumstances of the case, the Ld. CIT(A) is justified in law in deleting the Addition of Rs. 1.90 crores without appreciating the facts that Ld.AO has rejected the books of assessee after pointing out various serious defects in the books of the assessee.

2. The appellant craves leave to add to or deduct from or otherwise amend the above grounds of appeal”

3. Record of Hearing

3.1 The hearing in the matter took place before this Tribunal on 15.07.2025 when the Ld. DR for and on behalf of the revenue appeared before us and inter alia contended that the **“impugned order”** is bad in law, illegal, not proper and deserves to be set aside by this Tribunal in exercise of its appellate jurisdiction at the instance of the Revenue who is aggrieved by it. The ground of appeal in Form 36 was repeated and reiterated by the Ld. DR at the outset of hearing. It was submitted to this Tribunal that the Ld. A.O in the **“impugned assessment order”** has correctly

estimated the gross profit by taking entire facts and circumstances of the case **including turnovers and gross profit percentage of last three years. It was sought to be contended that the Ld. A.O** has in fact rejected **the books of accounts of the assessee company.** That the case of the assessee was selected for complete scrutiny. The **"conclusion"** of Ld. A.O in the **"impugned assessment order"** was relied upon in support of appeal of the Revenue and it was finally prayed that the **"impugned order"** of Ld. CIT(A) should be set aside and that the **"impugned assessment order"** should be upheld as it is correctly passed without there being any infirmities therein. Per contra Ld. AR has supported the **"impugned order"** of Ld. CIT(A) and has stated that the same is in accordance with law and no interference is called for by this Tribunal. The core ground of appeal of the Revenue is that the Ld. CIT(A) ought not to have allowed the first appeal as the Ld. A.O has rejected the books of accounts of the assessee after pointing out various serious defects in the books of accounts of the assessee **which fact is not true as there is no express finding in the "impugned assessment order"** that the **Ld. A.O has rejected**

books of accounts of the assessee. It was then contended by the Ld. AR for the assessee company that there is a plausible justification for Forex loss and relied upon page 52 & 53 of paper book. It was then contended that the preceding year's sales contract which matters in the current year, the Ld. A.O has taken this loss. If this loss is factored which Ld. A.O has done, the gross profit would be more. Reliance was placed on paper book page 69 which is a reply dated 03.05.2021 of assessee's CA to Ld. A.O wherein complete reply was filed. It was emphasized that components have changed. It tallies with page 51 & 52 of paper book. It was contended that comparison should be with comparable's. Land is not considered as there is no nexus with sales. **Purchases and sales tally.** Purchases are local only it is a matter of common sense. The purchase and sales are not questioned whereas books are doubtful but **are not rejected expressly.** Previous year figures cannot become binding guidelines. Previous years gross profit cannot be relied upon (There are no finding of Ld. A.O on purchases and sales). The Ld. AR then placed reliance on the judgment of ***Hon'ble Allahabad High Court dated 30.04.204 in case of PCIT v/s The Mahabir***

Jute Mills Ltd in ITA No.35 of 2024 - 2024:AHC:76350 - DB

and interalia contended that on facts no question of law was framed by the High Court. Our attention was invited to para 5 of the judgment to contend that gross profit rate of previous 3 years cannot be made basis of addition. Reliance was also placed on the judgment of ***Hon'ble Delhi High Court dated 07.05.2010 in ITA No.406/2009 in case titled CIT- XII V/s Smt Poonam Rani*** to contend that ***a low rate of gross profit in the absence of any material pointing towards falsehood of accounts books, cannot by itself be a ground to reject the account books u/s 145(3) of the Act.*** Reliance was also placed on the judgment of ***this Bench in ITA Nos.339/Ind/2017, 439/Ind/2018 & 440/Ind/2018 in case titled DCIT V/s Shri Om Prakash Dhanwani order dated 06.11.2023*** to contend that it is well settled principle that before rejecting the book results, discrepancies should be pointed out in the regular books of accounts by Assessing Officer. Addition on ground of low gross profit cannot be made (Para 12 & 13 relied upon). Hearing was concluded.

4. Observations, findings & conclusions.

4.1 We now have to decide the legality, validity and the propriety of the “**impugned order**” basis records of the case and rival contentions canvassed before us.

4.2 We have carefully perused the records of the case as presented to this Tribunal by both Ld. DR & Ld. AR to determine the legality, validity of the “**impugned order**” basis law and by following due process .

4.3 We basis records of the case and so also after hearing and upon examining the rival contentions are of the considered view that the “**impugned order**” has **rightly set aside the “impugned assessment order”** on well merited grounds and reasoning and we find no infirmities in it. It is rightly observed in the “**impugned order**” that all the documents required were provided to the Ld. A.O by the assessee. The Ld. A.O has made addition merely on the basis of assumption and presumption that since the gross margin of previous assessment years were higher than the year under assessment which in our considered view is **wrong way to make additions**. In order to make addition first of all there should be sufficient material on record to justify the

additions. In the present case **there is none** and Ld. CIT(A) has rightly observed the same and has correctly deleted the addition so made in the **“impugned assessment order”**.

The Ld. CIT(A) basis snapshot margin summary which is as below:-

<i>Particulars</i>	<i>A.Y 2015-16</i>	<i>A.Y 2016-17</i>	<i>A.Y 2017-18</i>
<i>Sales</i>	<i>1256274379.00</i>	<i>228525235.00</i>	<i>185856404.00</i>
<i>Add: Closing stock</i>	<i>191939242.00</i>	<i>9710265.00</i>	<i>0.00</i>
	<i>1448213621.00</i>	<i>238235500.00</i>	<i>185856404.00</i>
<i>Less: Opening stock</i>	<i>10681126.00</i>	<i>191939242.00</i>	<i>9710265.00</i>
<i>Add: Purchase</i>	<i>1350139447.00</i>	<i>34748319.00</i>	<i>169855000.00</i>
	<i>1360820573.00</i>	<i>226687561.00</i>	<i>179565265.00</i>
<i>Gross Profit</i>	<i>87393048.00</i>	<i>11547939.00</i>	<i>6291139.00</i>
<i>GP Ratio</i>	<i>6.96</i>	<i>5.05</i>	<i>3.38</i>

The Ld. CIT(A) has observed that the gross profit ratio for Assessment Year 2017-18 was 3.38% which is much lesser than previous year gross profit. That basis Chart below:-

<i>Particulars</i>	<i>A.Y 2015-16</i>	<i>A.Y 2016-17</i>	<i>A.Y 2017-18</i>
<i>Net Profit</i>	<i>21991502.00</i>	<i>1615156.00</i>	<i>1226819.00</i>
<i>NP Ratio</i>	<i>1.51</i>	<i>0.67</i>	<i>0.51</i>

The Ld. CIT(A) has rightly held that the net profit has reduced to 0.51% i.e. a reduction of 0.16% despite a substantial reduction in sales in Assessment Year 2017-18. We hold that Ld. DR has not controverted above tables/chart basis any material on record whatsoever in any manner.

4.4 The Ld. CIT(A) in the “**impugned order**” has rightly held that the assessee is maintaining books of accounts which were audited. Merely because gross profit margin is lower in the year under consideration vis-à-vis preceding assessment years cannot be a ground of additions to the income of the assessee unless the Assessing Officer points out a particular defect or discrepancies in the books of accounts maintained by the assessee.

4.5 We further hold that the Ld. A.O in the “**impugned assessment order**” has not expressly rejected the books of accounts. A mere observation that the assessee has lost the **credibility** on maintenance of proper books is not rejection of books in law. In this context the Ld. CIT (A) has rightly observed and held as under:-

“In order to reject the books, the AO should bring out that there has been a clear infringement of any accounting standard or accounting principles and prove the same by the way of concrete and material evidences and not merely on the basis of some assumptions and presumptions. The law is clear that suspicion, however strong cannot take place of evidences and proofs and addition can be made only on the basis of relevant material and concrete evidences and not on the basis of mere surmises, conjectures, suspicion, presumptions or assumptions”.

4.6 The Ld. CIT(A) has rightly held as follows in para 6.1:-

“6.1 In the case of Dhakeshwari Cotton Mills -vs.- CIT (1954) 26 ITR 775 (SC) Hon'ble Apex Court held that AO cannot make any addition on the account of his guess work without having any

material evidence on record. The relevant extracts of the said judgement is reproduced as under.....that in making the assessment under sub-section 3 of section 23 of the Income Tax Act, 1922 [corresponding to the section 143(3) of the Income tax Act, 1961], the Income Tax Officer is not entitled to make a pure guess and make an assessment without reference to any evidence or any material at all. There must be something more than bare suspicion to support the assessment under section 23(3)"

4.7 We hold that the commodities in the earlier years and the year under consideration are different and gross profit cannot be compared. The Ld. AR has rightly contended that comparison should be of comparable's and not un-comparable's. We accept the proposition so canvassed. Therefore we hold that Ld. A.O ought not to have averaged the gross profit rate of preceding years to arrive at gross profit rate for the year under consideration as commodities were different and were not comparable's. We further hold that neither purchases nor sales have been disputed by the Ld. A.O in the "**impugned assessment order**". The Ld. AR has made a grievance of it in the hearing and we concur with his contentions.

4.8 We also hold that less gross profit consequently less gross profit rate vis-à-vis earlier years *ipso facto* cannot be a ground to make addition by averaging the gross profit rate of last preceding years in the absence of any adverse material against the

assessee. Basis this casting aspersions (credibility) on books but without rejecting it expressly is not sufficient in law to make addition basis averaging of gross profit rate of preceding years.

4.9 We hold that in **zeal** for doing averaging of gross profit rate of preceding years, the year under consideration is too taken into consideration as is reflected in the table below:-

<i>Sl.No.</i>	<i>Assessment Year</i>	<i>Turnover</i>	<i>Gross Profit</i>	<i>Gross Profit %</i>
<i>1</i>	<i>2015-16</i>	<i>14779393385</i>	<i>169557867</i>	<i>11.47</i>
<i>2</i>	<i>2016-17</i>	<i>242011324</i>	<i>31483771</i>	<i>13.01</i>
<i>3</i>	<i>2017-18</i>	<i>238463272</i>	<i>547083</i>	<i>0.23</i>

We therefore find such an approach not in consistent with fair play and law. We hold that averaging gross profit rate at 8.23% for the year under consideration as **wrong**.

4.10 We hold that the sole ground of serious defects in the books of accounts of assessee which led the Ld. A.O to reject the books is wrong when admittedly addition is done basis averaging of gross profit rate of preceding years @8.23%. Revenue though has raised this sole ground to assail the **“impugned order”** but basis records they have failed to establish with any tangible material/evidence to substantiate the said ground.

5.

Order

5.1 In the premises set out herein above we **reject** the appeal of the Revenue.

5.2 In result we reject the appeal of the revenue and upheld the “impugned order”.

Order pronounced in open court on 21.07.2025.

Sd/-

(B.M. BIYANI)
ACCOUNTANT MEMBER

Sd/-

(PARESH M JOSHI)
JUDICIAL MEMBER

Indore

दिनांक/ Dated : 21/07/2025

Dev/Sr. PS

Copies to: (1) The appellant
(2) The respondent
(3) CIT
(4) CIT(A)
(5) Departmental Representative
(6) Guard File

By order
Senior Private Secretary
Income Tax Appellate Tribunal
Indore Bench, Indore