

आयकर अपीलीय अधिकरण, विशाखापटणम पीठ, विशाखापटणम

**IN THE INCOME TAX APPELLATE TRIBUNAL
VISA KHAPATNAM "DIVISION" BENCH, VISA KHAPATNAM**

(HYBRID HEARING)

**श्री विजय पाल राव, उपाध्यक्ष, एवं श्री एस बालाकृष्णन, लेखा सदस्य के समक्ष
BEFORE SHRI VIJAY PAL RAO, HON'BLE VICE PRESIDENT**

&

SHRI S BALAKRISHNAN, HON'BLE ACCOUNTANT MEMBER

**आयकर अपीलसं./I.T.A.No.517/VIZ/2024
(निर्धारण वर्ष/ Assessment Year: 2022-23)**

Penmatsa Prasad Raju D.No. 7-7-25/3 Kodavalli Road, FCI Colony Bhimavaram – 534201 Andhra Pradesh [PAN:AQCPP6707B] (अपीलधर्ती/Appellant)	Vs.	Income Tax Officer-Ward – 1 Income Tax Office Aayakar Bhavan JP Road, Sivaraopet Bhimavaram – 534201 Andhra Pradesh (प्रत्यर्ती/Respondent)
---	------------	--

**आयकर अपीलसं./I.T.A.No.33/VIZ/2025
(निर्धारण वर्ष/ Assessment Year: 2022-23)**

Income Tax Officer Income Tax Office Aayakar Bhavan Opp. Ganesh Canteen JP Road, Sivaraopet Bhimavaram – 534202 Andhra Pradesh (अपीलधर्ती/Appellant)	Vs.	Penmatsa Prasad Raju D.No. 7-7-25/3 Kodavalli Road, FCI Colony Bhimavaram – 534201 Andhra Pradesh [PAN:AQCPP6707B] (प्रत्यर्ती/Respondent)
--	------------	---

करदाता का प्रतिनिधित्व/ Assessee Represented by	:	Shri GVN Hari, Advocate
राजस्व का प्रतिनिधित्व/ Department Represented by	:	Dr.Satyasai Rath, CIT(DR)
सुनवाई समाप्त होने की तिथि/ Date of Conclusion of Hearing	:	15.07.2025
घोषणा की तारीख/Date of Pronouncement	:	25.07.2025

आदेश / O R D E R

PER SHRI S BALAKRISHNAN, ACCOUNTANT MEMBER:

1. These cross appeals are filed by the assessee and revenue against common order passed by the Learned Commissioner of Income Tax (Appeals), National Faceless Appeal centre, Delhi [hereinafter in short "Ld.CIT(A)"] vide DIN & Order No. ITBA/NFAC/S/250/2024-25/1070506953(1) dated 21.11.2024 for the A.Y.2022-23 arising out of the order passed under section 144 of Income Tax Act, 1961 (in short 'Act') dated 20.03.2024.

ITA NO. 517/VIZ/2024 (A.Y. 2022-23) – ASSESSEE APPEAL

2. Facts in brief are, assessee is an individual filed his return of income for the A.Y. 2022-23 on 28.10.2022 admitting a total income of Rs.14,72,050/-. The return was summarily processed under section 143(1)(a) of the Act. Subsequently, the case was selected for scrutiny through CASS. Notice under section 143(2) of the Act was issued on 01.06.2023 and notice under section 142(1) of the Act was issued on various dates. In response to the notices, assessee submitted part information. Ld. Assessing Officer [hereinafter in short "Ld. AO"] finally issued a show-cause notice dated 23.1.2024 requiring the assessee to show-cause why an amount of Rs.24,74,65,014/- could not be added to the income of the assessee as unexplained, since the assessee has not provided the identity, genuineness and creditworthiness of the parties from

whom purchases and the payments were made to them. In response, assessee filed reply. After considering the reply filed by the assessee, Ld. AO found that the assessee has not produced any invoices substantiating the purchases and therefore proceeded to make an addition of Rs.12,37,32,507/- by disallowing 25% of the payments made towards bogus purchases.

3. On being aggrieved by the order of the Ld. AO, assessee filed an appeal before Ld. CIT(A). Ld. CIT(A) observed that the disallowance @25% of the purchases implies net profit of ratio of more than 25% and hence estimated the net profit @2% on the sales made by the assessee without rejecting the books of accounts.

4. On being aggrieved by the order of the Ld. CIT(A), assessee is in appeal before us by raising following grounds of appeal: -

“1. The order of the learned Commissioner of Income Tax (Appeals) is contrary to the facts and also the law applicable to the facts of the case.

2. The learned Commissioner of Income Tax (Appeals) having deleted the addition towards purchases, ought to have directed the assessing officer to accept the income of Rs.14,72,050 admitted by the appellant instead of directing the assessing officer to estimate the net profit @2% of the turnover which comes to Rs.99,28,041.

3. Without prejudice to the above, the percentage of profit estimated by the learned Commissioner of Income Tax (Appeals) @2% is on higher side.

4. Any other ground that may be urged at the time of appeal hearing.”

5. Ground Nos. 1 & 4 are general in nature and needs no adjudication.
6. Ld. Authorised Representative [hereinafter “Ld.AR”] submitted that Ground No. 2 is not pressed and hence dismissed as not pressed.
7. With respect to Ground No. 3, Ld.AR submitted that assessee normally earns profit of 0.3% to 0.5% on the sales made by the assessee. He further submitted that assessee is in the business of trading in fish which is perishable goods and hence the profit margin in this trade would be lower as declared by the assessee. He further submitted that that the Ld. AO erred in treating 25% of the purchases as bogus purchases without considering the audited statements of accounts. He further submitted that trading in fish is generally unorganised and hence most of the traders / manufactures will not be registered under the provisions of GST or will not have any PAN details. He further submitted that assessee was regularly declaring profit in the range of 0.3% to 0.4% whereas in the impugned assessment year due to the large turnover assessee has declared the profit of 0.91% which is above the average profit admitted by the assessee during the earlier years. He further submitted that Ld. CIT(A) estimated the net profit at 2% without considering the above facts. He therefore pleaded that net profit declared by the assessee shall be accepted. Ld.AR relied on the decision of the Jurisdictional bench in the case of *M/s. MHM Fish Packers v. ITO* in ITA No. 361, 362 & 364/Viz/2017 dated 18.10.2019.

8. Per contra, Ld. Departmental Representative [hereinafter in short “Ld.DR”] placed heavy reliance on the order of the Ld. AO and submitted that assessee has failed to produce the copies of purchase bills and PAN details, email address, postal address, GST Numbers or confirmations from the parties from whom the assessee made purchases. Ld. DR vehemently argued that merely by making the payments through banking channels which are very high in value shall not be a ground for treating the purchases as genuine. He further submitted that the onus is on the assessee to prove the genuineness of the purchases with substantive documentary evidences and since assessee has not established the genuineness of the purchases claimed, Ld. AO has rightly disallowed 25% as bogus purchases. However, he further submitted that Ld.CIT(A) has erred in estimating the net profit @ 2% merely on the basis of assumption and surmises. He therefore pleaded that the order of the Ld. AO be restored. On the issue Ld.DR relied on the decision of the Hon’ble Bombay High Court in the case of Pr.CIT v. Shree Ganesh Developers [2025] 172 taxmann.com 542 (Bombay).

9. We have heard both the sides and perused the material available on record. From the submissions made it is evident that Ld. AO disallowed 25% of the purchases based on non-submission of purchase bills for verification of the genuineness of the purchases. However, the Ld. CIT(A) took an alternative view by estimating the profit @2% on the turnover. It is observed that neither

of the Revenue Authorities has invoked provision of Section 145(3) of the Act nor recorded any formal rejection of the books of accounts of the assessee before adhoc disallowance or estimation of profit. Further it is also found that there is no basis for the Ld. CIT(A) to estimate the profit @2%. It is not supported either by the comparable cases or past records of the assessee.

10. The Hon'ble High Court of Madras in the case of PCIT v. Marg Ltd. [84 taxmann.com 52] the division bench of High court of Madras held that the rejection of books of accounts is *sine qua non* before the Assessing Officer to make his own assessment. Paragraph 4(c) of the said decision is reproduced as under: -

"4(c). Therefore, it is sine qua non that the Assessing Officer to come to a conclusion that the books of account maintained by the assessee are incorrect, incomplete or unreliable and reject the books of account before the proceeding to make his own assessment. In the instant case, there is no reference in the assessment order of the Assessing Officer regarding rejection of books of account."

11. Further, the Hon'ble High Court of Gujarat in the case of Yunus Haji Fazawala v. CIT (supra) has held that action of the Assessing Officer in disallowing 25% of purchases by doubting its genuineness without rejecting the books of account cannot be sustained.

12. The underlying rationale behind such an action is to meet the standards of correct computation of accounts for the purpose of a more transparent and

precise assessment of income. Therefore, any pick and choose method of rejecting certain entries from the books of account while accepting other, without an appropriate justification, is arbitrary and may lead to an incomplete, unreasonable and erroneous computation of income of an assessee.

13. In the instant case both the disallowance by the Ld.AO and estimation of the Profit by the Ld.CIT(A) were made without formally rejecting the books of accounts and without fully appreciation of the factual and legal issues. In our considered view, unless the Ld.AO / Ld.CIT(A) reject the books of accounts with valid reasons, cannot resort to estimation of profit even in the case of best judgement assessments. In these circumstances, since the revenue has not given any reason for estimation of profit at 2%, which is without any basis, we set-aside the file to the Ld.CIT(A) for reconsideration of the issue afresh by providing one more opportunity to the assessee to substantiate the claim of purchases. At the same breath, we also caution the assessee to cooperate in the remand proceedings failing which the Ld. CIT(A) is at liberty to form an opinion based on the material available on record. The case law relied on by the Ld. DR is distinguishable on facts and cannot be applied in the instant case. Thus, grounds raised by the assessee are allowed for statistical purposes.

14. In the result, appeal of the assessee is allowed for statistical purposes.

ITA NO. 33/VIZ/2025 (A.Y. 2022-23) - REVENUE APPEAL

15. Revenue has raised following grounds of appeal: -

“1. The order of the Ld.CIT(A), National Faceless Assessment Centre (NFAC) is erroneous both on facts and in law.

2. The Ld. CIT(A) erred estimating the business profit at Rs.99,28,041/- @ 2% on the purchases and restricting the addition to Rs.84,55,995/-.

2.1 The Ld.CIT(A) erred in restricting the addition though the assessee has not furnished details of parties from whom purchases were made, either before the AO during assessment proceedings or before CIT(A) during appeal proceedings.

2.2. The Ld.CIT(A) erred in not appreciating the fact that the onus is on the assessee to prove the genuineness of the purchases claimed to have been made from various persons with proper supporting documentary evidences. However, the assessee failed to establish the genuineness of the purchases claimed.

3. The appellant craves leave to add or delete or amend or substitute any ground of appeal before and/or at the time of hearing of appeal.

4. For these and other grounds that may be urged at the time of appeal hearing, it is prayed that the disallowance/additions made by the Assessing Officer be restored.”

16. Since the issue is identical in nature with the grounds raised by the assessee in the assessee’s appeal, the decision of the bench in remitting the matter back to file of Ld. CIT(A) for fresh adjudication shall apply mutatis-mutandis to the appeal filed by the revenue. Accordingly, the ground raised by the revenue are allowed for statistical purposes.

17. In the result, appeal of the revenue is allowed for statistical purposes.
18. To sum-up, appeal of the assessee and appeal of the revenue are allowed for statistical purposes.

Order pronounced in the open court on 25th July, 2025.

Sd/-
(विजय पाल राव)
(VIJAY PAL RAO)
उपाध्यक्ष/VICE PRESIDENT
Dated: 25.07.2025
Giridhar, Sr.PS

Sd/-
(एस बालाकृष्णन)
(S. BALAKRISHNAN)
लेखा सदस्य/ACCOUNTANT MEMBER

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

1. निर्धारिती/ The Assessee : **Penmatsa Prasad Raju**
D.No. 7-7-25/3
Kodavalli Road, FCI Colony
Bhimavaram – 534201
Andhra Pradesh
2. राजस्व/ The Revenue : **Income Tax Officer-Ward – 1**
Income Tax Office
Aayakar Bhavan
JP Road, Sivaraopet
Bhimavaram – 534201
Andhra Pradesh
3. The Principal Commissioner of Income Tax
4. विभागीयप्रतिनिधि, आयकरअपीलीयअधिकरण, विशाखापटणम /DR,ITAT, Visakhapatnam
5. The Commissioner of Income Tax
6. गार्डफ़ाईल / Guard file

आदेशानुसार / BY ORDER

Sr. Private Secretary
ITAT, Visakhapatnam