

IN THE INCOME TAX APPELLATE TRIBUNAL
GUWAHATI BENCH, GUWAHATI
(VIRTUAL HEARING AT KOLKATA)

SHRI MANOMOHAN DAS, JUDICIAL MEMBER
SHRI SANJAY AWASTHI, ACCOUNTANT MEMBER

I.T.A. No. 46/GTY/2025
Assessment Year: 2017-18

K B Associates,

House No. 208, Rupali Path,
AIDC, R G Barua Road,
Guwahati - 781024
[PAN: AAJFK6526E]

.....**Appellant**

vs.

DCIT, Circle-3, Guwahati,

Aayakar Bhawan, G.S. Road,
Christian Basti,
Guwahati - 781005

..... **Respondent**

Appearances by:

Assessee represented by : Sanjay Mody, FCA
Department represented by : Kausik Ray, JCIT

Date of concluding the hearing : 29.07.2025
Date of pronouncing the order : 06.08.2025

ORDER

PER SANJAY AWASTHI, ACCOUNTANT MEMBER:

1. The present appeal emanates from the order under Section 250 of Income Tax Act, 1961 (hereafter “the Act”) passed by the Ld. Commissioner of Income Tax (Appeals), National Faceless Appeal Centre (NFAC), Delhi [hereafter “the Ld. CIT(A)”], dated 18.12.2024.

1.1 In this case, the Ld. AO has recorded in his order dated 01.12.2019 that the case was selected for scrutiny on several grounds, one being high ratio of refund to TDS. In his order the Ld. AO has recorded a finding that

satisfactory explanation was not provided by the assessee in response to notices sent from his office and thereafter the impugned addition was made after rejecting the books of accounts and estimating net profit at 50% of the gross receipts.

1.1 The assessee carried this matter in appeal, where he could not succeed. Some relevant portions from the impugned order deserve to be extracted at this stage.

“6.0 All the grounds from 1 to 7 relate to the addition of Rs 98,50,967/- in the order passed u/s 143(3) of the Act. In ground no 6, the contention of the appellant is that Ld AO was not justified in rejecting the books of account u/s 145(3) of the Act as all the details were duly furnished. From the perusal of the facts on record, I find that the contention of the appellant is not correct. The appellant has not made full compliance with the notices issued by Ld AO. Only part compliance was made before Ld AO. Full compliance was not even after penalty u/s 274 r.w.s 272A(1)(d) was imposed for incomplete compliance. Further, in the appeal proceeding also, the appellant has filed written submission only with respect to ground of appeal no 6. No details have been furnished except form no 26. Under the circumstances, the contention of the appellant all the compliances were made is totally incorrect. Under the circumstances, I find that Ld AO has correctly rejected the books of the appellant and estimated the net profit of the appellant. Therefore, ground no 6 of the appellant is dismissed....”

In its reply, no evidence has been furnished to support the claim of the high refund by the appellant before Ld AO. The appellant has remained only partially compliant to the notices issued by Ld AO. The appellant has also not furnished any submission or supporting evidence during the appeal proceedings in respect of any of the grounds of appeal. Under the circumstances, I find that the estimation of the net profit @ 50 percent of the gross turnover is justified as the same is done on the basis of market information. Also, in the AY 2016-17, similar addition made by Ld AO is upheld by Ld CIT(A). Accordingly, the grounds of the appellant are dismissed.”

1.2 Aggrieved with this action of Ld. CIT(A), the assessee has filed the present appeal with the following grounds:

“1. For that the Id. CIT(A) ought to have hold that the order of assessment dated 01.12.2019 passed u/s 143(3) of the Income-tax Act, 1961 (Act) by the learned ACIT, Circle-3, Guwahati (AO) is erroneous in law, facts and procedure.

2. i) For that on the facts and circumstances of the case, the Id. CIT(A) erred in not holding that the Id. AO was not justified in arbitrary rejecting the duly audited and regularly maintained books of account by invoking powers under sub-section (3) of section 145 of the Act merely on the ground that explanation for proportionately high refund of TDS is not furnished and consequently, in making huge addition of Rs. 98,50,967/-

ii) For that the Id. CIT(A) was not justified both in law and on facts in arbitrarily confirming the rejection of book result by the Id. AO on consideration not germane to the unacceptability of books of account and by exceeding the powers conferred under section 145(3) of the Act.

iii) For that the Id. CIT(A) ought to have hold that the rejection of books of account by the Id. AO being in gross violation of principles of natural justice, the same is bad in law on this count also.

3. i) For the Id. CIT(A) has erred in not holding that in absence of any details or creditable basis having been brought on record by the Id. AO, the Id. AD was not justified merely on the basis of a vague remark that 'for this nature of receipts (Contract works), it has been gathered from market information that the net profit to turnover ratio is generally around 50%, estimating the income of assessee only in respect of a part of the similar turnover 50% and accepting the income in respect of the balance turnover @ 16.53% and thus, Increasing the income of the assessee by Rs. 98,50,967/-

ii) For that the Id. CIT(A) was not justified both in law and on facts in ignoring the decision of the Hon'ble Supreme Court cited before him and erred in not holding the alleged 'market information' relied upon by the Id. AO is legally impermissible as the assessee was denied any opportunity to rebut the said alleged 'market information' and hence, the Id. AO was not justified in arbitrarily and whimsically enhancing the income of the assessee by Rs. 98,50,967/-.

iii) For that the id. CIT(A) ought to have hold that the addition of Rs. 98,50,967/- was made by the Id. AO on estimation in gross violation of principles of natural justice and statutory provisions of section 142(3) of the Act and therefore, bad in law and unsustainable.

4. For that the Id. CIT(A) ought to have hold that the order of assessment having been passed by the Id. AO without issuing any show cause notice in utter disregard to the Hon'ble CBDT's circular and in gross violation of principles of natural justice, the same is bad in law and is liable to be quashed on this ground alone.

5. For that the Id. CIT(A) ought to have hold that the Id. AO after finding that the assessee was engaged in the business of contract works and after finding that the income declared by the assessee works out to 16.53% of the gross receipt, was not justified in still arbitrarily enhancing the income of the assessee without any creditable basis.

6. For that the Id. CIT(A) has erred in passing the impugned order by ignoring the various submissions made by the assessee without dealing with same and without assigning any reason and in gross violation of principles of natural justice.

7. For that your appellant craves leave of your honour to take additional ground or grounds of appeal or to modify or to resign any ground(s) of appeal at or before the time of hearing.”

2. Before us, the Ld. AR argued with the help of a paper book that

considerable details were filed before the Ld. AO and thereafter before the Ld. CIT(A) also. The Ld. AR drew our attention to written submissions filed before the Ld. CIT(A) and also some documents which were annexed with the said submissions. The Ld. AR argued that the Ld. CIT(A)'s contention in the impugned order that written submissions only pertained to ground No. 6 before the Ld. CIT(A) [challenging the rejection of books of accounts under Section 145(3) of the Act], was factually incorrect. The Ld. AR pointed out that the compliance was made to the notices issued by the Ld. CIT(A) and it was unfortunate that he chose to ignore the contents of such submissions and depended mainly on an erroneous finding by the Ld. AO. The Ld. AR pointed out that paras 4, 5 and 6 in the impugned order were not factually correct and the arguments presented by the assessee before the Ld. CIT(A) were totally discarded. The Ld. AR concluded his arguments by saying that the provision of section 145(3) of the Act were wrongly invoked.

2.1 The Ld. DR relied on the orders of authorities below.

3. We have carefully considered the rival submissions, gone through the orders of authorities below and have perused the contents of the paper book filed by the assessee. We find that the assessee had filed written submissions before the Ld. CIT(A) and it is possible that some of the details contained therein were not before the Ld. AO. However, the correct course of action would have been that a remand report should have been called from the Ld. AO so that at least on facts there could be no scope for any mis-interpretation. We find that the Ld. CIT(A) has not really considered the arguments advanced before him and his findings (supra) are not really detailed and speaking. Considering the totality of facts and circumstances of this case, we feel that the facts have not been culled out at the level of Ld. AO and therefore, there is a chance that some miscarriage of justice has taken place. Accordingly, we set aside the impugned order and

remand this matter back to the file of Ld. AO for fresh assessment. Needless to say, the Ld. AO would give an opportunity of being heard to the assessee and the assessee would be expected to make full compliance in response to such opportunities given to him.

4. In result, appeal filed by the assessee is allowed for statistical purposes.

Order pronounced on 06.08.2025

Sd/-

[Manomohan Das]
Judicial Member

Sd/-

[Sanjay Awasthi]
Accountant Member

Dated: 06.08.2025
AK, Sr. PS

Copy of the order forwarded to:

1. K B Associates
2. DCIT, Circle-3, Guwahati
3. CIT(A)
4. CIT-
5. CIT(DR)

//True copy//

By order

Assistant Registrar, Kolkata Benches