

**IN THE INCOME TAX APPELLATE TRIBUNAL
AMRITSAR BENCH, 'DB': AMRITSAR**

**BEFORE SHRI UDAYAN DAS GUPTA, JUDICIAL MEMBER
AND**

SHRI BRAJESH KUMAR SINGH, ACCOUNTANT MEMBER

**ITA No.530/ASR/2024
[Assessment Year: 2016-17]**

Gulzar Ahmad Dar, Fohar Sligam Anantnag, Jammu & Kashmir-192129	Vs	Income Tax Officer, Ward NWR Near Silk Factory, Raj Bagh, Srinagar Jammu & Kashmir-190008
PAN-CEQPD3063J		
Appellant		Respondent

Appellant by	Shri Bashir Ahmad Lone, CA
Revenue by	Shri Charan Dass, Sr. DR

Date of Hearing	26.05.2025
Date of Pronouncement	22.08.2025

ORDER

PER BRAJESH KUMAR SINGH, AM,

This appeal by the assessee is directed against the order of National Faceless Appeal Centre (NFAC)/learned Commissioner of Income Tax (Appeals), Delhi (hereinafter referred to 'ld. CIT(A)') dated 22.07.2024 pertaining to Assessment Year 2016-17 arising out of assessment order u/s 147 r.w.s. 144B of the Income Tax Act, 1961 (hereinafter referred as 'the Act') dated 23.01.2024.

2. There is a delay of three days in filing the appeal before us. The assessee has filed a condonation application, which is reproduced as under:-

May I Please your Honour,

The appellant filed appeal u/s 253 of the Act before the Hon'ble Bench on 23/09/2024 . The date of appeal order passed u/s 250 of the Act is 22/07/2024 and date of service is taken as 23/07/2024 and the time of 60 days under normal circumstances expired on 22/07/2024, the appellant posted appeal on 20/09/2024 and the same stand received on 23/07/2024. The appellant posted appeal well before period of 60 days, and took 3 days to reach at Amritsar Therefore, there is deemed delay of 1 to 2, and the same is due to postal communication and the same is beyond the control of appellant.

Therefore in the interest of justice, it is prayed to allow the matter to be contested rather to dismiss it on delay, that too beyond the control of appellant & discretion may please be exercised to the further cause of justice.

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Since the assessee has sufficient and reasonable cause for small delay, therefore, the deemed delay of 1 to 2 days may please be condoned in the interest of justice and appeal may please be entertained & discretion may please be exercised to the further cause of justice.”

3. We have carefully considered the facts stated in the said application. Upon consideration, we are of the considered view that the explanation of the assessee is bona fide in explaining the delay in filing of this appeal. We, therefore, condone the delay and admit this appeal for hearing.

4. Brief facts of the case: The assessee is an individual, engaged in the business of trading of construction material (iron, cement & other related items) as wholesaler & retailer during the financial year 2015-16. In this case, the AO had information that the assessee had deposited cash of Rs. 91,20,964/- in his saving bank account no. xxxx000011 maintained with Jammu & Kashmir Bank but did not file his return of income u/s 139(1) of the Act for A.Y. 2016-17. Accordingly, the case was re-opened and notice u/s 148 of the Act was issued on 31.03.2023. In response to the said notice, the assessee filed his return of income on 12.04.2023 for A.Y. 2016-17 declaring total income of Rs. 1,34,995/-. Further, notices u/s 143(2)/142(1)/Show

cause notice were issued from time to time and the assessee furnished his reply along with details/documents before the AO. After considering relevant details/documents, the AO completed the re-assessment proceedings u/s 147 r.w.s 144B of the Act on 23.01.2024 with the estimation of his income @10% of the total turnover of Rs.1,13,54,842/- and made the addition of Rs. 10,00,489/- (Rs.11,35,484/- - Rs. 1,34,995/-) and determined total assessed income at Rs. 11,35,480/-.

4.1. Prior to the passing of the assessment order, in response to notice u/s 142(1) of the Act dated 06.10.2023, the assessee filed supporting various documents/books of accounts and stated that during the year under consideration the assessee was engaged in wholesale & retail trading of construction material (iron, cement & other related items) and income from this business was the main source of income of the assessee and for the verification of same business license was submitted. It was further submitted that the cash deposited in the account is the cash generated in the normal course of business on account of sales made and through sale/receipts from debtors in the normal course of business. It was further submitted that the source of cash was duly recorded in the cash book and duly incorporated in the return of income filed in response to notice u/s 148 of the Act.

4.2. However, the Assessing Officer noted that the assessee had shown a turnover of Rs.1,13,54,842/- opening stock at Rs.6,77,142/- closing stock at Rs.12,55,62/- and purchase of Rs.1,15,10,800/- and observed that the assessee was liable for getting his account audited u/s 44AB of the Act but had failed to get his accounts audited. The Assessing Officer also noted that that the assessee had not filed its return of income for immediately preceding year and succeeding year so it was not possible to verify

the correctness of figures adopted towards opening stock and closing stock. The Assessing Officer also issued a show-cause notice dated 05.01.2024 to the assessee as to why the profit in his business should not be estimated @10% and the addition should not be made in his hands. Further, the assessee was also directed to furnish the supporting documents, bills and vouchers towards purchases of Rs.1,15,10,800/- and according to the AO, it was not complied and in absence of these, the net profit of the assessee was estimated at 10% of the turnover of the assessee and income was estimated at Rs.11,35,484/-. After taking into account the income of Rs.1,34,995/- declared by the assessee in the return of income filed in response to notice u/s 148 of the Act dated 12.04.2023, the Assessing Officer made an addition of Rs.10,00,489/- (Rs.11,35,484/- -Rs.1,34,995/-).

5. Aggrieved with the said order, the assessee preferred an appeal before the Ld. CIT(A). The Ld. CIT(A) dismissed the appeal of the assessee and the findings of the Ld. CIT(A) are discussed later in this order.

6. Aggrieved with the said order, the assessee is in appeal before us by raising the following grounds of appeal:

1. The Ld. CIT(A) erred in both facts & laws, by upholding the order of AO, when the assessment order is bad in law, as AO has estimated the income of assessee @10% of sales without detecting any material defect in the Books of accounts nor the AO was able to reject books of accounts.

2. The Ld. CIT(A) erred in both facts & laws, by upholding the order of AO, when the order passed u/s 147 of the Act passed read with section 144B of the Income Tax Act 1961 is bad in law, as the same stands passed without application of mind and the basis of estimating income as per show cause notice and as mentioned in impugned assessment order are inconsistent.

3. *The Ld. CIT(A) erred in both facts & laws, by upholding the order of AO, when the entire reassessment is bad in law in view of the fact, that there is no nexus between reasons recorded and addition made.*

4. *The Ld. CIT(A) erred in both facts & laws, by upholding the order of AO, when the Ld. AO erred in both facts and laws, by making addition of Rs 1000489.00 by estimating income @10% of sales/turnover in an arbitrary manner and without any justification, when the assessee submitted complete books of accounts and information as desired by AO.*

5. *That the re-assessment is based on mere presumptions and conjectures and the re-assessment is illegal.*

7. During hearing before us, the ld. AR relied upon the submissions made before the ld. CIT(A) and the grounds of appeal filed before us.

8. The ld. Sr. DR supported the orders of the authorities below.

9. We have heard both the parties and perused the material available on record.

The Ld. CIT(A) in para no.4.2. rejected the legal grounds by observing as under:-

4.2 Firstly, I would like to discuss the legal ground of appeal. In this regard, the appellant contended in his written submission that there is no nexus between reasons recorded and addition made. Perusal of the re-assessment order at Para 1, it is noticed that the appellant's case was flagged in accordance with the Risk CRIUVRU information on ITBA/Insight Portal that the appellant had deposited cash at Rs. 91,20,964/- in his saving bank account maintained with JK Bank during the F.Y. 2015-16. The AO clearly mentioned that the case was re-opened u/s 147 of the Act after recording reasons with prior approval from competent authority u/s 151(1) of the Act. Accordingly, notice u/s 148 of the Act dated 31.03.2023 in the prescribed proforma was issued to the appellant. Further, on the basis of the said information, the Assessing Officer had specific and definite information at his command to form a belief that income chargeable to tax had escaped assessment. It is a trite law that for reopening of assessment, there must be only a prima facie basis for formation of reason to believe that income has escaped assessment. The escapement of income need not be proved at this stage. The AO found that the appellant failed to furnish any return of income even though having huge cash deposits in the bank. During the appellate proceedings, the appellant admitted all these cash deposits as his business transactions and disclosed the total turnover at Rs. 1,13,54,842/-, which is more than the cash deposits of Rs. 91.20.964/-. This is the

reason why the AO didn't make any addition on a/c of cash deposits and estimated the business income on the basis of turnover. Also, the entries in bank statement suggest that all the cash deposits were business transactions. Thus, there is direct nexus between the reasons recorded and the addition made in the assessment order. In view of the above facts, the contention of the appellant is rejected. Thus, legal ground of the appellant is dismissed.”

9.1. We have perused very carefully the order of the Ld. CIT(A) and the facts of the case and we are of the considered view that the Ld. CIT(A) was right while dismissing the legal grounds raised before the Ld. CIT(A). Therefore, in view of the above findings of the ld. CIT(A), the legal grounds as raised by the assessee in grounds nos.2, 3 and 5 of the appeal before us are dismissed.

10. Further, in ground of appeal no.4 before the ld. CIT(A), the assessee had submitted that the estimation of profit @10% of the turnover in the case of the assessee was not justified because the assessee had substantiated his ITR and book results by submitting all the information as desired by the Assessing Officer from time to time and submitted complete books of accounts. It was further submitted that the assessee had substantiated its purchase by books of account and purchases were supported by purchase ledger, bills and most of the purchases were made through proper banking channel. In support of these facts, the ld. AR submitted that copy of purchase ledger and bank ledger was submitted during the assessment proceedings and therefore the addition made by the Assessing Officer and confirmed by the Ld. CIT(A) should be deleted. The relevant submissions of the assessee in ground of appeal no.4 before the Ld. CIT(A) and the finding of the Ld. CIT(A) are reproduced as under:-

Assessee's Submission

“The Ld. AO erred in both facts and laws, by making addition of Rs.1000489.00 by estimating income @10% of sales/turnover in an arbitrary manner and without any justification, when the assessee submitted complete books of accounts and information as desired by AO.

The appellant during the year was engaged in the business of trading of construction material to earn his livelihood. The appellate filed its ITR in compliance to notice u/s 148 of the Act. The appellate submitted complete books of accounts and details and information as desired by AO from time to time.. it is settled position of law, that after the notice is issued u/s 148 of the Act and assessee has filed its ITR, the provisions of income tax shall, so far as may be, apply accordingly, as if, such return were a return required to be furnished under section 139 of the Act. The appellate substantiated its ITR and Book results by submitting all the information as desired by AO from time to time and submitted complete books of accounts. Despite that, The Ld. AO applied Net profit rate of 10%, therefore Ld. AO exceeded his jurisdiction.

The Ld. AO in an arbitrary manner framed the assessment by estimating income of 10% without any logical basis. The Ld. AO has no jurisdiction to estimate income of the assessee of its own without detecting any material defect in the book results. It is settled Law, that assumptions cannot supersede the facts. It is settled law, that gross profit rate/net profit rate cannot be he estimated cursorily and in a routine manner without showing as to how the book results are superfluous. Since appellate submitted complete books of accounts, therefore application of net profit rate unjustified, besides the fact, appellate has not earned so much of money during the year. The assessee substantiated its purchases by books of accounts and the said books of accounts were accepted by AO, there addition has no basis. The purchases are supported by purchase ledger, bills, and most of the purchases are made through proper banking channel. In support of said fact, the copy of purchase ledger and bank ledger is attached. Further the reasons mentioned in assessment order have no connection with show cause notice.”

Ld. CIT(A)'s Finding

“On examination of the facts narrated in the assessment order, it is seen that the appellant had declared turnover or gross receipts of Rs.1,13,54,842/- but failed to get his account audited u/s 44AB of the Act for the A.Y. 2016-17. Further, the appellant failed to furnish the documentary evidences in support of purchases, opening stock, closing stock. Due to non-availability of the supporting evidences of the entries in books of accounts and non-compliance of audit provision of the Act, the AO did not accept the profit margin declared by the AO and estimated it at 10% of the turnover as the AO was not satisfied with the correctness or completeness of books of account of the appellant on account of non-verification of sales/purchases or net result of the business activities for taxation purpose (refer para 4 of the assessment order). Further, in the absence of Tax Audit Report and supporting evidences for purchases & expenses, the claim of expenditure especially purchase value adopted for arriving at the net profit can't be accepted and the only remedy left with the AO was to estimate the net profit of the appellant. Further, the appellant has made reliance on several case laws without explaining that the facts of the cited case law are similar to the facts of the present case.”

11. In this regard, the assessee filed a paper book, in which statement of computation of income for FY 2015-16 and financial statement for FY 2015-16 have been filed at page no.6, 7 and 8 of the paper book. Thus, it is seen that the assessee produced books of accounts before the AO and claimed that the purchases were supported by purchase ledger, bills, and most of the purchases are made through proper banking channel. In support of said fact, the copy of purchase ledger and bank ledger were also submitted. However, these submissions have not been properly appreciated by the ld. CIT(A) while dismissing the appeal of the assessee as he noted that no documentary evidences in support of purchases, opening stock, closing stock, whereas, the assessee claims that most of the purchases are made through proper banking channel. These are important facts which needed factual verification by the ld. CIT(A) and if so required by calling a remand report from the Assessing

Officer. Therefore, in view of these facts, the order of the ld. CIT(A) cannot be sustained and the same is set-aside and restored to his file for fresh adjudication after affording an opportunity of being heard to the assessee. The assessee is also directed to appear before the Ld. CIT(A) and produce the evidences/details before the Ld. CIT(A) as required by him in support of his appeal.

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

Order pronounced as per Rule 34(4) of the ITAT Rules, 1963 on 22nd August, 2025.

Sd/-

**[UDAYAN DAS GUPTA]
JUDICIAL MEMBER**

Sd/-

**[BRAJESH KUMAR SINGH]
ACCOUNTANT MEMBER**

Dated 22.08.2025.

Shethar

Copy forwarded to:

1. Appellant
2. Respondent
3. PCIT
4. CIT(A)
5. DR

Asst. Registrar,
ITAT, Amritsar