

आयकर अपीलीय अधिकरण न्यायपीठ “एक-सदस्य” मामला रायपुर में

**IN THE INCOME TAX APPELLATE TRIBUNAL
RAIPUR BENCH “SMC”, RAIPUR**

**श्री पार्थ सारथी चौधरी, न्यायिक सदस्य के समक्ष
BEFORE SHRI PARTHA SARATHI CHAUDHURY, JUDICIAL MEMBER**

**आयकर अपील सं./ITA Nos.584 & 585/RPR/2025
निर्धारण वर्ष / Assessment Years : 2018-19 & 2019-20**

Anil Kumar Jain
34, Maruti Life Style, Ravi Shankar University,
S.O, Raipur-492 010
PAN: AHYPJ7657H

.....अपीलार्थी / Appellant

बनाम / V/s.

The Assistant Commissioner of Income Tax (Central),
Bilaspur (C.G.)

.....प्रत्यर्थी / Respondent

Assessee by : Shri Abhishek Mahawar, CA
Revenue by : Dr. Priyanka Patel, Sr. DR

सुनवाई की तारीख / Date of Hearing : 05.01.2026
घोषणा की तारीख / Date of Pronouncement : 06.01.2026

आदेश / ORDER**PER PARTHA SARATHI CHAUDHURY, JM**

The captioned appeals preferred by the assessee emanates from the respective orders of the Ld.CIT(Appeals)/NFAC, dated 05.08.2025 for the assessment years 2018-19 & 2019-20 as per the grounds of appeal on record.

2. Parties herein submitted that the facts and issue arising in both these appeals are absolutely common and similar and after recording their submissions both these appeals are heard together and disposed of vide this consolidated order.

3. The legal contention raised by the Ld. Counsel for the assessee pertaining to both these appeals is that an estimated addition has been made on the ground of commission income earned without rejecting the books of account u/s.145(3) of the Income Tax Act, 1961 (for short 'the Act') and without passing an order of assessment u/s.144 of the Act.

4. I shall take up the appeal filed by the assessee in ITA No.584/RPR/2025 for A.Y.2018-19 as lead case wherein the facts are that the assessee is a resident individual and engaged in the business of trading and commission of iron and steels and also earned interest income during the year under consideration. A search and seizure operation u/s.

132 of the Act was conducted on the residential/business premises of the assessee on 19.02.2020. In response to the notice u/s.153A of the Act, the assessee filed return of income declaring income at Rs.8,13,000/-. That in response to the statutory notices issued to the assessee, the Ld. AR attended the proceedings from time to time and had furnished written submission with supporting documents.

5. During assessment proceedings, the A.O observed that the assessee was involved in providing bogus purchase and sale bills, on which, the A.O added sum of Rs.12,58,774/- as commission income for providing such bogus purchase and sale bills.

6. During the first appellate proceedings, the Ld. CIT(Appels)/NFAC had affirmed the findings of the A.O and dismissed the appeal of the assessee.

7. At the time of hearing, the Ld. Counsel for the assessee submitted that such addition on account of commission income has been made by the A.O without rejecting the books of account u/s.145(3) of the Act and without resorting to pass assessment u/s.144 of the Act. It was submitted by the Ld. Counsel that the A.O had accepted the purchase/sales recorded in the books of account and over and above had made such addition which was against the settled proposition of law. In

this regard, the Ld. Counsel relied on the decision of the Hon'ble High Court of Delhi in the case of **Pr. CIT Vs. Forum Sales (P). Ltd. (2024) 160 taxmann.com 93 (Del.)** and also decision of the "Division Bench" of Hon'ble High Court of Karnataka in the case of **CIT Vs. Anil Kumar & Co. (2016) 67 taxmann.com 278/386 ITR 702. (Kar.)**.

8. Per contra, the Ld. Sr. DR supported the findings of the Revenue authorities. She submits that as per facts when the assessee was providing bogus purchase and sales bills definitely he would not do it for free and accordingly, has earned commission for providing such services. She vehemently supported the addition made on account of commission income.

9. Having heard submissions of the parties herein even without going into the factual merits of the matter, the legal contention that is there before me for adjudication is where the Revenue has failed to reject the books of account and proceeded to estimate income without framing assessment u/s. 144 of the Act, whether such action is sustainable as per law. In this regard, the Hon'ble High Court of Delhi in the case of **Pr. CIT Vs. Forum Sales (P). Ltd. (supra.)** has observed and held as follows:

"19. A plain reading of the aforementioned provisions would indicate that the AO wields an authority to make additions on the basis of estimation of income upon fulfillment of the conditions mentioned in Section 145(3) of the Act. Once the AO is satisfied about the existence of irregularities in the books of account as per Section 145(3) of the Act, it shall

proceed in the manner provided under Section 144 of the Act. At this juncture, what needs consideration is the question whether such an addition must be made only after the rejection of the books of account by the AO.

20. The Division Bench of the High Court of Bombay in the case of Principal Commissioner of Income-tax v. Swananda Properties Pvt. Ltd. [2019 SCC OnLine Bom 13359] had an occasion to consider the said question and the same was accordingly answered as under:-

“11. We note that the books of account of the respondent were rejected by the Commissioner of Income-tax (Appeals) under section 145(3) of the Act. However, the Tribunal found in the impugned order that the invocation of section 145(3) of the Act is unjustified as no defect was noted in the books of account to disregard the same. We note that the Commissioner of Income-tax (Appeals) in his order while rejecting the books of account does not specify the defect in the record. The basis of the rejection appears to be best judgment of assessment done by him. The rejection of the books should precede the best judgment assessment. On facts, the Revenue has not been able to show any defect in the respondent's records which would warrant rejection of the books and making a best judgment assessment. Thus, on facts the view taken by the Tribunal is a possible view. Therefore, no substantial question of law arises. Thus not entertained.”

[Emphasis supplied]

21. The Division Bench of the Karnataka High Court in the case of CIT v. Anil Kumar & Co. [2016 SCC OnLine Kar 8512], has held that in cases where the Revenue had failed to reject the books of account and proceeded to an estimation of income without framing the assessment under Section 144 of the Act, such an action is unsustainable as per law. The relevant paragraph of the said decision is reproduced as under:-

“11. In so far as the estimation of gross profit made by the Assessing Officer modified by the Commissioner of Income-tax (Appeals), the Tribunal has rightly held that when the books of account of the assessee had not been rejected and assessment having not been framed under section 144 of the Income-tax Act the said authorities were in error in resorting to an estimation of income and such exercise undertaken by them was not sustainable. Section 145(3) of the Act lays

down that the Assessing Officer can proceed to make assessment to the best of his judgment under section 144 of the Act only in the event of not being satisfied with the correctness of the accounts produced by the assessee. In the instant case the Assessing Officer has not rejected the books of account of the assessee. To put it differently the Assessing Officer has not made out a case that conditions laid down in section 145(3) of the Act are satisfied for rejection of the books of account. Thus, when the books of account are maintained by the assessee in accordance with the system of accounting, in the regular course of his business, the same would form the basis for computation of income. In the instant case it is noticed that neither the Assessing Officer nor the Commissioner of Income-tax (Appeals) have rejected the books of account maintained by the assessee in the course of the business. As such the Tribunal has rightly rejected or set aside the partial addition made by the Assessing Officer for arriving at gross profit and sustained by the Commissioner of Income-tax (Appeals) and rightly held that the entire addition made by the Assessing Officer was liable to be deleted. The said finding is based on sound appreciation of facts and it does not give rise for framing substantial question of law.”

[Emphasis supplied]

22. In another case of Principal Commissioner of Income-tax v. Marg Ltd. [2017 SCC OnLine Mad 37852], the Division Bench of the High Court of Madras has held that the rejection of books of account is sine qua non before the AO proceeds 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.”

[Emphasis supplied]

23. In the case of CIT v. Gian Chand Labour Contractors [2007 SCC OnLine P&H 1577], the Division Bench of the High Court of Punjab and Haryana while taking a similar view, has held as follows:-

“8. Section 29 of the Act prescribes that the income referred to in section 28 which is assessable under the head “Profits and gains of business or profession” shall be computed in accordance with the provisions contained in sections 30 to 43A of the Act. Section 145 of the Act provides for computation of income under section 29 on the basis of books of account and the method of accounting regularly followed by the assessee. However, where the Assessing Officer is not satisfied with the correctness or completeness of the said books, he may reject the same and estimate the income to the best of his judgment in accordance with the provisions of section 144 of the Act. When an estimate is made to the best judgment of an Assessing Officer, he substitutes the income that is to be computed under section 29 of the Act. Once the best judgment assessment is made by fixing a rate of net profit, the assessee's claim for deduction on account of expenses cannot be deemed to have been ignored. The net profit rate is applied after taking into consideration all factors and it accounts for all the deductions which are referred to under section 29 and are deemed to have been taken into consideration while making such an estimate.”

[Emphasis supplied]

24. The series of judgments referred to hereinabove clearly allude to the settled position of law that the books of account have to be necessarily rejected before the AO proceeds to the best judgment assessment upon fulfilment of conditions mentioned in the Act. 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.

25. In the present case, the ITAT has made a categorical finding that despite the fact that the AO was provided with the requisite bills, vouchers and addresses of the transacting parties, it did not make any effort to confirm the veracity of the alleged bogus or inflated bills.

26. We, hereby, also take note of the observations made by the ITAT in its order dated 22.10.2018 in Paragraph 25, wherein, while affirming the deletion of additions vide order of the CIT (A), it was held as under:-

“25. We find although the Assessing Officer was having complete address of the parties, however, he did not bother to call for any information from the said parties if he had some doubts. The entire addition by disallowing of 40% of the purchases in our opinion is not justified when the books of account are not rejected. We find the Hon'ble Gujarat High Court in the case of Yunus Haji Fazawala Vs. 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. The order of the Tribunal confirming the disallowance was accordingly reversed. Since in the instant case also the books of account are not rejected, therefore, action of the CIT(A) in deleting such addition is justified. Further we find merit in the findings of the CIT (A) that if the action of the Assessing Officer is accepted then profit of the assessee will be 32.9% for A.Y. 2013-14 and 56.09% for A.Y. 2014-15 which is illogical and absurd. Since the order of the CIT(A) on this issue is just and proper under the facts and circumstances of the case, therefore; we do not find any infirmity in the same. Accordingly the same is upheld and the ground raised by the revenue is dismissed.”

27. Also, the decisions relied upon by the Revenue do not essentially support its case as the facts of the cited cases are strikingly different from the case at hand and therefore, the same are distinguishable. Though the decision of the Division Bench of the Calcutta High Court in Unit Construction Co. Ltd. would only have a persuasive value, however, a closer scrutiny of the same leads us to the conclusion that the said decision was rendered in the context of unexplained investments as per the scheme of Section 69 of the Act. In Paradise Holidays, the issue pertained to the rejection of books of account without an appropriate justification and therefore, unlike the present case, the challenge was laid with respect to the rejection of books of account itself.

28. So far as the proposed question (D) is concerned, the same is a matter of fact which has been settled by the ITAT which states that the action of the AO in making an addition of Rs.1,00,000/- on the protective basis, which already stood explained, deserved to be deleted. The ITAT further held that the substantive addition has already been made in the hands of Mr. Moin Akhtar Qureshi, which has been mentioned by the AO himself and therefore, there is no infirmity in deletion of the said addition by the CIT(A).

29. Admittedly, the addition of income as discussed in questions (B), (C) and (D) on estimate basis has been done without rejecting the books of account. In view of the aforesaid, we find that no substantial question of law arises in the present appeals.

30. Consequently, we do not find any merit in the case of the Revenue and have no reason to interfere with the view taken by the ITAT. Therefore, the appeals stand dismissed. Pending application(s), if any are also disposed of.”

10. Reverting to the facts of the present case, admittedly, the A.O has not resorted to either Section 145(3) of the Act or Section 144 of the Act. On one hand, the A.O accepts the purchase and sales recorded in the books of accounts and thereby, he decides not to reject the same and at the same time, on estimation he adds commission income over and above purchase and sales as reflected in the books of accounts. That as per the judicial precedent referred hereinabove, such addition is unjustified, arbitrary and bad in law and hence, the A.O is directed to delete the said addition from the hands of the assessee while providing appeal effect of this order.

11. Since the legal issue has been answered in favour of the assessee, then other grounds pertaining to the merits becomes academic only.

12. In the result, appeal of the assessee in ITA No.584/RPR/2025 for A.Y. 2018-19 is allowed.

ITA No.585/RPR/2025
A.Y.2019-20

13. Since parties herein conceded at the threshold that the facts and circumstances involved in the appeal in ITA No.585/RPR/2025 for A.Y.2019-20 is absolutely similar and common as were there before me in ITA No.584/RPR/2025 for A.Y.2018-19, therefore, my decision rendered in ITA No.584/RPR/2025 for A.Y.2018-19 shall ***mutatis mutandis*** apply to ITA No.585/RPR/2025 for A.Y.2019-20. That as per the similar terms appeal of the assessee in ITA No.585/RPR/2025 for A.Y.2019-20 is allowed.

14. In the combined result, both the appeals of the assessee are allowed.

Order pronounced in open court on 06th day of January, 2026.

Sd/-
(PARTHA SARATHI CHAUDHURY)
न्यायिक सदस्य/JUDICIAL MEMBER

रायपुर / Raipur; दिनांक / Dated : 06th January, 2026.

SB, Sr. PS

आदेश की प्रतिलिपि अग्रेषित / Copy of the Order forwarded to :

1. अपीलार्थी / The Appellant.
2. प्रत्यर्थी / The Respondent.
3. The Pr. CIT-1, Raipur (C.G.)
4. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, "एक-सदस्य" बेंच,
रायपुर / DR, ITAT, "SMC" Bench, Raipur.
5. गार्ड फाइल / Guard File.

आदेशानुसार / BY ORDER,

// True Copy //

Senior Private Secretary
आयकर अपीलीय अधिकरण, रायपुर / ITAT, Raipur