

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 No.554/Ind/2025
(AY: 2020-21)

Gopal Muwel, Morad, Manawar, Dhar (PAN: CAAPM6256Q)	<u>बनाम/</u> Vs.	ITO Dhar
(Appellant)		(Respondent)
Assessee by	Shri Lucky Singhal, AR	
Revenue by	Shri Ashish Porwal, Sr.DR	
Date of Hearing	27.01.2026	
Date of Pronouncement	06.02.2026	

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, [herein after referred to as the Act for the sake of convenience & brevity]. The Assessee is aggrieved by the order bearing Number:- ITBA/NFAC/S/250/2025-26/1075866312(1) dated 29.04.2025 passed by the Ld. CIT(A) u/s 250 of the Act, which is herein after referred to as the "**Impugned order**". The Relevant Assessment year is 2020-21 and the

corresponding previous year period is from 01.04.2019 to 31.03.2020.

2.

Factual Matrix

2.1 That as and by way of an Assessment order made u/s 143(3) rws 144 of the Act, the total income of the Assessee was computed & assessed at **Rs. 63,98,910/-**. The total income as per the return of income filed was at **Rs.6,12,710/-**. The addition/variation in respect of issue involved was made at **Rs.57,86,200/-**. The aforesaid Assessment order bears no: ITBA/AST/S/143(3)/2022-23/1045666639 (1) and the same is dated 19.09.2022 which is herein after referred to as the **“Impugned Assessment Order”**

2.2 That the assessee had e-filed the return of income for the A.Y.2020-21 on 10.01.2021 admitting the total income of **Rs.6,12,710/-**.

2.3 That the case of the assessee was selected for limited scrutiny to verify the following issues:

“Deductions from income from other sources”

2.4 That in the return of income the assessee had shown **Rs.62,37,768/-** as the **"Income from other sources"** and had claimed **Rs.57,86,200/-** as **expenses/deductions u/s 57 of the Act**. The resultant net amount comes to **Rs.4,51,568/-**. **Net other source of income.**

2.5 It is recorded in the aforesaid **"Impugned Assessment Order"** that assessee had **complied partially** the notice u/s 143(2), letter dated 04/07/2022 **partially** & show cause notice u/s 143(2) dated 17.08.2022 **fully**. [Para 2 of the impugned assessment order].

2.6 That in the reply dated 27.07.2021 in response to notice u/s 143(2) dated 29.06.2021 the assessee has stated as under:-

The assessee vide his reply dated 27/07/21 has stated the following:

"We are engaged in the business of contractor ship with local customers on sub assignment basis and also we have machineries which we give on rent. So income from contractor ship is shown under income from business and profession head and income from renting of machineries is shown under income from other sources Since renting generates us the rent from which we make payments of interest on loan, salary of drivers and assistants, repair and maintenance and also the fuel cost. So we have shown the gross rent in income from other sources less expenses beared by us in other sources again. So there is no unusual expenses claimed"

2.7 That in the **“Impugned Assessment Order”** in para 3.3 it is recorded by the Ld. AO that **“the assessee has not submitted any evidences in support of his claim.”**

2.8 It is also recorded in the **“Impugned Assessment order”** that “the assessee was requested to submit details regarding the expenses/deductions claimed u/s 57 to the tune of Rs. 57,86,200/-. However, the assessee has not submitted any details regarding the same to substantiate the genuineness of his claim of deduction u/s 57. Therefore, this amount of Rs. 57,86,200/- was proposed to be disallowed and added back to the total income of the assessee.

2.9 That the assessee vide reply dated 17.08.2022 stated that **“gross receipts forms part of business”** & has been shown **inadvertently under other sources head & requested opportunity to rectify the said return.** The **Reply of the assessee was found not acceptable as there is no Provision under the Act to make amendment-in the return of income at the Assessment Stage without revising the return.** Change of head of income cannot be

done u/s 154. Therefore the Ld. AO issued a show cause dt 17.8.2022 calling upon the assessee to show cause as to why the deduction claimed u/s 57 of the Act should not be disallowed. The core contention of the assessee at the "**impugned Assessment Order**" stage was that the Assessee is engaged in the business of construction & offered tax **under presumptive taxation u/s 44AD of the Act.** Consequently there is no liability to maintain any books of Accounts.

The Assessee is involved in the business of **renting of JCB Machineries** wherein the income is shown **under the head "Other Sources"**. With Regard to the expenditure made, the Assessee has not maintained the books of accounts. Further the operating of **machineries like JCB** involves major cost- in terms of fuel, Salary, repairs & maintenance & that these amounts were **majorly paid through bank & fuel cost has been incurred by cash.** It was also stated that though the assessee has **two bank account for business & renting but the receipts in both the accounts are combined.** In brief there is no separate account for separate classification of

both the income i.e. (i) civil contractor-ship (ii) renting of JCB's. Therefore After deleting 6% margin out of gross receipts of **Rs 62,37,468/**, the expenditure comes to Rs **58,63,502/-**-which amount is well below the expenditure claimed u/s 57 amounting to **Rs.57,86,200/-** in the return of income. The Ld. AO in the "**Impugned Assessment Order**" has observed as follows:-

(i) Provision of section 56(2)(ii) is reproduced

(ii) Assessee has not offered the rental income under business head. The same is offered under the head "Other sources"

(iii) For the preceeding years assessee has shown income from renting of JCB's under "**other sources**".

(iv) Assessee though may not be required to maintain books of accounts for business head but the assessee is required to maintain for the "**Expenditure**" shown under the head "**other sources**"

(v) There is no separate accounts for classification of income. From the bank statements too, classification

could not be verified. Hence no evidence submitted for expenditure.

(vi) Judgement of the Supreme Court in case of Goetze(India) Ltd. 284 ITR 324. Relied upon wherein it is held that assessee cannot amend the ROI for making a claim for deduction other than by filing a revised ROI.

(vii) **Claim of Rs.57,86,200/- disallowed & added to ROI**. The assessment order u/s 143(3) r.w.s 144 of the Act.

2.10 That the assessee being aggrieved by the aforesaid "Impugned Assessment Order" prefers the first appeal u/s **246 A of the Act** before the Ld. CIT(A) who by the "Impugned Order" has partly allowed the first appeal of the assessee on the grounds & reasons stated therein. The core grounds & reasons for the dismissal of the first appeal was as under:

"6. Decision

I have gone through the facts of the case. The only grievance of the appellant is against the disallowance of expenditure of Rs. 57,86,200/- claimed u/s 57 of the Act, although the grounds of appeal are drafted clumsily.

The appellant on his own has declared income from contract works as business income and offered profit in terms of section 44AD of the Act for taxation. On the other hand, he has declared

income from renting out machinery as other source income. The appellant has made an argument that income from renting out machinery could also come under business income and it would be seen that the appellant, in fact, declared higher profit in the present return than that would have been worked out in terms of section 44AD of the Act. The appellant wanted to make the point that in the present return, he has declared more profit and claimed lesser expenses, if section 44AD was the yardstick. The other point that the appellant made out is that the AO cannot disallow the entire expenditure claimed u/s 57 of the Act because there are bank records for the expenses incurred, which were incidental to earning of rent from letting out of machinery.

On the first issue, the appellant has been following the trend of declaring income from rent of machinery as other source income consistently over years. The appellant had the opportunity to file a revised return of income to present its accounts differently for the AY 2020-21, which he has not done. At this stage, there is no scope to change the head; with no change of activity of the appellant compared to the earlier years, it would be arbitrary to suddenly change income head merely because the appellant could not substantiate the claim for deduction u/s 57 of the Act with supporting vouchers/evidences. Having said that, it is also a fact that there must be incidental expenditure in running an activity which earns income and such expenses, as can be explained from bank statements or other evidences, must be allowed. The AO was unwise to disallow the entire claim made by the appellant.

The appellant has filed a profit and loss account and furnished summary of the bank accounts. The bank accounts were available before the AO at the assessment stage and instead of examining the same, he has adopted a short cut method and made an erratic addition of the entire claim. The summary of bank accounts shows expenses incurred through bank of Rs. 28,93,405/-, which is related to earning of other source income. Further, the appellant has claimed depreciation of Rs. 5,97,835/-, which is allowable in terms of section 56(2)(ii) & 56(2)(ii)r.w.s. 57(ii) of the Act. The appellant cannot be denied deduction of Rs. 34,91,240/-, therefore, in the facts emanating from the case.

When an expenditure is claimed, it must be substantiated by an assessee, on being asked to do so by the AO. The appellant, in the initial assessment stage failed to do so. At the appellate stage, on the basis of documentary evidence in the form of bank account being explained, I allow claim of deduction u/s 57 of the Act to the extent of Rs. 34,91,240/- as against the claim of Rs. 57,86,200/- made by the appellant. The appellant thus gets relief of Rs. 34,91,240/-. The remaining addition of Rs.22,94,960/-is confirmed.

The appeal is, in the result, partly allowed."

2.11 The Assessee being Aggrieved by the **"Impugned Order"** has preferred the instant second appeal before this Tribunal and has raised following grounds of appeal in the form No. 36 against the **"Impugned Order"** which are as under:-

"1.Erroneous Disallowance of Fuel Expenses Essential to Business Operation- The learned CIT(A) and Assessing Officer erred in law and on facts by disallowing 222,94,960 towards fuel (petrol and diesel) expenses, which are inextricably linked to the business of machinery rental. These expenses are essential for income generation and were reasonably substantiated through bank withdrawals and operational scale. "The fuel expenses to be borne by the vendor" as specifically mentioned in the work order, so disallowance the same is arbitrary and irrational.

2.Failure to Recognize Eligibility Under Section 44AD Presumptive Scheme- The appellant, being an eligible assessee with total receipts below the prescribed threshold and income received via banking channels, declared a profit rate exceeding 7%, which is higher than the required 6% under the proviso to Section 44AD(1). Despite this, the authorities failed to apply the presumptive scheme under Section 44AD, which obviates the need for detailed expense scrutiny OR maintenance of books.

3. machinery (along with driver and operator services) constitutes a systematic business. As held in Rayala Corporation Pvt. Ltd. v. ACIT (SC, 2016) and Chennai Properties & Investments Ltd. v. CIT [2015] 373 ITR 673 (SC), classification of income should be Income from Renting Activity Is in the Nature of Business-Although the income was declared under "Other Sources" due to earlier reporting consistency, the activity of renting out plant and follow the real nature of the activity, not its label in the return.

4.Violation of Natural Justice and Disproportionate Treatment-The AO disallowed the expenditure without granting sufficient opportunity to submit explanations and documents, owing largely to portal access issues and procedural lapses. The CIT(A) also failed to fully consider the material placed on record, including

GST returns, reconstructed books, and transaction logs. The bank statement reflects sufficient cash withdrawal to substantiate the Fuel expenses.

5. Partial Allowance without Adequate Scrutiny Is Arbitrary- The CIT(A) allowed 234.91 lakh based on limited bank scrutiny but disallowed the remainder mechanically, without disproving its 5 business nexus. In CIT v. Caleuita Agency Ltd. [(1951) 19 ITR 191 (SC)], it was held that once the assessee explains expenditures credibly, the burden shifts to the department to disprove it.

6. Inflexible Rejection of Cash Expenses Contrary to Legal Principles- The authorities below unjustly disallowed fuel expenses merely due to lack of paper vouchers, despite adequate circumstantial evidence. As held in V.C. Arunai Vadivelan v. ACIT [2021]128 taxmann.com 195 (Madras HC), genuine business expenses cannot be disallowed solely because they are cash-paid OR supported by self-made vouchers, especially when their necessity is commercially evident."

3.

Record of Hearing

3.1 The hearing in the matter took place before this Tribunal on 27.01.2026 when the Ld. AR for & on behalf of the Assessee appeared before us & interalia contended that the **"Impugned Order"** is bad in law, illegal & not Proper. It is in the violation of the principles of natural justice. It therefore deserves to be set aside. The Ld. AR then submitted that the assessee was actually in the business of civil contractor-ship & **since preceding years has entered into the business of renting**. By renting the JCB machines the assessee actually

derives rental income basis deployment of plant & machinery. It was contended that the assessee claimed expenditure u/s 57 of the Act basis expenditure incurred while deploying such JCB's on rent. The major expense of **fuel is in cash & for which the necessary records of bills of the diesel/petrol pumps are not available having been misplaced. Ld. AO has disallowed entire claim.** It was also contended that all rental receipts are from banking channels 100% as JCB's are deployed on the rental basis to a big corporate called "**ultra tech**" a leading company in India. In ROI the assessee has declared such rental receipts under the head "**Other sources**". **ROI is however not on record, but facts are clear in the "Impugned Assessment order"**. Hearing thus can be proceeded with. The Ld. AR then submitted that the issue before the Ld. AO was **qua section 44AD only** & by virtue of para 4 of the "**Impugned Assessment Order**" the **claim u/s 44AD is in fact rejected.** The Ld. AR then invited this tribunal's attention to page 59,60 & 61 of appeal memo wherein cash withdrawals are highlighted which were mainly **for fuel i.e. diesel.** It as

submitted that the assessee has two bank account & other is saving account. There are cash withdrawals in both the accounts. Page 59 to 62 is current account with PNB & page 63 to 65 is SB a/c with PNB. It was submitted that the assessee is a civil contractor in the preceding years & has two sources of income one from civil contractor's works & other from rental of JCB under "**Other sources**". In the current year i.e. the year under consideration civil contractors works **has fetched very nominal income & major source is from the rental income of JCB's**. It was fairly submitted that in the preceding years civil contractors income is u/s 44AD & rental income under head "**other sources**". It was also fairly submitted by the Ld. AR that for the year under consideration **there is no evidences like bills, vouchers etc.** in support of fuel expenses which were incurred by the assessee by way of cash. It was also submitted that the fuel expenses are less than 40% of the rental receipts. The overall profit is about 5 lakh approximately.

3.2 Per contra the Ld. DR for & on behalf of the revenue submitted that there is no infirmities in the impugned order

& part relief has been given to the assessee by the Ld. CIT(A). The Ld. DR then readout internal page 3 of the **"Impugned Assessment Order"** that **scrutiny is for expenses only**. The assessee is noncompliant which fact is recorded in the **"impugned assessment order"**. The only material which the assessee has provided is in the form of bank statements. **There is absolutely no supporting details for expenses incurred**. Internal page 4 & 5 of the **"Impugned Assessment Order"** was read out to contend that at the original stage of assessment **itself there was no explanation for expenditure**. The Ld. DR however fairly stated that for renting of JCB's some fuel expenses must have been incurred. The Ld. DR assisted this tribunal by inviting attention to page 48 of appeal memo. Profit rate is approximately 7.25%. About 4.5 lakh is declared profit. In the rejoinder Ld. AR submitted that business of renting of JCB's is a highly competitive business now a days. Everybody is keen to work for a good corporate. Ld. AR suggested let 8% would be a fair rate. **These debates took place at the fag end of the hearing since some expenses must have been**

incurred for fuel on deployment of JCB's on rent. There is however no evidence for fuel expenses was by & large admitted, **Position during the course of hearing.** The Ld. DR then left the issue to bench to take appropriate call as per law as remanding the matter back to the lower authorities would be the exercise in the futility. Hearing was then concluded.

4. **Observations Findings & conclusions**

4.1 We have to decide the legality, validity and propriety of the **"impugned order"** basis records of the case & the rival submission canvassed before us.

4.2 We have carefully perused the records of the case and have heard the submissions.

4.3 We basis records of the case & after hearing & upon examining the rival contentions of the Ld. AR & the Ld. DR canvassed before us, are of the considered opinion that in the **"impugned assessment order"** the Ld. AO has made addition/variation of Rs.57,86,200/-. The ROI was at Rs.6,12,710/-. The total income computed & assessed was at Rs.63,98,910/-. Copy of the return of income for A.Y. 2020-21 is not placed on record which is claimed to have been filed u/s 44AD of the Act. The income from renting out machinery (JCB's) was offered as **"other source income"**. The assessee in the ROI has declared **Rs.62,37,768/-** as income **"from other sources"** & **claimed deduction u/s 57 of the Act at**

Rs.57,86,200/- against such income, showing net other source income of Rs.4,51,568/-. The stand of the assessee was that income from contract works [civil contractor-ship] earned by him was declared as business income u/s 44AD of the Act whereas the income from renting out of machinery's was offered "**as other sources income**". Since the assessee could not substantiate the deduction u/s 57 of the Act **with the satisfactory & credible evidence & hence the amount of Rs. 57,86,200/-** was fully disallowed. According to assessee after deleting 6% margin as specified u/s 44AD of the Act [gross receipt received in bank] the assessee is left with 94% expenditure which can be done in cash or through bank. The assessee's case is 6% margin rule u/s 44AD of the Act is equally applicable to him as all gross receipts in bank account only so profit comes at Rs.3,74,266/- as per the said section & expenditure comes to Rs.58,63,502/- i.e. max expenditure benefit u/s 44AD of the Act. The assessee however has shown Rs.57,86,200/- as expenditure which amount is well below Rs.58,63,502/- the maximum permissible. The assessee's contentions that he is in the business of construction & offered tax under presumptive taxation u/s 44AD of the Act & hence no liability to maintain books of accounts & **same were in fact not maintained.** The nature of section 44AD of the Act allows assessee to show the renting of income in the said section also. Therefore, after deleting 6% margin out of gross receipts of Rs.62,37,768/- the expenditure comes to Rs.58,63,502/- which is well below the expenditure

claimed u/s 57 amounting to Rs.57,86,200/- in the return. In brief the **analogy of 44AD is applied to other sources.**

4.4 The Ld. AO in the "**Impugned Assessment Order**" by relying on section 56(2)(ii) has held that the assessee has not offered the rental income under business head, in preceding years the assessee too has shown such renting income under head "**other sources**". Though the assessee by virtue of section 44AD is not required to maintain books of accounts for business head, the assessee is required to maintain the same for expenditure shown under the head "**other sources**". It is an admitted position that there is no separate account for classification of income. Bank statements basis "**classification**" cannot be verified. No evidence for expenditure incurred to earn rental income. All these have been held against the assessee in the "**impugned assessment Order**". Basis above deduction u/s 57 was disallowed.

4.5 In so far as the "**Impugned order**" of the Ld. CIT(A) is concerned we have already reproduced above the core finding at para 2.10 (supra).

4.6 We are of the considered opinion that there is no infirmities in the impugned order & no serious flaw has been pointed out to this tribunal both in fact & in law by the Ld. AR of the assessee. **The Ld. AR desires that petrol/diesel expenses of Rs.23,62,605/- should be allowed without there being proof or evidence in support thereof.** The Ld. CIT(A) in para 2.10 has made a **reasonable analysis** which the Id. AR has not been able to demolish it by any cogent material/evidences. The entire gamut of the case

is considered by the Ld. CIT(A) & a fair order is given. In the absence any evidence for the fuel expenses the Ld. AR wants us to give relief on presumptive basis that without fuel machinaries cannot be deployed. But the Ld. AR has failed to give any material, bill & vouchers & we are afraid that in the absence of any material on record we cannot go by presumptions & assumptions. Further **basis** bare bank statements summary & claim of depreciation a **deduction of Rs.34,91,240/- is allowed which is just fair & reasonable**. The Ld. CIT(A) has rightly exercised his discretion & has believed the assessee. The expectation of the assessee seems to be never ending, **particularly so when he has no material/evidence in support of any expenses including of Rs.34,91,240/-**. The Ld. CIT(A) even then has trusted the assessee & any thing beyond that would be far fetched. It should not be forgotten that **case was opened under scrutiny u/s 143(3)** where each & every expenditure claimed must be satisfactory explained with credible evidence. The Ld. DR has emphasized this fact & we concur with his submissions. Enough indulgence is already given which is fair & reasonable.

4.7 However this tribunal **simultaneously in the peculiar facts & circumstances of the case as analysed aforesaid & in the interest of justice so that litigation is put to rest is of the considered opinion that both the Ld. AR & the Ld. DR are adidem that some expenses on fuel cost must have occurred as the contract was all inclusive on the deployment of JCB's to "Ultra tech Ltd."** hence it would be just, fair &

convenient that requisite fuel expense/cost be first ascertained as & by way of a proper & detailed empirical analysis basis that fuel cost be determined. The necessary & due benefit of it be given to assessee if found justifiable/eligible. We clarify empirical analysis means studying & interpreting information based on real world data, direct observation & measurable evidence, rather than just the theories or logic to draw conclusions, identity patterns & test hypotheses.

4.7 In the premises drawn up by us the the impugned order is set aside as & by way of remand back to the file of Ld. AO with direction as contained in para 4.6 (supra).

5

Order

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

Pronounced in open court on 06.02.2026

Sd/-

(BHAGIRATH MAL BIYANI)
ACCOUNTANT MEMBER

Sd/-

(PARESH M JOSHI)
JUDICIAL MEMBER

Indore

Dated : 06/01/2026
Patel/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