

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 No.756/RPR/2025**

**निर्धारण वर्ष / Assessment Year : 2019-20**

Isha Metal Stores  
Gol Bazar, Raipur-492 001  
PAN: AAAFI6193C

.....अपीलार्थी / Appellant

**बनाम / V/s.**

The Assistant Commissioner of Income Tax,  
Central Circle-2, Raipur (C.G.)

.....प्रत्यर्थी / Respondent

Assessee by : Shri Sunil Kumar Agrawal, CA &  
Vidya Verma, Advocate

Revenue by : Dr. Priyanka Patel, Sr. DR

सुनवाई की तारीख / Date of Hearing : 23.02.2026

घोषणा की तारीख / Date of Pronouncement : 23.02.2026

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

The present appeal preferred by the assessee emanates from the order of the Ld.CIT(Appeals), Raipur-3, dated 27.11.2025 for the assessment year 2019-20 as per the grounds of appeal on record.

2. Brief facts in this case are as follows:

“The assessee is engaged in retail & wholesale trading of household goods. The return of income for the above period was filed by the assessee on 07.03.2020 declaring total income of Rs.28,08,610/-.

During a survey proceedings on 19.02.2019, only sales bill book and some purchase vouchers were found in the premises, sales bills were generated physically and many of the entries were found to be unaccounted. A bill book, "Chandan estimate cash memo" bill (BI-06) was found and impounded, as the entries of sales for Rs.48,49,112/- were found to be not accounted in the computerized accounts in Tally software. Shri. Sanjay Gupta, partner of assessee firm admitted that the purchase and sales of Rs.48,49,112/- were made completely out of accounts and declared Rs. 48,49,112/- as the income of the firm for the current year and voluntary surrender the same.

During the assessment proceedings, the assessee retracted from the statement through the sworn affidavit dated 10.03.2020. The contention of the assessee firm was not accepted by the assessing officer as the partner of assessee firm, Shri Sanjay Gupta himself stated in his statement that the transactions of sale/purchase found in bill book "Chandan estimate cash memo Bill" is not recorded in tally data and regular books of account and disclosed Rs.48,49,112/- as unrecorded sales without any pressure built up by the survey team.

The Assessing Officer concluded that the GP i.e. 22.17% (i.e. 10,75,050/-) of total unrecorded sales of Rs.48,49,112/- was added back to the total income of the assessee.”

3. The Ld. CIT(Appeals) had dismissed the appeal of the assessee observing as follows:

“The assessee firm is contesting the addition of Rs. 10,75,050/- made by the Id. AO on account of unrecorded sales detected during the survey proceedings conducted on 19.02.2019. During the survey, a bill book titled "Chandan estimate cash memo" was found, which contained sales bills of Rs.48,49,112/- that were not accounted for in the computerized accounts maintained in Tally software. Shri Sanjay Gupta, partner of the assessee firm, admitted to the unaccounted sales and purchases and declared Rs.48,49,112/- as income of the firm for the current year, surrendering the same for taxation.

The assessee has retracted from this statement through a sworn affidavit dated 10.03.2020, claiming that the surrender was made under pressure from the survey team and was not based on actual unaccounted sales. However, the Id. AO did not accept this retraction, relying on the statement given by Shri Sanjay Gupta, Partner of assessee's firm during the survey proceedings. The Id. AO estimated a GP rate of 22.17% on the unrecorded sales of Rs.48,49,112/-, resulting in an addition of Rs.10,75,050/- to the total income of the assessee.

The assessee's contention that the surrender was made under pressure and was not based on actual unaccounted sales is not supported by any evidence. The statement given by Shri Sanjay Gupta during the survey proceedings was voluntary and without any coercion. The assessee's retraction from the statement without any corroborative evidence to prove that the surrender was involuntary cannot be accepted. The retraction appears to be an afterthought, aimed at avoiding tax liability. The absence of evidence to substantiate the claim of pressure or coercion undermines the validity of the retraction. Therefore, the Id. AO's decision to reject the retraction and estimate the GP on unrecorded sales is justified. The retraction does not alter the fact that unaccounted sales were detected, and the GP estimation is based on the assessee's own financial records.

The Id. AO estimated a GP rate of 22.17% on the unrecorded sales of Rs.48,49,112/-, resulting in an addition of Rs.

10,75,050/- to the total income assessee. This estimation is based on the assessee's own financial records for the A.Y. 2019-20, which show a GP rate of 22.17%. The assessee has not provided any evidence to suggest that this GP rate is not applicable to the unrecorded sales. Therefore, the ld. AO's estimation of GP is reasonable and justified.”

4. At the time of hearing, the contention in law raised by the Ld. Counsel for the assessee was that the estimated GP addition @22.17% on unrecorded sales made by the A.O without rejecting the books of account u/s.145(3) of the Income Tax Act, 1961 (for short 'the Act') is illegal, unsustainable and bad in law and liable to be deleted. The Ld. Counsel further submitted that if at all, additions were to be made by the A.O, in such circumstances, the A.O need to have rejected the books of account first and only after that he could have proceeded to make addition over and above the transaction reflected in the books of account. In absence of such exercise by the A.O, the entire action is bad in law.

5. Per contra, the Ld. Sr. DR vehemently supported the findings of the Revenue authorities.

6. I have heard the submissions of the parties herein, carefully considered the documents placed on record and analyzed the facts and circumstances in this case. The limited point of argument as assailed by the Ld. Counsel was that in the present facts and circumstances of the case, the A.O made an estimated addition over and above the purchase

and sales transaction reflected in the books of account without rejecting the said books of account u/s. 145(3) of the Act. That further, it was also submitted without resorting to Section 145(3) of the Act, it was not open to the A.O to proceed with his own assessment and make further additions over and above the transactions reflected in the books of account. If the A.O is not satisfied with the recordings in the books of account and has serious doubt about the genuineness of the same, he can definitely reject books and thereafter, proceed to make his own assessment and in the consequent assessment, the A.O may make further additions since he has already rejected the books of accounts.

7. However, in the present case of the assessee, it is clearly evident from facts on record that the A.O has not resorted to Section 145(3) of the Act but had still proceeded to make further additions on estimated basis on the unrecorded sales. That on one hand, the A.O has not doubted the genuineness of the books of account and on the other hand, he has proceeded to make his own assessment and making additions on estimated basis over and above the transactions recorded in the books of account of the assessee. That, such an exercise is not permissible within the purview of the settled legal principles on this issue. This issue is no more “Res-Integra” and it has been held by ITAT in numerous decisions as well as Higher Judicial Forums order that in order to render books of

account as non-genuine and making further additions, the A.O first has to reject the books of account and without doing that any additions are not warranted. I take guidance from the judgment of the **Hon'ble High Court of Madras** in the case of **Pr. CIT, Chennai Vs. Marg Ltd., (2017) 396 ITR 580 (Madras)**, wherein the Hon'ble High Court has held and observed as follows:

"4. We now proceed to merits of the matter under the caption 'Discussion' infra.

#### DISCUSSION

4(a) As stated supra, the Assessee is a Public Limited Company engaged in the business of Civil Construction and related services.

4(b) A.O had made addition to the income returned by the Assessee by estimating gross profit. The power to make such addition on estimate basis is available to the A.O under section 144 of the IT Act. Section 145 enables the A.O to invoke the power under section 144 when certain conditions adumbrated in sub-section (3) of Section 145 are satisfied. Therefore, it becomes necessary and useful to extract Section 145(3) of the I.T Act, which reads as follows:

"145(3) Where the Assessing Officer is not satisfied about the correctness or completeness of the accounts of the assessee, or where the method of accounting provided in sub-section (1) has not been regularly followed by the assessee, or income has not been computed in accordance with the standards notified under sub-section (2), the Assessing Officer may make an assessment in the manner provided in Section 144."

4(c) Therefore, it is sine qua non that the AO to come to a conclusion that the Books of Accounts maintained by the Assessee are incorrect, incomplete or unreliable and reject the Books of Accounts before the proceeding to make his own assessment. In the instant case, there is no reference in the Assessment Order of the AO regarding rejection of Books of Account.

4(d) Therefore, there is nothing on record to show that the AO came to the conclusion that the Books of Accounts maintained by the

Assessee are incorrect, incomplete, unreliable and as a consequence rejected the Books of Account.

4(e) Therefore, after setting out the plethora of case laws on this point, CIT (A) held that the accounts of the Assessee cannot be rejected merely based on the perception of the AO that the Assessee has declared low profit margin for certain projects when Books of Accounts have not been rejected. Considering the factual position that there is no reference in the Assessment Order made by the AO regarding the Books of Accounts (this has been fairly admitted by the Revenue before ITAT), we are not, therefore, labouring through the labyrinth of case laws relied on by CIT (A). The relevant portion pertaining to admission in this regard by the Revenue is at Paragraph 4 of the order of ITAT and the same reads as follows:

"4. On a query from the bench, whether the assessing officer rejected the books of account during the course of assessment proceedings, the learned department representative very fairly submitted that there is no reference in the assessment order in the rejection of books of account"

4(f) As this factual position has been admitted, ITAT, dismissed the appeal of the Revenue by holding that profits of an Assessee cannot be estimated without rejecting the books of account.

4(g) ITAT has expressed its considered opinion that only when an assessee is not maintaining Books of Accounts properly and the correct income cannot be estimated on the basis of the Books of Accounts, the Books of Accounts can be rejected. ITAT has gone on to hold that the AO can estimate profit only thereafter."

8. Further, I find that similar issue has been adjudicated by the ITAT, SMC Bench, Raipur in the case of **Anil Kumar Jain Vs. ACIT (Central, Bilaspur, ITA No.584 & 585/RPR/2025, dated 06.01.2026** wherein, this issue has been answered in favour of the assessee against the Revenue observing as follows:

"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.”

9. Respectfully following the aforesaid judicial pronouncements on the same parity of reasoning, I hold that it is not open for the A.O to estimate profit of the assessee without rejecting the books of account. That since this legal contention is answered in affirmative in favour of the assessee against the Revenue, all other grounds stands academic only.

10. In the result, appeal of the assessee is allowed.

Order pronounced in open court on 23<sup>rd</sup> day of February, 2026.

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

रायपुर / Raipur; दिनांक / Dated : 23<sup>rd</sup> February, 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 फ़ाइल / Guard File.

आदेशानुसार / BY ORDER,

// True Copy //

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