

**IN THE INCOME TAX APPELLATE TRIBUNAL  
JODHPUR BENCH (Virtual) JODHPUR**

**BEFORE DR. MITHA LAL MEENA, HON'BLE ACCOUNTANT MEMBER  
AND SUDHIR PAREEK, HON'BLE JUDICIAL MEMBER**

**ITA No. 304/Jodh/2024  
(Assessment Year 2017-18)**

<b>Balaji Marbles And Tiles Pvt. Ltd. 12 Dunne Market, Bargawan, Jabalpur Road, Madhya Pradesh – 483501. PAN No. AACCB 4886 C</b>		<b>DCIT, Central Circle -1, Udaipur.</b>
<b>Assessee by</b>	<b>Shri Rahul Bardia, CA (Virtual)</b>	
<b>Revenue by</b>	<b>Shri P.R. Mirdha, Addl. CIT (Virtual)</b>	
<b>Date of Hearing</b>	<b>18.02.2026.</b>	
<b>Date of Pronouncement</b>	<b>26.02.2026.</b>	

**ORDER**

**DR. MITHA LAL MEENA, A.M.:**

This appeal filed by the assessee is directed against the order of the Commissioner of Income Tax (Appeals), Udaipur-2 [CIT(A)], dated 28.02.2024 for the Assessment Year 2017-18.

2. The assessee has taken following grounds of appeal:
  1. The Ld CIT erred in law and facts of the case in rejecting the books of account during appellate proceedings.
  2. The Ld CIT Appeals erred in law and facts of the case in enhancing the addition on account of GP addition of Rs 94,24,706/-.
  3. The Ld CIT Appeals erred in law and facts of the case in comparing the GP ratio of assessee as 2.07% whereas the assessee explained

that its GP % shall be 25.89% if same its of direct expenses are considered.

4. The Ld CIT Appeals erred in law and facts of the case in sustaining the addition of Rs 32,51,115/- u/s 69A.
  5. The order passed by the Ld CIT Appeals is bad in law and facts, void ab initio and without jurisdiction.
  6. The appellant reserves the right to add or amend any ground of appeal
3. The issue raised in the ground no. 1 is regarding rejection of the books of account by the Ld. CIT (A) during appellate proceedings.
4. We have heard both the sides and perused the material on record. Admittedly, the Ld. CIT (A) has rejected the books of accounts of the assessee stating the reasons that the Quantity of sand sold as per audit report and VAT return is not tallying for 54 tonnes [The quantity as per books is 3,04,440 tonnes and as per VAT return is 3,04,494 tonnes as discussed on page No. 32 of CIT Appeal order]; that the Gross profit of Company is abnormally low which is not found justified as the GP ratio is 2.07% as compared to GP ratio of last year of 16.71%; that single invoice is made for sales claimed to be made on different dates to different members and that there was no verifiable evidence available with the assessee to prove that genuine sales were made..
5. The Ld. AR for the appellant argued that the CIT (A)'s action for rejection of books has been wrong because the assessee furnished reconciliation of sales

quantity as per books viz-a-viz VAT return. There was no defect found in the books of accounts. The sales as per books of accounts were more by Rs 1,24,750/- as compared to VAT return duly supported with assessment order for VAT and Reconciliation statement (refer page No.33 and 34 of CIT appeal order). The AR further submitted that the appellant during course of appellate proceedings submitted a reconciliation chart for GP margin as compared to earlier year. The GP margin for present assessment year was 25.89% as compared to GP ratio of 16.71% for the immediately preceding assessment year (refer page No.35 & 36 of Ld CIT Appeal order).

6. As regards to the issue of single invoice of Rs 20,72,000/- on 31.10.2016, the AR submitted that the details of bill No. 294 for Rs 2072000 [Taiwa Mines] was submitted to AO and CIT Appeals (refer page No.37 of Ld CIT Appeals order). He submitted that the Company runs three sand mines at Jarha, Khajuri and Talwa. The appellant claimed that the details of sale were provided during the assessment. Material (SAND) was sold on Transit pass (also known as PIT Pass). It was contended that combined sales are entered on 31.10.2016 when the cash was received at Head office. For first fortnight (14.10.2016 to 31.10.2016) there was no system to collect cash daily hence these were recorded as single sale. After 31.10.2016 system was developed to collect the cash daily which is also reflected in sales register. The Ld. AR vehemently

contended that each sale bill has to be linked by royalty receipt on individual basis. Royalty assessment by the mining department was already completed and there was no pending demand. Therefore, daily bills issued could be verified from royalty records.

7. To justify the books of accounts with verifiable evidences, the assessee submitted books, vouchers, quantity records, VAT assessment order, royalty details, assessment order for assessment year 2016-17 where books for same business activity was accepted by the department. The AR argued that books of accounts are audited and there was no negative comment in the audit report. The Ld. AR also submitted that the assessment order for Assessment Year 2023-24 was also completed u/s 143(3) and returned income has been accepted.

8. The Ld. Counsel argued that Ld. CIT (A) does not have power to reject the books of accounts u/s 145(3). The text of section 145 of the Act is reproduced herewith for reference:-

145. (1) Income chargeable under the head "Profits and gains of business or profession" or "Income from other sources" shall, subject to the provisions of sub-section (2), be computed in accordance with either cash or mercantile system of accounting regularly employed by the assessee.

(2).....

(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.

9. On perusal of subsection 3 to section 145 as reproduced above it may be noted that the Assessing Officer may reject the method of accounting employed by the assessee and determine the profits from PGBP & IOS at the best of his judgement. The said section has two limbs. First, a case where the Assessing Officer is not satisfied with the method of accounting followed by the assessee. Second, a situation where no method of accounting is regularly followed by the assessee.

9.1 As far as the second limb is concerned it is an objective consideration and there is no requirement to record an opinion/satisfaction in order to attain jurisdiction for the rejection of books of accounts. Therefore, the CIT(A) in his wide amplitude of powers may reject the books in such situation even if the Assessing Officer had accepted the books. However, in contradiction, the first limb calls for a subjective determination of the Assessing Officer to be satisfied that where the method employed by the assessee does not portray a correct or complete picture. The Assessing Officer has to record satisfaction in order to

attain the jurisdiction, then and only then he may proceed to reject the books of the assessee. At this juncture we may refer to section 2(7A) of the Act which defines Assessing Officer as follows: -

"Assessing Officer" means the Assistant Commissioner or Deputy Commissioner or Assistant Director or Deputy Director or the Income-tax Officer who is vested with the relevant jurisdiction by virtue of directions or orders issued under subsection (1) or sub-section (2) of section 120 or any other provision of this Act, and the Additional Commissioner or Additional Director or Joint Commissioner or Joint Director who is directed under clause (b) of sub-section (4) of that section to exercise or perform all or any of the powers and functions conferred on, or assigned to, an Assessing Officer under this Act.

On perusal of above section, it may be observed that the term 'Assessing Officer' does not include the CIT(A). So, the obvious question arises, whether in the first situation referred above, where the assessee regularly follows a method of accounting and the Assessing Officer is satisfied with such method of accounting, can the CIT(A) substitute his satisfaction for that of the Assessing Officer to reject the books of accounts?

10. At this juncture it may be noted that under the Act the authority empowered to exercise a particular power is the only authority who can

validly exercise such a power. The said proposition has been upheld to an extent that even the officer assuming superior authority cannot record his/her satisfaction on behalf of the lower authority. Reference may be made SPL's Siddhartha Ltd — Delhi High Court — 345 ITR 223 where the requisite sanction u/s 151 for re-opening of assessment u/s 147, was given by the CIT instead of the JCIT. The High Court noted that as per the provisions of section 151, in the case at hand it was the JCIT who should have approved the re-opening and held as follows:

*"Section 116 also defines the Income-tax authorities as different and distinct Authorities. Such different and distinct authorities have to exercise their powers in accordance with law as per the powers given to them in the specified circumstances. If powers conferred on a particular authority are arrogated by other authority without mandate of law, it will create chaos in the administration of law and hierarchy of administration will mean nothing. Satisfaction of one authority cannot be substituted by the satisfaction of the other authority. It is trite that when a statute requires, a thing to be done in a certain manner, it shall be done in that manner alone and the Court would not expect its being done in some other manner."*

11. In our view, such certain power cannot merely be presumed to be granted to the CIT(A), since wherever the legislature intended to do so it has made a specific reference to the CIT(A). As discussed earlier such reference

may be read into section 131/ 270A etc. Therefore, as it appears, in absence of specific mention of the CIT(A) u/s 145, prima facie the same cannot be envisaged to empower the CIT(A) to reject the books by substituting his opinion for that of the Assessing Officer.

12. In the present case, again there was no specific defect noticed in the books of accounts by the Ld. CIT Appeals. The allegation of VAT difference is factually incorrect and GP fall itself would not justify the rejection of books of accounts in absence of any specific deficiency pointed out in the books of accounts by the Ld. CIT Appeals where the assessee has submitted bill wise details of sales made with copies of invoices alongwith sales register. In view of that matter, the decision of Ld. CIT (A) in rejection of books of accounts u/s 145(3) is perverse to the facts on record and according the same is held as bad in law, and as such rejected.

9. The ground No 2 pertains to enhancement the addition on account of GP addition of Rs. 94,24706/-.

9.1 The Ld. counsel submitted that the CIT(A) has no powers to assess a new source of income, which was not considered by the Assessing Officer in the course of assessment proceedings, with a view of its taxability. In the present case, the Ld AO has not rejected the books. Had the AO made addition on account of suppression of GP, then Ld. CIT Appeal would have got power to

enhance the income u/s 251 (2) of the Income tax Act. The Ld AO has discussed the GP ratio with respect to justification of cash deposit in the bank a/c during demonetization period which is affirmed by the Id. CIT(A) and it is nowhere linked to GP addition as Ld. CIT Appeal has done in the appellate proceedings.

9.2 It is noted that a certain power cannot merely be presumed to be granted to the CIT(A), since wherever the legislature intended to do so it has made a specific reference to the CIT(A) as discussed above on the issue of rejection of books of account. The Ld. AR placed reliance on the case of Zuberi Engineering Company - Jaipur ITAT- 175 ITD 557 of the Jaipur Bench where it was observed that-

*"In the case in hand, the Assessing Officer made certain disallowances of expenses while completing the assessment U/s 143(3) of the Act whereas the Id. CIT(A) invoked the powers to enhance the assessment by rejecting the books of account and consequently the income of the assessee was enhanced by applying the G.P. rate to estimate the income of the assessee. Therefore, it is clear that the said issue and aspect of not accepting the book results of the assessee was never taken up by the Assessing Officer in the scrutiny assessments of the assessee. Even if the Assessing Officer ought to have considered the said point of correctness of the books of account and rejection of same U/s 145(3) of the Act if the said matter was not taken up for scrutiny and enquiry then it is a subject matter falling in the ambit of revisionary power U/s 263 of the Act due to the reason that there was a complete lack of enquiry on the part of*

*the Assessing Officer to examine the correctness of books of account. Since this was not at all subject matter of the assessment, therefore, it cannot be a subject matter of enhancement of income v/s 251 of the Act. Accordingly following the various decisions as relied upon by the assessee as well as the decision of this Tribunal in the case of Jagdish Narayan Sharma (supra) we set aside the order of the Id. CIT(A) qua this issue being beyond the jurisdiction of the Id. CIT(A)."*

9.3 In the present case, since the Assessing officer has considered the correctness or completeness of accounts and the method of accounting of books but the Id. CIT(A) has invoked the rejection of books u/ s 145(3) of the act which the Assessing Officer in the course of assessment proceedings had never proposed. Meaning thereby that such a reflection of the books of accounts would tantamount to discovering a new source of income. In view of that matter, the Id. CIT(A)'s decision of the addition by way of enhancement on account of GP addition of Rs. 94,24,706/- is infirm and perverse to the facts on record, and against the settled principles of law.

9.4 We, therefore, accept the grievance of the assessee as genuine and as such delete the GP addition of Rs. 94,24,706/- made by way of enhancement by the Id. CIT (A). Thus, ground no. 2 is allowed.

10. In ground No. 3 the appellant challenged that the Id CIT Appeals erred in law and facts of the case in comparing the GP ratio of assessee as

2.07% whereas the assessee explained that its GP% is 25.89% if direct expenses are considered as per last year.

10.1 The Counsel submitted that the GP ratio of current year is 2.07%.

However, if we compare the elements taken to calculate GP ratio of preceding year i.e. assessment year 2016-17 and calculate GP ratio of assessment year 2017-18 by same method, then the ratio will be 25.89%.

The reconciliation sheet is given here under:-

Sr.No.	Particulars	AY 2017-18	AY 2016-17	Remarks
1	Sand Sales			Refer sch 15
2	Decrease/increase of inventory			Refer Sch 18
3	Direct expenses			
	Machine running and maintenance			Sch 22
	Diesel and oil exp			Sch 22
	Royalty expenses			Sch 22
	Service tax on royalty	46,59,189		sch 22
	Machine rent on royalty		21,57,833	Sch 22
	Water tanker			Sch 22

	exp			
	Inventory			Sch 22
	administrative			
	expenses	31,00,457		
	Other taxes		3,725	
	Misc mines exp	25,173	30,847	
	Stock yard exp	1,000		
	Books and		Not considered	
	penalty			
	Salary	34,53,862	Not considered	11,63,284
	Transportation	29,70,952	Not considered	25,30,900
	Depreciation	20,44,407		
	Rebate and discount	83,650		
	Other income	(2,800)	(2,18,250)	
	Penalty	13,12,893	Not considered	
	Service tax		Not considered	
4	Gross Profit	13,82,136	83,16,584	
	GP ratio As per audit report	2.07%	16.71%	

Explanation: - There was difference in the basis of calculation of GP ratio in both the years.

- (i) Expense of books Rs 1,25,000, penalty Rs 2,00,989, salary Rs 11,63,284, Transportation Rs 25,30,900 and service tax Rs 1,00,729 is not reduced

for calculation of gross profit which was done in current year. Thus, GP will down to Rs. 41,95,682/-

- (ii) Additional expense of service tax on royalty Rs 46,59,189 and inventory w/off Rs 3100457 are charged during the year.

10.2 Considering the explanation of the appellant and the facts on record, we hold that the fall in the figures of GP ratio as compared to preceding assessment year was due to charging of the additional expense of service tax on royalty Rs 46,59,189/-, Inventory w/off Rs 3100457 etc during the year. Thus, there was no fall in the GP ratio as per the trading history of the assessee which has been accepted by the department over the years.

10.3 Accordingly, assessee grievance is accepted as genuine and ground no. 3 is allowed.

11. In ground No. 4 the appellant has challenged the order of the Ld CIT Appeals in sustaining the addition of Rs 32,51,115/- u/s 69A.

11.1 We mean that the Ld AO merely doubted that the assessee has inflated figures of sales of sand in VAT return in the 3rd quarter from 2174975 to Rs 25151542/- to cover up the source of cash deposit after receipt of scrutiny notice u/s 143(2). In this regard, the Ld. AR explained that the audit report with financial statements has been uploaded in portal on 04.09.2017 whereas

notice u/ s 143(2) has been issued on 27.09.2018 and that the sales figures as per books of accounts are already declared. The appellant has also furnished an explanation for quantity difference of 54 tonnes of sand as per books and as per VAT before the authorities below.

11.2 It is noted that the appellant has submitted the Proof of sales bill of Rs 20,72,000/- on 31.10.2016 duly supported with list of parties with royalty details; that Copy of cash book and sales vouchers and Copy of bank ledger explaining all the entries as per statement and that Reconciliation of GP ratio as compared to last year where the GP Ratio of current year is established at 25.89% after reconciliation of figures as compared to preceding year.

11.2 In the present case, the AO has passed the Assessment order for the preceding Assessment Year 2016-17, accepting the returned income (copy is placed on record), it is also noted that the AO has accepted the books of account with the cash sales accounted in the books on same pattern as in the present assessment year. Meaning thereby that the figure of cash in hand as on 09.11.2016 has been accepted by the AO.

11.3 Considering the peculiar facts of the case, we hold that the impugned order is perverse to the facts of the case in sustaining the addition of Rs. 32,51,115/- u/s 69A of the Act. We, therefore, delete the addition of Rs.

32,51,115/- sustained by the Ld. CIT (A) u/s 69A of the Act. Thus. Ground no. 4 is allowed.

12. The last ground is general in nature and hence does not require separate adjudication.

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

**Order pronounced on 26/02/2026 in the open court.**

**Sd/-**  
**(SUDHIR PAREEK)**  
**JUDICIAL MEMBER**

**Sd/-**  
**(DR. MITHA LAL MEENA)**  
**ACCOUNTANT MEMBER**

**Dated : 28/02/2026.**

***Nimisha Sr. PS***

***True Copy***

**Copies to :**

- (1) The appellant.
- (2) The respondent.
- (3) CIT
- (4) CIT(A)
- (5) Departmental Representative
- (6) Guard File

**BY ORDER,**