

IN THE INCOME TAX APPELLATE TRIBUNAL

"H(SMC)" BENCH, MUMBAI

BEFORE SHRI VIKRAM SINGH YADAV, ACCOUNTANT MEMBER

SHRI SANDEEP SINGH KARHAIL, JUDICIAL MEMBER

ITA No.319/MUM/2026
(Assessment Year : 2016-17)

Tulsidas Virji Chothani,

601, 6th Floor, Shantrunjay Building,
Neelkanth Valley, Ghatkopar East,
Mumbai - 400077
PAN: AABPC0337M

..... Appellant

v/s

Income Tax Officer, Ward-27(3)(1)

IT-Office, Vasi Railway Station Building,
Navi Mumbai - 400703

..... Respondent

Assessee by : Shri Mehul Shah
Revenue by : Shri Pravin Salunkhe, Sr. DR

Date of Hearing – 26/02/2026

Date of Order - 04/03/2026

ORDER

PER SANDEEP SINGH KARHAIL, J.M.

The assessee has filed the present appeal against the impugned order dated 25/09/2025, passed under section 250 of the Income Tax Act, 1961 (*"the Act"*) by the learned Additional/Joint Commissioner of Income Tax (Appeals)-1, Gurugram, [*"learned Addl./Joint CIT(A)"*], for the assessment year 2016-17.

2. In the appeal, the assessee has raised the following grounds: -

"Being aggrieved by the order of the Assessing Officer, 27(3) - 4, Mumbai and learned Commissioner of Income-tax (Appeal), NFAC Delhi, this appeal petition is filed on the following amongst other grounds of appeal, which it is prayed may be considered without prejudice to one another.

1. On the facts, and in circumstances of the case, and in law, learned Commissioner of Income-tax (Appeal) erred in upholding order of the Assessing Officer estimating net profit margin of 51% on alleged suppressed turnover of RS. 5,467,520 and adding Rs. 2,788,435 to income without appreciating reconciliation placed on record demonstrating that actual reported turnover of the Appellant was RS. 6,457,550 and net profit was RS. 518,564 (8.03%), and the figure of RS. 1,016,637 placed in Return of Income in turnover column was just reproduction of Gross profit figure owing to typographical error.

2. On the facts, and in circumstances of the case, and in law, learned Commissioner of Income-tax (Appeal) erred in unilaterally holding that, the Appellant had not opted for presumptive scheme of declaring income under section 44AD without appreciating that, the Appellant had opted for section 44AD of the Income-tax Act 1961 while filing the Return of Income as is evident from the Return filed."

3. The solitary grievance of the assessee, in the present appeal, is against the addition on account of the alleged suppressed turnover.

4. The brief facts of the case are that the assessee is an individual and has a business of exporting various items. For the year under consideration, the assessee filed its return of income on 08/03/2017, declaring a total income of 5,18,564. The return filed by the assessee was selected for scrutiny, and statutory notices under section 143(2) and section 142(1) of the Act were issued and served on the assessee. During the assessment proceedings, it was noticed that the assessee had exported goods of Rs. 64,84,157. However, from the perusal of the return of income, it was observed that the assessee had shown a turnover of Rs. 10,16,637. Since, the assessee has shown less turnover by Rs. 54,67,520 (Rs. 64,84,157 minus Rs. 10,16,627 equal to Rs. 54,67,520), the assessee was asked to show cause as to why an amount of Rs. 27,88,425, being 51% (the profit percentage declared by the assessee) of Rs. 54,57,520 be not added to total income of the assessee. In response, the assessee submitted that it duly disclosed the turnover of Rs. 64,57,550 in

its profit and loss account and computed the income of Rs. 5,18,564, which was duly offered to tax under section 44AD of the Act, being 8.03% of the turnover. The assessee further submitted that at the time of filing the return of income, inadvertently, the amount of gross profit was also entered in the column of gross receipts, which is a completely inadvertent and *bona fide* error.

5. The Assessing Officer ("AO"), vide order dated 28/11/2018 passed under section 143(3) of the Act, disagreed with the submissions of the assessee and held that the assessee was not maintaining the books of accounts as turnover was reflected in column 53, which pertains to the cases where regular books of account of business or profession are not maintained. The AO held that the assessee's reliance upon the profit and loss account and balance sheet showing full turnover is not maintainable and is merely an afterthought. The AO placed reliance upon the decision of the Hon'ble Supreme Court in Goetze India Limited v/s CIT, reported in (2006) 157 Taxman 1 (SC), and held that even if the assessee had wrongly shown its turnover in the original return of income, it was required to file the revised return of income within the provisions of the Act. Thus, it was held that a mere claim for correct turnover is not maintainable without filing a valid revised return of income, which the assessee has failed to do. Accordingly, the AO made an addition of Rs. 27,88,435.

6. The learned CIT(A), vide impugned order, dismissed the appeal filed by the assessee on this issue, by observing as follows: –

"4.1.2 Ground of appeal 1:- In this ground of appeal, the appellant has contended that the A.O. has erred in estimating net profit margin of 51% on alleged suppressed turnover of Rs. 54,67,520/- and adding Rs. 27,88,435/- to declared income. It is apparent from reply that the appellant attributes the mismatch in ITR to a clerical mistake. However, an income-tax return is a statutory document verified under section 140 and carries evidentiary value. The law prescribes procedure to correct mistakes, if any, i.e., filing a revised return within the due date u/s. 139(5). The appellant failed to do so. The Hon'ble Supreme Court in Goetz (India) Ltd. v. CIT(2006) 284 ITR 323 (SC) categorically held that claims for relief not made in the return cannot be entertained otherwise than by filing revised return. Therefore, the AO was justified in declining to accept corrected figures at assessment stage.

4.1.2 The AIR data reflected exports of Rs. 64,84,157. Against this, the appellant disclosed receipts of only 10,16,637 in ITR. Such under-reporting is serious and cannot be brushed aside as mere typographical error.

It is the responsibility of the assessee to file accurate return. Having failed to do so, the appellant cannot shift the burden onto the AO at appellate stage. Further, the appellant's reliance on section 44AD is misplaced. Presumptive provisions are optional and can be adopted only if declared in the return. Here, the assessee has maintained books of accounts and filed ITR-3. Once regular books are maintained, income is to be computed on basis of such books and not by presumptive estimation. Judicial precedents such as CIT v. Surinder Pal Anand (2010) 192 Taxman 264 (P&H) clarify that section 44AD cannot be forcibly applied where books exist.

4.1.3 The AO adopted 51% NP rate based on disclosed figures. In absence of any reliable books or reconciliation accepted through proper revised return, estimation by AO is justified. Courts have consistently upheld that where true state of accounts is doubtful, AO can resort to reasonable estimate. For example in the case Kachwala Gems v. JCIT (2007) 288 ITR 10 (SC), the Hon'ble Supreme Court held that:-

".....It is well settled that in a best judgment assessment there is always a certain degree of guess work. No doubt the authorities concerned should try to make an honest and fair estimate of the income even in a best judgment assessment, and should not act totally arbitrarily, but there is necessarily some amount of guess work involved in a best judgment assessment, and it is the assessee himself who is to blame as he did not submit proper accounts. In our opinion there was no arbitrariness in the present case on the part of the Income Tax Authorities. Thus, there is no force in this appeal, and it is dismissed accordingly."

4.1.4 In view of the above, it is held that the AO rightly relied on disclosed figures in ITR and applied N.P. rate accordingly. On the other hand, the appellant failed to file revised return correcting alleged clerical error. Therefore, addition of 27,88,435 made by the AO is justified. Thus, the ground of appeal no. 1 is dismissed."

Being aggrieved, the assessee is in appeal before us.

7. We have considered the submissions of both sides and perused the material available on record. The assessee in the profit and loss account of its proprietary concern, in the name and style of Chothani International, for the year ending 31/03/2016, forming part of the paper book on page 9, declared turnover from export sales of Rs. 64,57,550. After reducing the direct expenditure, the assessee computed a gross profit of Rs. 10,16,638. However, we find that while filing its return of income, for the year under consideration, in column 53, the assessee declared a gross receipt of Rs. 10,16,637. It is further evident that the assessee declared a similar amount, i.e. Rs. 10,16,637, as its gross profit. Thus, the assessee arrived at a net profit of Rs. 5,18,564 by reducing expenses of Rs. 4,98,073. As per the assessee, while filing its income tax return, it erroneously entered the same amount of gross profit and gross receipts. The tabular representation of the error committed by the assessee, as furnished before the lower authorities, is reproduced as follows: –

<i>Table No. of Income Tax return</i>	<i>Particulars</i>	<i>Reported in ITR</i>	<i>Correct Disclosure</i>
<i>53a</i>	<i>Gross Receipts</i>	<i>10,16,637</i>	<i>64,57,550</i>
<i>53b</i>	<i>Gross Profits</i>	<i>10,16,637</i>	<i>10,16,637</i>
<i>53c</i>	<i>Expenses</i>	<i>4,98,073</i>	<i>4,98,073</i>
<i>53d</i>	<i>Net Profit</i>	<i>5,18,564</i>	<i>5,18,564</i>

8. It is further the plea of the assessee that it has computed its income under the deeming provisions of section 44AD of the Act and thus declared a net profit at 8.03%. However, the Revenue disagreed with the assessee's submissions and treated the difference between the total export, as per the ITD system, amounting to Rs. 64,84,157, and the total turnover declared in the return of income, amounting to Rs. 10,16,637, as the suppressed turnover

of the assessee. The AO, as well as the learned CIT(A), placing reliance upon the decision of the Hon'ble Supreme Court in Goetze India Limited (supra), held that a mere claim of incorrect turnover is not maintainable without filing a valid revised return of income.

9. As regards the difference in turnover, i.e. Rs. 64,84,157, and turnover of Rs. 64,57,550 declared in the profit and loss account, the learned AR submitted that the same is due to the exchange fluctuation as the entire receipts of the assessee are on account of export. From the perusal of the return of income, forming part of the paper book from pages 45-74, we find that the assessee specifically declared in the return that the accounts were not maintained as per section 44AA and the same have not been audited under section 44AB of the Act.

10. In the present case, it is pertinent to note that on one hand, the AO treated the reliance placed by the assessee on the profit and loss account and balance-sheet showing full turnover as an afterthought, while on the other hand, the learned CIT(A) held that once the regular books are maintained, income is to be computed on the basis of such books and not by presumptive estimation. However, none of the authorities disputed the turnover declared by the assessee, which, in any case, is only slightly less than the turnover as per the ITD system. Further, it is also not disputed that even though the assessee has prepared its profit and loss account and balance-sheet, however, the same were not audited as per the provisions of the Act. Accordingly, we find merit in the submission of the assessee that since regular books of accounts or business or profession are not maintained as per the provisions

of the Act, the income was declared under the deeming provisions of section 44AD of the Act. Further, we are of the considered view that the gross turnover declared in the return of income appears to be merely an inadvertent error, as no concern can make 100% gross profit on the export sales, as some amount of direct expenditure in the form of purchase cost, freight charges, etc., will always be incurred, and the same cannot be ignored in running an export business. Therefore, in view of our aforesaid findings, we do not find any merit in the impugned addition made by the AO and upheld by the learned CIT(A). Thus, the same is directed to be deleted. As a result, the grounds raised by the assessee are allowed.

11. In the result, the appeal by the assessee is allowed.

Order pronounced in the open Court on 04/03/2026

**Sd/-
VIKRAM SINGH YADAV
ACCOUNTANT MEMBER**

**Sd/-
SANDEEP SINGH KARHAIL
JUDICIAL MEMBER**

MUMBAI, DATED: 04/03/2026

Prabhat

Copy of the order forwarded to:

- (1) *The Assessee;*
- (2) *The Revenue;*
- (3) *The PCIT / CIT (Judicial);*
- (4) *The DR, ITAT, Mumbai; and*
- (5) *Guard file.*

By Order

Assistant Registrar
ITAT, Mumbai.