

*IN THE INCOME TAX APPELLATE TRIBUNAL  
KOLKATA BENCH "A" KOLKATA*

Before **Shri Waseem Ahmed, Accountant Member** and  
**Shri S.S.Viswanethra Ravi, Judicial Member**

**ITA No.562/Kol/2013**  
Assessment Years:2006-07

Bhagirathi Associates 23 & 24, Bazaar Lane, Chatra, Hooghly-712004 [PAN No.AAGFB 7985 E]	<b>बनाम / V/s.</b>	ITO Ward-1(2), Hooghly-712 101 West Bengal
अपीलार्थी /Appellant	..	प्रत्यर्थी /Respondent

अपीलार्थी की ओर से/By Appellant	Shri Subhash Agarwal, Advocate
प्रत्यर्थी की ओर से/By Respondent	Shri Sallong Yadan, Addl. CIT-DR
सुनवाई की तारीख/Date of Hearing	27-06-2016
घोषणा की तारीख/Date of Pronouncement	10-08-2016

**आदेश /O R D E R**

**PER Waseem Ahmed, Accountant Member:-**

This appeal by the assessee is against the order of Commissioner of Income Tax (Appeals)-XXXVI, Kolkata dated 10.01.2013. Assessment was framed by ITO Ward-1(2), Hooghly u/s 143(3) of the Income Tax Act, 1961 (hereinafter referred to as 'the Act') vide his order dated 31.12.2008 for assessment year 2006-07. The grounds raised by the assessee per its appeal are as under:-

*"1. For that on the a facts and in the circumstances of the case, the Ld. CIT(A) was not justified in confirming the addition of Rs.3,72,832/- made by the AO on account of undisclosed sales.*

*2. For that on the a facts and in the circumstances of the case, the Ld. CIT(A) erred in confirming the addition of Rs.6,19,720/- made by the AO on account of alleged inflated claim under the head "proportionate payment to land owners."*

3. For that on the a facts and in the circumstances of the case, the Ld. CIT(A) was not justified in confirming the additions made by the AO by wrongly invoking the provisions of section 40(a)(ia) in respect of the following payments made by the assessee totaling to Rs.7,14,378/-

(a) Sabita Mukherjee	Rs.2,97,251/-
(b) M/s Pompa Furniture	Rs. 70,166/-
© Md Safi	Rs.1,66,961/-
(d) Sk. Rahman	Rs. 76,000/-
(e) Madan Mohan Enterprise	<u>Rs.1,04,000/-</u>
	Rs.7,14,378/-

4. (i) For that on the a facts and in the circumstances of the case, the Ld. CIT(A) erred in confirming the additions made by the AO on account of alleged bogus purchases totaling to rs.4,68,470/- made from the following parties-

(a) M/s Bharat Marble & Mineral Works	Rs.3,71,678/-
(b) JBB Enterprises	Rs. 80,164/-
© Mahesh Stores	<u>Rs. 16,628/-</u>
	Rs.4,48,470/-

(ii) For that on the a facts and in the circumstances of the case, the Ld. CIT(A) grossly erred in taking a wrong figure of Rs.4,71,678/- while confirming the addition on account of alleged bogus purchases made from M/s Bharat Marble & Mineral Works.

5. For that on the a facts and in the circumstances of the case, the Ld. CIT(A) erred in confirming the addition of Rs.52,515/- made by the AO on account of expenditure on interior decoration by wrongly treating the same as bogus expenditure.

6. For that on the a facts and in the circumstances of the case, the Ld. CIT(A) erred in confirming the additions made by the AO on account of alleged discrepancies in the purchases and closing balances totaling to Rs.6,69,582/- in respect of the following parties-

(a) Nripati Pal	Rs.2,23,778/-
(b) Avishek Agency	Rs. 31,880/-
© Pal's Supplier (cement)	Rs. 56,140/-
(d) Pal's Supplier (Iron Rod)	Rs. 69,792/-
(e) Megha Enterprise	Rs. 10,446/-
(f) Ma Chandi Hardware	Rs. 76,369/-
(g) Dey Builders	Rs. 70,774/-
(h) Biswanath Electric Services	Rs. 39,000/-
(i) M/s B.N.Gosh & Sons	<u>Rs. 91,403/-</u>
	Rss.6,69,582/-

7. Without prejudice to grounds no. 1 to 6, the Ld. CIT(A) ought to have made a reasonable estimate of profit by applying GP ratio after rejecting the books of account.

*8. That the appellant craves leave to add, alter or delete all or any of the grounds of appeal.”*

Shri Subhash Agarwal, Authorized Representative appeared on behalf of assessee and Shri Sallong Yaden, Departmental Representative appeared on behalf of Revenue.

2. First we take up ground No.7 where the issue raised by assessee is that Ld. CIT(A) ought to have made a reasonable estimate of profit by applying GP ratio after rejecting the books of account

3. Facts in brief are that assessee in the present case is a partnership firm and engaged in the business of construction as promoter and developer of real estate. The assessee is selling the residential flats and commercial units by constructing a multistoried building known as Ushaangar. The assessee for the year under consideration has filed its return of income by declaring business income of ₹2,76,810/-. Thereafter the case was selected for scrutiny and notice was issued u/s. 143(2) r.w.s 142(1) of the Act. At the outset, it was observed that assessee failed to produce the necessary books of account before Assessing Officer in connection with the assessment proceedings except cash book, bank book and journal ledger. The AO during assessment proceedings observed certain facts from the material available on records which are listed below:-

- (1) No purchase register, stock register and sale register and journal register was maintained by assessee;
- (2) Assessee has claimed building and construction expense for cement, iron, doors, windows and electrical fittings expenses but no vouchers in support with these expenses were made available;
- (3) Money receipt book was maintained for advance received from flat owners;
- (4) Assessee failed to furnish the complete set of the bills against the purchase shown in the profit & loss a/c and the names of the creditors were not matching with the list of purchases furnished by assessee.

- (5) There was no outstanding balance against the sundry creditors for the year ending on 31<sup>st</sup> Mach, 2006 but there was a loan creditors of ₹ 23 lakhs out of which ₹ 7.80 lakh is seen to have been paid in the financial year 2005-06.
- (6) The investigation and examination of books of account submitted by assessee were conflicting and self-contradictory in nature.

In view of above the AO observed several discrepancies in the figures of sale, expenses, purchases, non-compliance of the provisions of section 40A(3) of the Act, non-maintenance of party wise ledgers and differences in the creditors viz a viz purchases. The AO found the difference of Rs. 29,99,083.00 on account of several disallowances and additions. The AO after giving reasonable opportunity has disallowed the same and added to the total income of assessee.

Aggrieved assessee preferred an appeal to Id. CIT(A) who has partly allowed the relief to the assessee.

Aggrieved by the order of Id. CIT(A), assessee came in second appeal before us.

4. At the outset the Id. AR before us submitted that the lower authorities should have rejected the books of accounts for making the assessment on estimation basis. It is because there were a lot of defects in the accounts produced and many accounts were not produced before the lower authorities. On the other hand the Id. DR vehemently supported the order of the lower authorities.

5. We have heard the rival parties and perused the materials available on record. From the perusal of the assessment order we find that the several additions were made to the total income of the assessee on account numerous discrepancies found in the books of accounts. The additions were substantially confirmed by the lower authorities. We find in the similar facts and circumstances the various Hon'ble Courts have rejected the books of accounts for bringing the actual amount of profit to tax. Some of the case laws are listed below. The relevant extract of the judgment of Hon'ble High Court of Allahabad in the case of Awadhesh Pratap Singh Abdul

Rehman & Bros. vs.CIT (1994) 119 CTR 0001 : (1994) 210 ITR 0406 : (1994) 76  
TAXMAN 0106

*“The account books were rejected because admittedly no stock register was maintained nor the sales were found verifiable in absence of the cash memos. The vouchers of expenses were also not forthcoming and the income returned was ridiculously low as compared to the exorbitant turnover and the extent of the business carried on by the assessee. It is difficult to catalogue the various types of defects in the account books of an assessee which may render rejection of account books on the ground that the accounts are not complete or correct from which the correct profit cannot be deduced. Whether presence or absence of stock register is material or not, would depend upon the type of the business. It is true that absence of stock register or cash memos in a given situation may not per se lead to an inference that accounts are false or incomplete. However, where absence of a stock register, cash memos, etc., if coupled with other factors like vouchers in support of the expenses and purchases made are not forthcoming and the profits are low, may give rise to a legitimate inference that all is not well with the books and the same cannot be relied upon to assess the income profits or gains of an assessee. In such a situation the authorities would be justified to reject the account books under s. 145(2) and to make the assessment in the manner contemplated in those provisions. Taking all these aspects and the material into consideration, the Tribunal has found as a fact that the claim of the assessee for acceptance of the account books was not sustainable. On the findings of fact recorded by the Tribunal, its order does not give rise to any question of law.*

*Finding of Tribunal that book result shown by assessee was rightly rejected being arrived at after taking into consideration facts of case and factors leading to rejection of accounts, is a finding of fact.*

*Where absence of stock register, cash memos, etc., if coupled with other factors like vouchers of expenses are not forthcoming and profits are low, authorities would be justified in rejecting account books under s. 145(2) and in making best judgment assessment.”*

The relevant extract of the judgment of High Court of Rajasthan Commissioner of  
Income Tax vs. Ram Singh

(2014) 266 CTR 0122 (Raj) : (2014) 99 DTR 0217 (Raj) : (2014) 363 ITR 0417 (Raj)

*“Appeal (Tribunal)? Non speaking order? Rejection of books of accounts? Validity? Assessee were liquor contractors and were awarded license by State of Rajasthan for sale of Indian made country liquor (IMCL) under Rule 67(1) and 67(kk) of Rajasthan Excise Rules, 1956 so also retail sale of beer and Indian made foreign liquor (IMFL) under Rule 3-A of Rajasthan Foreign Liquor (Grant of Wholesale and Retail) Sale License, Rules, 1982 under exclusive privilege system for different places? In some of cases, assessee had formed Association Of Persons (AOP) and obtained*

*license/contract to sell liquor as aforesaid exclusively? Licenses were obtained by successful bidders and other than those licensees, no other person was permitted to sale liquor which was prohibited commodity? During course of assessment proceedings, assessee were specifically asked to furnish shop-wise & brand-wise details of all receipts and sale of IMCL, IMFL and Beer which were admittedly not produced? Vouchers for expenses were required to be produced? In some cases some vouchers were produced but, by and large, in majority of cases even vouchers were not produced? However, AO rejected books of account and trading results u/s 145 by holding that non-maintenance of sale vouchers was major defect since sale was not open to verification? AO also estimated gross profit rate and in some of cases net profit rate and in some of cases ad hoc estimated addition had been made? CIT(A) upheld finding of AO about rejection of books of accounts u/s. 145(3) but gave relief by reducing trading addition? Held, Recording of reasons is part of fair procedure? As observed in Alexander Machinery (Dudley) Ltd. Crabtree, 1974 L.C.R. 120, failure to give reasons amounts to denial of justice as also observed by Apex Court in 2005 (2) SC 329 Mangalore Ganesh Beedi Works Vs. CIT & Anr? Impugned judgments of ITAT was stereo typed, non-speaking, unreasoned, arbitrary and whimsical? Hence quashed and set aside to be decided afresh and de-novo in accordance with law.”*

We also find that the lower authorities are empowered under the Income Tax Act to reject the books of accounts Where the Assessing Officer is not satisfied about the correctness or completeness of the accounts of the assessee. It is relevant to reproduce the provisions of section 145 of the Act which reads as under

### **Method of accounting**

*“(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) The Central Government may notify in the Official Gazette from time to time [income computation and disclosure standards] to be followed by any class of assessee or in respect of any class of income.*

*(3) Where the Assessing Officer is not satisfied about the correctness or completeness of the accounts of the assessee, [has not been regularly followed by the assessee, or income has not been computed in accordance with the standards notified under sub-section (2)], have not been regularly followed by the assessee, the Assessing Officer may make an assessment in the manner provided in section 144.]”*

Keeping in view the above provisions of the Acts and case laws cited above, we find very clear cut findings from the AO order which states that assessee has not

maintained any party wise ledger account, no bills or payment vouchers were produced against the purchase expenses, all the necessary books were not made available, the creditors details were submitted without their opening balance. We also find in making a best judgment assessment the Assessing Officer does not possess absolutely arbitrary authority to assess at any figure he likes and that although he is not bound by strict judicial principles he should be guided by rules of justice, equity and good conscience [*Abdul Qayum & Co. v. CIT*, (1993) 1 ITR 375, 378 (Oudh)]. A best judgment assessment is not by way of penalty for non-compliance [*Jot Ram Sher Singh v. CIT*, (1934) 2 ITR 129 (All)] and it cannot be made capriciously in utter disregard to the material on record [*Gunda Subbaya v. CIT* (1939) 7 ITR 21, 26-27 (Mad-FB); *CIT v. S.Sen* (1949) 17 ITR 355 (Ori)]. In view of above we are of the considered view that the lower authorities should have rejected the books of accounts. Accordingly we are inclined to restore the issue to the file of the AO for fresh adjudication as per law and to frame the assessment de-novo after rejecting the books of accounts. Since we have decided issue raised by assessee in ground No.7 by rejecting the books of account and estimating the reasonable profit on the basis after giving reasonable opportunity to the assessee. Hence this ground of the assessee is allowed for statistical purposes.

5. Remaining grounds do not call for any adjudication at this stage because the file has been restored to the AO for deciding this issue afresh after providing reasonable opportunity of being heard to assessee.

6. **In the result, assessee's appeal stands allowed for statistical purposes.**

Order pronounced in open court on 10/08/2016

Sd/-  
(S.S.Viswanethra Ravi)  
Judicial Member

Sd/-  
(Waseem Ahmed)  
Accountant Member

\*Dkp

दिनांक:- 10/08/2016

कोलकाता / Kolkata

**आदेश की प्रतिलिपि अग्रेषित / Copy of Order Forwarded to:-**

1. अपीलार्थी/Appellant-Bhagirathi Associates, 23 & 24, Bazaar Lane, Chatra,  
Hooghly-712004
2. प्रत्यर्थी/Respondent- ITO, Wd-1(2), Hooghly-712101, W.B
3. संबंधित आयकर आयुक्त / Concerned CIT
4. आयकर आयुक्त- अपील / CIT (A)
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण कोलकाता / DR, ITAT, Kolkata
6. गार्ड फाइल / Guard file.

/True Copy/

By order/आदेश से,

उप/सहायक पंजीकार  
आयकर अपीलीय अधिकरण,  
कोलकाता