

IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI "H" BENCH: NEW DELHI

BEFORE SHRI KUL BHARAT, JUDICIAL MEMBER &
SHRI M.BALAGANESH, ACCOUNTANT MEMBER

ITA No.8298/Del/2019

[Assessment Year : 2011-12]

Total Integrated Design (India) Pvt.Ltd., D-105, GF, Defence Colony, New Delhi-110019. PAN-AAACT3502B	vs	ITO, Ward-25(3), New Delhi.
APPELLANT		RESPONDENT
Appellant by	Ms. Gunjan Jain, CA	
Respondent by	Shri Gurpreet Shah Singh, Sr.DR	
Date of Hearing	08.06.2023	
Date of Pronouncement	.07.2023	

ORDER

PER KUL BHARAT, JM :

The present appeal filed by the assessee for the assessment year 201112 is directed against the order of Ld. CIT(A)-16, New Delhi dated 22.08.2019.

The assessee has raised following grounds of appeal:-

1. "Under the facts and circumstances of the case, the ld. First Appellate Authority as well as Ld. A.O. have grossly erred in making an addition of Rs 54,514/- as unexplained expenditure u/s 69C of the Income Tax Act, 1961.

Tax effect related to above mentioned ground of appeal is Rs 16,572/-

2. Under the facts and circumstances of the case, the ld. First Appellate Authority has grossly erred in rejecting the books of accounts of the assessee without appreciating

the fact that the appellant has maintained complete & correct accounts of the business carried by the appellant and the same have been duly audited as per law.

3. Under the fact and circumstance of the case, the Id. First Appellate

Authority were grossly erred in making addition of Rs. 54,10,504/- by applying GP ratio on gross receipts, which is unwarranted, against the facts & bad at law.

Tax effect related to above mentioned ground of appeal is Rs 16,44,793/-

4. The Id. Assessing officer has grossly erred in disallowing a sum of Rs 3,60,000/- being accounting charges alleging that the same have been paid without deduction of tax, which is against the facts and bad at law.

Tax effect related to above mentioned ground of appeal is Rs 1,09,440/-

5. The appellant prays for leave to add, amend, alter or withdraw any grounds of appeal.

Total Tax Effect relating to all the above mentioned grounds of appeal is Rs17,70,805/-.”

2. At the time of hearing, Ld. Counsel for the assessee submitted that she does not wish to press Ground No.4, the same is hereby, dismissed as not pressed.

3. Ground No.5 raised by the assessee is general in nature, needs no separate adjudication hence, dismissed.

4. Ground Nos. 1 to 2 raised by the assessee are against the addition of INR 54,514/- made u/s 69C of the Income Tax Act, 1961 (“the Act”) as unexplained expenditure.

5. Ground No.3 raised by the assessee is related to addition made by applying gross profit ratio on gross receipts amounting to INR 54,514/-.

6. Apropos to these grounds of appeal, Ld. Counsel for the assessee reiterated the submissions as made in the written submissions. For the sake of clarity, the relevant contents of the written submissions are reproduced as under:-

1. “The assessee Company is in appeal before this Hon. Court against the order passed u/s 250(6) of the Act dt. 22.08.2019 for Assessment Year 2011-12 by the Ld. First Appellate Authority on the following additions made by the Ld. A.O.

a) Addition amounting to Rs. 54,10,404/- rejecting the books of the assessee and considering GP at the rate of 22.47% on the basis of average GP rates of the preceding years due to following reasons.

i. Difference amounting to Rs. 54,514/- in Form 15CA and Tax Audit report.

ii. Fall in the GP ratio of the assessee company of the A.Y. 2011-12 as compared to the GP of preceding two years.

iii. Discrepancies on account of Income reflecting in Profit and Loss Account and 26AS of the assessee Company.

iv. Increase in expense pertaining to professional charges as compared to preceding year.

The assessee hereby submits its detailed point wise submissions in Annexure 1 enclosed in this paperbook.

b) Addition amounting to Rs. 54,514/- on account of difference in Form 15CA and Tax Audit report.

2. Brief undisputed facts of the case are enumerated hereinafter:

3. The assessee Company is a Private Limited Company, engaged in the business of interior decorators, architects, furnishers and surveyors wherein the assessee

undertakes and executes turnkey projects and contracts and renders consultancy and advisory services.

4. The assessee Company filed its Return of Income for the year under consideration i.e., A.Y. 2011-12 on 29.09.2011 declaring total income of Rs. 2,74,552/-. Thereafter, the case of appellant was selected for Scrutiny through CASS.
5. The Ld. A.O. vide orders dated 28.03.2014 passed u/s 143(3) of the Act and assessed the Income of the assessee Company at Rs. 1,29,11,270/- by making additions under various heads amounting to Rs. 1,26,36,713/-. A copy of said orders is being enclosed herewith on page no. 37 to 43 of this paperbook for your ready reference.
6. Aggrieved by the aforesaid orders, the assessee Company filed appeal before the Ld. First Appellate Authority wherein the Hon'ble CIT(A) allowed partial relief to the assessee. The Ld. CIT(A) however upheld additions amounting to Rs. 54,64,918/- made by the Ld. A.O. vide orders dated 22.08.2019 on the basis of fall in GP rate and discrepancy in form 15CA and tax audit report. Copy of the said orders are enclosed on page no. 01 to 36 of this paperbook for your ready reference.
7. The additions upheld by the Ld. CIT(A) against which the assessee Company is in appeal before this Hon. Court are tabulated as under:

S. No.	Addition	Under Section	Amount of Addition upheld
1.	Addition amounting to Rs.54,10,404/- rejecting the books of the assessee and considering GP at the rate of 22.47% on the basis of average GP rates of the preceding years.	145(3)	54,10,404/-
2.	Addition amounting to Rs. 54,514/- on account of difference in Form 15CA and Tax Audit report.	69C	54,514/-
	Total		54,64,918/-

8. The brief contentions of the assessee are enumerated hereinafter:
9. The additions amounting to Rs. 1,08,04,598/- were made by the Ld. Assessing Officer by grossly misinterpreting the factual information which was provided to him during the course of Assessment Proceedings. The assessee was asked to link

the payment made to various contractors with the revenue received against those contracts. For this purpose the assessee filed a chart before the Ld. Assessing Officer a copy of which is being enclosed here along with on page no. 50 of this paperbook. A brief explanation and the misunderstanding of the Ld. A.O. is given hereunder:

10. The assessee was executing a project for M/s GMR airport developers which had a total gross revenue of Rs. 30,60,405/-. To execute the said project the assessee had engaged various sub-contractors, the detail of which has been provided in the aforesaid chart. On the said project Deolalikar Consultants Private Limited and N Dimpu Singh were engaged for executing a part of that particular project. As a result this gross revenue sum of Rs. 30,60,405/- appeared twice in third column of the said chart. Similarly the project being executed for Sunair Hotels amounting to Rs. 4,624,947/- is also appearing twice in the said column, the gross project value of Interglobe Hotel amounting to Rs. 4,891,485/- is also appearing twice in the said list. The same is the case with many other project which are appearing repeatedly in the said list as different subcontractors were working on the same project. The Ld. Assessing Officer made the total of that particular list by including the project receipts multiple times and thereby rejected the books of accounts of the assessee and made grossly unwarranted additions in the case of the assessee. Needless to say, that the Ld. Assessing Officer grossly misunderstood the details and made unwarranted additions on the basis of gross misunderstanding of the facts of the case. The rejection of books of accounts as well as resorting to addition on the basis of GP ratio was also a result of grossly non application of mind and misinterpretation of the details which were filed before the Ld. Assessing Officer. The Ld. Assessing Officer got carried away on the basis of this misunderstanding of the fact and went ahead with rejecting the books of accounts of the assessee as well as resorting to additions based on GP ratios of the previous years. In other words the entire Assessment Order passed by the Ld. Assessing Officer was on the basis of the biased opinion formed by him by grossly misinterpretation of the details which were filed before him during the Assessment Proceedings. There were no defects in the books of accounts which was not explained before Hon'ble CIT(A) and Ld. A.O. and which would result in the rejection of books of accounts of the

company under Section 145(3) of the Income Tax Act, 1961 and to apply the GP ratio of the earlier years.

11. During the First Appellate proceedings the assessee duly explained that the difference of Rs. 1,08,04,598/- is due to double addition of the amounts by the Ld. A.O. which was subsequently deleted by the Ld. CIT(A). Nonetheless, Ld. CIT(A) sustained the addition of Rs. 54,10,504/- on account of fall in GP rate without understanding the submissions and nature of business of the assessee.

12. The reconciliation of gross receipts of a professional with the information contained in form 26AS is always problematic and difficult. The reason being the recognition of the expense by the principal in one year and deduction of TDS on the same on due basis. On the contrary the recipient of Income in the case of professional is generally on cash basis whereas in the case of contractors is in accordance with the percentage completion method as prescribed by AS-9 of the Accounting Standards issued by ICAI. The assessee in this particular case is a contractor and recognizing Income in its books of accounts on the basis of execution of the said contracts. Whereas the principals for whom the said assessee is working record the transactions in the books of accounts on due basis and also deduct tax on payment or on recording of the said transaction in the books of accounts whichever is earlier. Moreover, a number of times mistakes committed by the deductor of Tax while feeding the information in their TDS returns results in mismatch. In spite of the best efforts and with no intent to evade Tax, there are differences which remain between the books of accounts and 26AS which is derived from various TDS returns filed by the principal with respect to the payments made or due to the concerned assessee. Some small differences at times remain due to communication gap between the contractor and the principal but the same may not necessarily have any revenue implications for the purpose of Income Tax. It needs to be understood that a contractor does not have a long term relationship with the principal firm's they are working with and there are instances where post-completion of the project due to various issues or disputes between the two parties they do not cooperate with each other. As a result there can be some small differences in 26AS and the revenue which has been recognized by a contractor but the same cannot be a basis for outrightly rejecting the books of accounts of the contractor or for making unwarranted

additions on the basis of differences. This factual situation applies across the board to all the assessee where the income recognition is not in accordance with the deduction of tax provided under the Income Tax Act, 1961. For most of the TDS provisions the Income Tax Act provides for deduction and payment of tax on payment or on credit to the recipient whichever is earlier. An example in this regard is the audit fees which is generally provided at the end of the year by the company on provisional basis. But the same is recorded by the auditor in the subsequent year on receipt basis resulting in mismatch of details of TDS contained in Form 26AS. A number of times at the time of payment, the company renegotiate the provision which has been created and a lesser payment is made but the TDS return filed for the previous year is not revised resulting in mismatch with Form 26AS.

13. In short any difference in Form 26AS in comparison to receipts in P&L Account arises because there are instances when the other party has not booked the expense in the current year and has recorded the same in next year, but the assessee company has shown such amount as Income in its P&L Account for the current year. Thus, the same cannot be termed as an intention to evade taxes as the same is only a matter of reconciliation and general business norm of the assessee company.
14. It is a settled principle of law that every year of assessment is a separate year and has its own specific and peculiar transactions. While making assessment in particular year assessing officer cannot resort to make additions on account of fall in GP without having any basis of the same situation having been prevailed in the other Assessment Year. Therefore, addition by taking average GP of two preceding years cannot be made on the basis of merely fall in GP ratio in one year. The assessee places reliance on the following rulings:-
 - a) Ruling of Hon'ble High Court of Gujarat in the case of Commissioner of Income-tax-IV vs. Symphony Comfort System Ltd., [2013] 35 taxmann.com 533 (Gujarat).
 - b) Ruling of Hon'ble ITAT Ahmedabad Bench in the case of Century Tiles Ltd. vs. Joint Commissioner of Income-tax, [2014] 51 taxmann.com 515 (Ahmedabad - Trib.).
 - c) Ruling of Hon'ble ITAT Jaipur Bench (Third Member) in the case of Deputy Commissioner of Income-tax, Circle-2, Alwar vs. British Health Products (1) Ltd.

15. The aforesaid rulings have been discussed in length at later stage in the ground wise submissions of the assessee.
16. It would not be out of place to mention that the Ld. CIT(A) has taken absolutely contrary view in upholding the rejection of books of account and addition amounting to Rs. 54,10,504/- on account of low G.P. while deleting the following disallowances as tabulated below made by the Ld. A.O. for travelling expenses, director remuneration and payments to foreign consultancy after going through the ledgers and copies of bills submitted by the assessee. In other words, once the Ld. CIT (A) was: satisfied with the ledgers and copies of bills, rejection of books of account on account and upholding the GP Calculated by the Ld. A.O. is unwarranted and bad at law.

S.No.	Additions/Disallowances by Ld. A.O.	Section/ Head	Amount	Decision of Ld. CIT(A)	Addition upheld
1.	a) Addition on account of Reimbursement of expenses	69C	54,414/-	Upheld	54,514/-
	b) Addition on account of payment of consultancy (foreign)		5,68,701/-	Deleted as the addition was on account of remittance from previous year i.e., A.Y. 2010-11	-
2.	Addition due to double addition of amounts received from various projects and defects in books of accounts	145(3)	1,08,04,598/-	Deleted after verification of bills	54,10,504/-
3.	Disallowance out of Professional Charges	40A(2)	1,00,000/-	Deleted after verification of the genuineness of the transaction	-
4.	Ad Hoc Disallowances out of Travelling Expenses		2,00,000/-	Deleted by Ld. CIT(A) as Ld. A.O. failed to point out any adverse findings	-
	Disallowances out of Director Remuneration	40A(2)	5,49,000/-	Deleted after examining the evidences as produced by the assessee	-
6.	Disallowances of Accounting Charges	40a(ia)	3,60,000/-	The Ld. CIT(A) allowed the expenses subject to verification of Ld. A.O. and the Ld. A.O. allowed the same after verification.	-
			1,26,36,713/-		

17. As is evident from the above table, the Hon'ble CIT(A) directed Ld. A.O. in his orders to verify the expenses in relation to the accounting charges amounting to Rs. 3,60,000/-. The Ld. A.O. subsequently verified all the bills and has allowed the deduction to the assessee. In other words, both Ld. A.O. as well as Hon'ble CIT(A) have allowed the expenses of the assessee after verification of the bills but has rejected the books

on mere discrepancies in accounting which were eventually explained by the assessee which is highly injudicious, unwarranted and bad at law.

18. Without prejudice to the aforesaid, the assessee Company has duly maintained its books of account and has all the books as well as supporting evidence such as invoices of expenses, agreements for the services provided and bank statement from which transactions have been made which are duly placed on record.

19. In order to have better understanding, the assessee hereby submits a brief note on nature of business of the assessee Company. The assessee Company is in business of providing interior designing services. The business of the assessee is as such that the assessee Company has to keep making changes according to client specifications and includes negotiations, change in price of products, delay in deadlines of completion of project, change in cost analysis due to various reasons which may result in profit or loss to the assessee Company.

20. However, the Ld. CIT (A) without completely understanding the nature of the business of the assessee Company as well as the explanation provided by the assessee Company, rejected the books of accounts and upheld the addition of Rs. 54,10,504/- which is highly injudicious, unwarranted and bad at law.

21. Further, during the course of First Appellate Proceedings, the assessee duly explained the reasons of all such defects arising in its submissions dated 27.03.2019 and the same were taken into account while deleting the additions, however the addition amounting to Rs. 54,10,504/- was sustained by the Ld. CIT(A) on the basis of rejection of books.

22. It is further submitted that the CIT(A) in her orders have observed that the additions made in the case of the assessee by the Ld. A.O. vide his orders are only on account of reconciliations as well as on ad hoc basis.

23. The next contention of the assessee is against the addition of Rs. 54,514/- arising on account of difference between Form 15CA and Tax Audit report. The said difference in Form 15CA and Tax Audit report was as follows:

S. No.	Particulars	Amount (In Rs.)
1.	Reimbursement of Expenses as per Form 15CA	7,67,010/-

2.	Reimbursement of Expense as per Tax Audit Report		
	a.	AID Thailand reimbursement of Expenses	3,65,906/-
	b.	AID Singapore reimbursement of Expenses	3,46,690/-
	Total	(a+b)	7,12,596/-
	Difference	(1-2)	54,414/-

24. As is evident from the aforesaid table that the amount of Rs. 7,67,010/- was claimed as expenses in Form 15CA however, the actual payment made for the same was of Rs. 7,12,596/- as reflected in the Tax Audit Report.

25. Moreover, during the assessment proceedings the assessee had duly submitted the reconciliation as well as explained that reimbursement of expenses was to be made to AID Thailand and Singapore and accordingly Form 15CA was prepared. The assessee made payment at a later stage which led to difference of Rs. 54,514/-.

26. The aforesaid orders passed by the Hon'ble First Appellate Authority suffers from various infirmities the appellant has accordingly taken following grounds of appeal against same:-

i. Under the facts and circumstances of the case, the Ld. First Appellate Authority as well as Ld. A.O. have grossly erred in making an addition of Rs 54,514/- as unexplained expenditure u/s 69C of the Income Tax Act, 1961.

ii. Under the facts and circumstances of the case, the Ld. First Appellate Authority has grossly erred in rejecting the books of accounts of the assessee without appreciating the fact that the appellant has maintained complete & correct accounts of the business carried by the appellant and the same have been duly audited as per law.

iii. Under the fact and circumstance of the case, the Ld. First Appellate Authority were grossly erred in making addition of Rs. 54,10,504/- by applying GP ratio on gross receipts, which is unwarranted, against the facts & bad at law.

iv. The Ld. Assessing officer has grossly erred in disallowing a sum of Rs. 3,60,000/- being accounting charges alleging that the same have been paid without deduction of tax, which is against the facts and bad at law.

v. The appellant prays for leave to add, amend, alter or withdraw any grounds of appeal.

27. The arguments of the appellant in favor of the aforesaid grounds of appeal are enumerated hereunder.

28. For the sake of judicial disposal, the assessee is taking grounds in rational order instead of the chronology in which grounds were filed before this Hon'ble Court.

Arguments of the appellant in favour of Ground of Appeal No. 2 & 3

29. The Ld. First Appellate Authority has grossly erred in rejecting the books of accounts of the assessee without appreciating the fact that the appellant has maintained complete & correct accounts of the business carried by the appellant and the same have been duly audited as per law.

30. The Ld. First Appellate Authority has grossly erred in making addition of Rs. 54,10,504/- by applying GP ratio on gross receipts, which is unwarranted, against the facts & bad at law.

31. The additions amounting to Rs. 1,08,04,598/- were made by the Ld. Assessing Officer by grossly misinterpreting the factual information which was provided to him during the course of Assessment Proceedings. The assessee was asked to link the payment made to various contractors with the revenue received against those contracts. For this purpose the assessee filed a chart before the Ld. Assessing Officer a copy of which is being enclosed here along with on page no. 50 of this paperbook. A brief explanation and the misunderstanding of the Ld. A.O. is given hereunder:

32. The assessee was executing a project for M/s GMR airport developers which had a total gross revenue of Rs. 30,60,405/-. To execute the said project the assessee had engaged various sub-contractors, the detail of which has been provided in the aforesaid chart. On the said project Deolalikar Consultants Private Limited and N Dimpu Singh were engaged for executing a part of that particular project. As a result this gross revenue sum of Rs. 30,60,405/- appeared twice in third column of the said chart. Similarly the project being executed for Sunair Hotels amounting to Rs. 4,624,947/- is also appearing twice in the said column, the gross project value of Interglobe Hotel amounting to Rs. 4,891,485/- is also

appearing twice in the said list. The same is the case with many other project which are appearing repeatedly in the said list as different subcontractors were working on the same project. The Ld. Assessing Officer made the total of that particular list by including the project receipts multiple times and thereby rejected the books of accounts of the assessee and made grossly unwarranted additions in the case of the assessee. Needless to say, that the Ld. Assessing Officer grossly misunderstood the details and made unwarranted additions on the basis of gross misunderstanding of the facts of the case. The rejection of books of accounts as well as resorting to addition on the basis of GP ratio was also a result of grossly non application of mind and misinterpretation of the details which were filed before the Ld. Assessing Officer. The Ld. Assessing Officer got carried away on the basis of this misunderstanding of the fact and went ahead with rejecting the books of accounts of the assessee as well as resorting to additions based on GP ratios of the previous years. In other words the entire Assessment Order passed by the Ld. Assessing Officer was on the basis of the biased opinion formed by him by grossly misinterpretation of the details which were filed before him during the Assessment Proceedings. There were no defects in the books of accounts which was not explained before Hon'ble CIT(A) and Ld. A.O. and which would result in the rejection of books of accounts of the company under Section 145(3) of the Income Tax Act, 1961 and to apply the GP ratio of the earlier years.

33. During the First Appellate proceedings the assessee duly explained that the difference of Rs. 1,08,04,598/- is due to double addition of the amounts by the Ld. A.O. which was subsequently deleted by the Ld. CIT(A). Nonetheless, Ld. CIT(A) sustained the addition of Rs. 54,10,504/- on account of fall in GP rate without understanding the submissions and nature of business of the assessee.

34. The reconciliation of gross receipts of a professional with the information contained in form 26AS is always problematic and difficult. The reason being the recognition of the expense by the principal in one year and deduction of TDS on the same on due basis. On the contrary the recipient of Income in the case of professional is generally on cash basis whereas in the case of contractors is in accordance with the percentage completion method as prescribed by AS-9 of the Accounting Standards issued by ICAI. The assessee in this particular case is a contractor and recognizing Income in its books of accounts on the basis of execution of the said contracts. Whereas the principals for whom the said assessee is working record the transactions in the books of accounts on due basis and also deduct tax

on payment or on recording of the said transaction in the books of accounts whichever is earlier. Moreover, a number of times mistakes committed by the deductor of Tax while feeding the information in their TDS returns results in mismatch. In spite of the best efforts and with no intent to evade Tax, there are differences which remain between the books of accounts and 26AS which is derived from various TDS returns filed by the principal with respect to the payments made or due to the concerned assessee. Some small differences at times remain due to communication gap between the contractor and the principal but the same may not necessarily have any revenue implications for the purpose of Income Tax. It needs to be understood that a contractor does not have a long term relationship with the principal firms they are working with and there are instances where post-completion of the project due to various issues or disputes between the two parties they do not cooperate with each other. As a result there can be some small differences in 26AS and the revenue which has been recognized by a contractor but the same cannot be a basis for outrightly rejecting the books of accounts of the contractor or for making unwarranted additions on the basis of differences. This factual situation applies across the board to all the assessee where the income recognition is not in accordance with the deduction of tax provided under the Income Tax Act, 1961. For most of the TDS provisions the Income Tax Act provides for deduction and payment of tax on payment or on credit to the recipient whichever is earlier. An example in this regard is the audit fees which is generally provided at the end of the year by the company on provisional basis. But the same is recorded by the auditor in the subsequent year on receipt basis resulting in mismatch of details of TDS contained in Form 26AS. A number of times at the time of payment, the company renegotiate the provision which has been created and a lesser payment is made but the TDS return filed for the previous year is not revised resulting in mismatch with Form 26AS.

35. In short any difference in Form 26AS in comparison to receipts in P&L Account arises because there are instances when the other party has not booked the expense in the current year and has recorded the same in next year, but the assessee company has shown such amount as Income in its P&L Account for the current year. Thus, the same cannot be termed as an intention to invade taxes as the same is only a matter of reconciliation and general business norm of the assessee company.

36. Moreover, it is pertinent to note that the Ld. CIT(A) has deleted the disallowances made by the Ld. A.O. for travelling expenses, director remuneration and payments to

foreign consultancy after going through the ledgers and copies of bills submitted by the assessee. However, Ld. CIT(A) rejected the books of accounts by stating above mentioned defects. Once he was satisfied with the ledgers and copies of bills, rejection of books of account and upholding the Gross Profit calculated by the Ld. A.O. is unwarranted and bad at law.

37. In the light of the aforesaid submissions it is hereby submitted that the assessee is maintaining proper books of accounts and there is no incorrect claim of expenses therefore the rejection of books of accounts of the assessee by the Ld. A.O. and subsequently upheld by Ld. CIT(A) is injudicious unwarranted and bad at law.

38. In this regard the assessee places reliance on following judicial precedents:

a. Ruling of Hon'ble High Court of Gujarat in the case of Commissioner of Income-tax-IV vs. Symphony Comfort System Ltd., [2013] 35 taxmann.com 533 (Gujarat) wherein it was held as under:

"2..... The AO merely gone by the fact that there was a fall in the gross profit rate as compared to the preceding assessment year which itself is no ground to reject the books of account of the assessee. No specific defect in the maintenance of the books of account by the assessee has been pointed out AO.....

.....In the absence of any specific defect pointed out in the books of account and the records maintained on computer, the AO was not justified in rejecting the books results, or to enhance the gross profit rate. Accordingly, there is no merit in this ground of appeal of the revenue. The same is accordingly, dismissed."

Copy of the said ruling is enclosed on page no. 51 to 52 of this paperbook for your kind perusal.

b. Ruling of Hon'ble ITAT Ahmedabad Bench in the case of Century Tiles Ltd. vs. Joint Commissioner of Income- tax, [2014] 51 taxmann.com 515 (Ahmedabad - Trib.) wherein it was held as under:

"23. In the instant case, we find that the Assessing Officer could not bring any material on record to show that any bogus expenditure or non-verifiable expenses were debited under any head of expenses. In the above circumstances, in our considered view, the wholesale rejection of book result in the instant case was not warranted. The reasons given by the lower authorities in the instant case for rejecting the book results was inability of the assessee to properly explain the reason for decline in gross profit for disproportionate increase in expenses in three heads. In our opinion, the above reason could at best present a case where the Assessing Officer ought to have verified the books with caution and make due inquiries but does not empower the Assessing Officer to reject the book results"

Copy of the said ruling is enclosed on page no. 53 to 65 of this paperbook for your kind perusal.

c. Ruling of Hon'ble ITAT Jaipur Bench (Third Member) in the case of Deputy Commissioner of Income-tax, Circle-2, Alwar vs. British Health Products (1) Ltd. wherein it was held as under:

"7.5.....We, therefore, hold that both the Revenue Authorities have gone wrong in adopting a simplistic way of determining an estimated income of the assessee although the assessee was maintaining voluminous details of the transactions carried out to run the business found to be duly incorporated in the audited books of account maintained during day-to-day business. While running a business, it is not possible to maintain a static graph of profit in all the years. The earning of profit depends upon several market conditions as well as the mode and manner in which the business has been carried out by the assessee. In the present case, in our considered opinion, the assessee has successfully demonstrated the reason of the variation as discussed at length supra. We, therefore, hold that the profit declared by the assessee for the year under consideration should not be disturbed. In consequence thereof, the grounds raised by the assessee are hereby allowed.

Copy of the said ruling is enclosed on page no. 66 to 83 of this paperbook for your kind perusal.

Arguments of the appellant in favour of Ground of Appeal No. 1

39. The Ld. First Appellate Authority as well as Ld. A.O. have grossly erred in making an addition of Rs. 54,514/- as unexplained expenditure u/s 69C of the Income Tax Act, 1961.

40. The said addition of Rs. 54,514/- was on account of difference between Form 15CA and Tax Audit Report the same is tabulated as under:

S. No.	Particulars	Amount (In Rs.)
1.	Reimbursement of Expenses as per Form 15CA	7,67,010/-
2.	Reimbursement of Expense as per Tax Audit Report	
	a. AID Thailand reimbursement of Expenses	3,65,906/-
	b. AID Singapore reimbursement of Expenses	3,46,690/-
	Total (a+b)	7,12,596/-
	Difference (1-2)	54,414/-

41. The aforesaid difference is due to the fact that the said amount was paid post negotiations which led to decrease in payment. However, while filing Form 15CA those negotiations were taking place therefore the amount of Rs. 7,67,010/- was filed.

42. During the assessment proceedings the assessee duly submitted the reconciliation as well as explained that reimbursement of expenses was to be made to AID Thailand and Singapore and accordingly Form 15CA was prepared.

43. Without prejudice to the aforesaid, the Ld. CIT(A) has grossly erred in invoking the provisions of Section 69C and treating the aforesaid sum of Rs. 54,514/- as unexplained expenditure which is grossly injudicious, unwarranted and bad at law.

44. In the present case, the Ld. A.O. on his surmise and conjecture has alleged that the said payment has been made in cash and invoked section 69C of the Act. The Ld. A.O. failed to appreciate the fact that the payment was being made to Thailand and Singapore and the same was made through banking channels and could not be done in Cash. Therefore, the allegation upon the assessee that unexplained expenditure is made is grossly injudicious, unwarranted and bad at law.

Arguments of the appellant in favour of Ground of Appeal No. 4

45. The Ld. Assessing officer has grossly erred in disallowing a sum of Rs. 3,60,000/- being accounting charges alleging that the same have been paid without deduction of Tax, which is against the facts and bad at law.

46. The Hon'ble CIT(A) directed Ld. A.O. in his orders to verify the expenses in relation to the accounting charges amounting to Rs. 3,60,000/-. The Ld. A.O. subsequently has verified all the bills and has allowed the deduction to the assessee. Therefore such ground does not need special adjudication.”

7. Ld. Counsel for the assessee drew our attention towards impugned order to buttress the contention that action of lower authorities is arbitrary and unjustified.

8. On the other hand, Ld. Sr. DR for the Revenue opposed the submissions of Ld. Counsel for the assessee and supported the orders of the authorities below. He submitted that findings are based on material available on record. The Ld.CIT(A) has rightly observed that true profit could not be deduced from the accounts so supplied. He therefore, prayed that impugned order may be upheld.

9. We have heard Ld. Authorized Representatives of the parties and perused the material available on record and gone through the orders of the authorities below. So far Ground Nos.2 & 3 are concerned, the authorities below have not accepted books results and have estimated the profit. The AO proceeded to make addition on the basis of peak on the other hand, Ld.CIT(A) reduced the addition by taking into account double addition made by the AO of the same item. Ld.CIT(A) after considering the submissions decided the controversy by observing as under:-

“A perusal of the aforesaid details shows that there is weight in the submission of the AR. Clearly, the AO has erred in adding the receipts pertaining to projects vis-à-vis the professional expenses paid as each professional is working on more than one common

project. So details of projects against professionals would mean an overlap of projects as also receipts. To making professional payments to consultants the basis of the project receipts of the appellant concern would result in a double addition on account of the same project. To further substantiate the correctness of the total receipts, the AR produced job work invoices, copies of service tax returns, copies of contracts etc. In the light of the above details discussion, I direct the AO to delete the addition made on account of such purported discrepancy. It is however, pertinent to remember that this addition of Rs.1,08,04,598/- includes the addition of Rs.54,10,504/- on account of addition on fall in GP rate which has upheld in the foregoing paras. So, the appellant concern gets only a relief of Rs.53,94,094/-.”

10. We are unable to sustain the findings of Ld.CIT(A) for sustaining the addition partly on the basis of fall in gross profits without pointing out any specific discrepancy in accounts that resulted into suppression of true figure of gross profit. The findings should not be pure guess works, it should have certain foundation. In the case in hand, Lower authorities have failed to advert to the contentions of the assessee that difference between the figures reported in Form 26AS and actually recorded in the books of assessee was due to business model of assessee. The other party did not book expenditure in a particular year for that the assessee cannot be held responsible for them before. This fact ought to have been verified by the lower authorities before proceeding to reject books of accounts. Law is well-settled that the AO while resorting to estimation should consider all aspects surrounding the

transactions. Merely because there is a fall in gross profit rate would not ipso facto be the reason for rejection of book results. Therefore, considering the material placed on record, the impugned order is hereby, set aside and the issue is restored to the file of AO for deciding it afresh. The AO is hereby, directed to verify the correctness of the claim of the assessee regarding mismatch of figure in Form 26AS arose because of booking of income by the assessee in the year under appeal

and by recipient of services in next year. He would decide the issue in accordance with law. Thus, Ground Nos. 2 & 3 raised by the assessee are allowed for statistical purposes.

11. Now, coming to Ground No.1 which is related to addition of INR 54,514/- made on account of difference between Form 15CA and Tax Audit Report.

12. It is contended on behalf of the assessee that the difference arose because of the fact that the amount was paid post negotiation which resulted into decrease in payment. However, while filing Form No.15CA, the amount was written as 7,67,010/-. The amount was reflected prior to negotiation and final payment. It is contended that the addition has been made purely on the basis of surmises and by invoking the provision of section 69C of the Act.

13. On the other hand, Ld. Sr. DR opposed these submissions and supported the orders of the authorities below.

14. We have heard Ld. Authorized Representatives of the parties and perused the material available on record and gone through the orders of the authorities below. The contention of the assessee does not inspire any confidence. Before

Assessing Authority, no explanation in difference of remuneration of Rs.54,514/- was furnished thus, the unreconciled difference was admitted by the assessee. It is contended by Ld.Sr.DR that at this stage, the assessee cannot be allowed to take a different stand. We find that the assessee has not brought any evidence supporting its contention that there were certain negotiations with other party for reduction in payment. In the absence of such evidence, we do not see any reason to interfere in the findings of lower authorities, the same is hereby affirmed. Thus, Ground No.1 raised by the assessee is rejected.

15. In the result, the appeal of the assessee is partly allowed for statistical purposes.

Order pronounced in the open Court on 19th July, 2023.

Sd/-

Sd/-

(M.BALAGANESH)
ACCOUNTANT MEMBER

(KUL BHARAT)
JUDICIAL MEMBER

* Amit Kumar *

Copy forwarded to:

1. Appellant
2. Respondent
3. CIT
4. CIT(Appeals)
5. DR: ITAT

ASSISTANT REGISTRAR ITAT,
NEW DELHI