IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN AT
JAIPUR BENCH, JAIPUR

JUDGMENT
***

DB Income Tax Appeal No.117/2004
CIT Vs. Ram Singh
& connected appeals as per Schedule-A appended to this judgment.

Order reserved on : 14/12/2013

Order pronounced on : 21/01/2014

HON'BLE MR. JUSTICE AJAY RASTOGI
HON'BLE MR. JUSTICE J.K. RANKA

Mr. Sameer Jain]
Mrs. Parintoo jain]
Mr. R.B. Mathur]
Mr. Anuroop Singhi for]
Mr. J.K. Singhi], for the revenue.

Mr. R.P. Garg]
Mr. P.K. Kasliwal]
Mr. Prakul Khurana]
Mr. Naresh Gupta]
Mr. Anurag Kalavatiya]
Mr. Mahendra Gargiya], for the assessees

BY THE COURT

1. These Income Tax Appeals u/Sec. 260A of the Income Tax Act, (for short, IT Act') are directed against the orders of the Income Tax Appellate Tribunal, Jaipur Bench, Jaipur (for short, 'ITAT'). Most of the appeals have been preferred by the revenue while in some of the cases, the assessees have also chosen to file appeals as well as cross

objection.

2. Since a common substantial question of law is involved in the bunch cases relating to liquor contractors, all these appeals are being disposed of by this common order with consent of the parties.

2-A In DB ITA No.117/2004, 244/2005, 254/2005 & 293/2005 following substantial questions of law were framed by the Court:

Substantial question of law in DB ITA No.117/2004:

"Whether in the facts and circumstances of the case the appellate tribunal and the learned Commissioner (Appeals) were justified in deleting the additions exorbitantly without stating any logic reason or arguments despite the fact that the application of Section 145(2) of the Act was not disputed and whether the finding of the Tribunal is perverse?"

Substantial question of law in DB ITA No.244/2005:

"1.Whether in the facts and circumstances of the case the ITAT and CIT(A) were justified in law in restricting the additions without assigning any reasons when the invoking of the provisions of section 145 of the Act has been upheld?

2.Whether in the facts and circumstances of the case, the ITAT & CIT(A) has not acted perversely in reducing and restricting the trading additions without assigning any reasons and making estimation over estimation?"

Substantial question of law in DB ITA No.254/2005:

"Whether it is implicit under the provisions of Section 145(2) of the Act, 1961 to necessarily make some additions upon rejection of accounts when there is no material to support that assessee has earned higher income and under these circumstances whether the adhoc trading additions of Rs.2,00,000/- was justified."

Substantial question of law in DB ITA No.293/2005:

"Whether it is implicit under the provisions of section 145(2) of the Act, 1961 to make some additions on rejection of accounts when there is no material to support that assessee has earned higher income and under these circumstances whether the trading additions of Rs.80,00,000/- was justified when the same was not supported by any material on record?"

3. The assessees are liquor contractors and were awarded license by the State of Rajasthan for sale of Indian made country liquor (IMCL) under Rule 67(1) and 67(kk) of the Rajasthan Excise Rules, 1956 so also the 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 the cases, the assessees had formed Association Of Persons (AOP) and obtained license/contract to sell the liquor as aforesaid exclusively. The licenses were obtained by successful bidders and other than these licensees, no other person was permitted to sale

the liquor which is a prohibited commodity.

4. In the State of Rajasthan contracts for wholesale and retail sale of liquor are awarded separately by the Excise Commissioner for a fiscal year after obtaining tenders from the registered contractors and it comes somewhere in the month of January/February of the preceding fiscal year for contract of the next financial year and by and large, the business begins from 1st of April and ends by 31st of March of the next year.

5. By and large, the revenue district is divided into various groups of shops, known as liquor group after combining two or more tehsils or areas of tehsils of a district. While in retail sale of particular liquor group of shops can only operate and for wholesale: sale of liquor is awarded to a licensee for whole of the Rajasthan. In some cases, the liquor contract is awarded for two years consecutively with some increase in guarantee amount in the second year of contract. Profitability in liquor business depends on several factors like socio economic condition, literacy, drinking habits of population of area of operation. If the area is prosperous from agricultural, industrial and commercial point of view, there is likelihood to be more consumption of all kinds of liquor. If it is urban area, then there will be more consumption of IMFL and Beer.

6. According to the terms of license, a liquor contractor is required to lift liquor from the Government of Rajasthan for a specified value with the stipulation that if the contractor does not take delivery for the specified value, it is liable to make good the deficiency at the end of the year to the State Government called as "shortfall". The shortfall payments are directly linked with the profitability in the sense that when there is less demand of liquor, a contractor prefers to lift less quantity of liquor and prefers to pay "shortfall". As per the excise rules, the liquor contractor has to maintain complete stock register and record of all its employees as per "Nokarnama" approved by the District Excise Officer. No other person can be placed as an employee unless the details of the employees are provided to the District Excise Officer. The liquor contractor has to submit monthly account of receipt of liquor, sale thereof and balance stock at the end of the month to the Excise Inspector by 5th of the following month. In the case of country liquor, the purchases are made from the Excise Department through permits. Accordingly, purchases of IMCL as also purchases of IMFL and Beer can be made from wholesale licensees of IMFL distilleries respectively after seeking permission of the Excise Department and while the purchases are proved but it is an admitted fact that the sale price is not fixed and the assessees have neither issued sale voucher to the purchaser nor maintained.

7. During the course of assessment proceedings, the assessees 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. The assesses were also required to produce the details of sale of bottles and bardana which too was not provided and a lumpsum amount was credited on account of such sale. Details of purchases, being regulated and as per the guidelines of the Excise Department, were produced but sale vouchers, have not been produced for verification. The Assessing Officer was of the view that in the absence of sale vouchers, the assessees are at liberty to charge selling price as per their own sweet will and since the assessees had monopoly and have exclusive jurisdiction to sale goods in that area/district, could charge any amount. What amount was actually charged by the assessees was not known since sales are not open to verification. The AO was of the view that in view of the deficiency the books of accounts are liable to be rejected u/s 145(3) of the IT Act.

8. It was the claim of the assessees that all the purchases are

vouched, detailed and verifiable and they have produced the relevant purchase vouchers/permits of the purchase of the liquor, but in so far as the sale bills are concerned, it was submitted that since the quantum of liquor is so small, in the case of IMCL, the same is being sold in pouches which costs Rs.30/- to Rs.70/-, in cases of Beer the amount ranged from Rs.50/- to Rs.70/- and in IMFL small bottles were of low rate, therefore, it was not practically possible to maintain the sale vouchers. It was further submitted that in this particular trade the customers never like to disclose the identity and therefore, even if the sale voucher is maintained, name of recipient, name of purchaser will have to be left blank. However, it was submitted that the purchases are entirely vouched and when purchases are entirely vouched, then the consequential sale version ought to have been accepted as the sale was out of the very goods purchased by the assessees.

9. It was also submitted by the assessees that all the details as desired by the Excise Department except sale vouchers had been maintained and all the books of accounts and supporting vouchers were generally produced and maintained in accordance with the Excise Rules. However, it was stated by the assessees that they did maintain sale register wherein day to day stock details are recorded and merely because the sale vouchers have not been maintained, there is no

justification for rejecting books of accounts.

10. However, the AO rejected the books of account and trading results u/s 145 of the IT Act by holding that non-maintenance of the sale vouchers is a major defect since the sale is not open to verification. The assessing officer relied upon the judgment of the Apex Court in the case of CIT Vs. British Paints India Limited, (1991)188 ITR 44, M/s. Lal Chand Wailati Ram Vs. CIT: (1978) 111 ITR 244 (P&H); M/s. Bombay Cycle Stores Co. Ltd. Vs. CIT: (1958) 33 ITR 13 (Bombay); SN Nama Sivayam Chettier Vs. CIT: (1960) 38 ITR 579 (SC); Commissioner of Income-tax Vs. MC Millan & Co.: 38 ITR 182 (SC).

11. After rejecting the books of accounts, in some of the cases, the AO has estimated gross profit rate and in some of the cases net profit rate and in some of the cases adhoc estimated addition had been made.

12. The matters were challenged before the respective Commissioner of Income Tax (Appeals) (for short, the 'CIT(A) by the assessees who has upheld the finding of the assessing officer about rejection of books of accounts under Section 145(3) but gave relief by reducing trading addition. In some of the cases, the CIT(A) relied upon comparative cases of similarly situated liquor contractors and past history and

decided the appeals but by and large without much of discussion orders have been passed.

13. It will be appropriate to quote the observation of the CIT Appeals made in the case of asseessee M/s. Ram Singh & Party for the assessment year 1995-96 dt.13.9.1996 which reads ad infra-

> *"That the book results of the appellant cannot be relied upon is not disputed. Considering the book results of the appellant, during this year as compared to the earlier year, I feel that an addition to the extent of Rs.1 lac will be justified. The appellant will get a relief of Rs.11,35,929/-.*
> *In effect, the appeal is partly allowed".*

14. Against the order of CIT(A), revenue has preferred appeal before ITAT and in some of the cases, the assessees have also chosen to file appeal and in some cases, cross-objections were also filed.

15. The ITAT, after hearing the parties, agreed with the contention as to rejection of the books of accounts under Section 145(3) of the Act and in some cases, even the counsels for the assessees admitted that provisions of Section 145 are applicable. However, in so far as the addition on account of quantum, the ITAT, did not adopt a particular yardstick on account of the fact that, different places may have different

facts and chose to reduce/further the GP rate/NP rate/adhoc addition. The ITAT has neither discussed the factual foundation and submissions and by cryptic order decided the appeals. These orders of the ITAT have been assailed before us as aforesaid.

16. Learned counsel for the revenue contended that when the AO gave well reasoned order after discussing the entire issue and also brought in material on record, the CIT(A) also by and large, in majority of the cases, gave detailed reasoning but the ITAT, being a final fact finding authority, was to address the issue in an appropriate manner and not in a summary or in perfunctory manner.

17. Learned counsel for revenue contends that the Tribunal searching for definite evidence to test the validity of the additions made by the AO has transgressed into the realm of indefiniteness from the realm of guesswork for computation of income where the books of account of assessee have been rejected by the AO holding that it is not possible to ascertain the true income of the assessee from such books of account and therefore, the finding of the Tribunal in holding that the results shown in the books of account by the assessee ought to be accepted is not sustainable.

18. Counsel for revenue further contends that ITAT is the final fact finding authority has not recorded any finding or reasoning in restricting, reducing, estimating lump sum ad hoc amount, at the same time, the Tribunal has not given any justification in confirming/enhancing/reducing additions made by the CIT (A). The orders passed by ITAT are not Speaking Order.

19. They drew our attention to some of the orders which have been passed by the Tribunal just in three lines without discussing facts, without discussing arguments and on the basis of assumptions & presumptions drastically reduced the income in round figures. They contended that all the three authorities, namely; AO, CIT(A) as well as ITAT have come to a categorical finding as to rejection of books of accounts and invoking of provisions of Section 145, therefore, a fair estimate was required to be made by the Assessing Officer and in almost all the cases, the Assessing Officer has passed well reasoned order, the ITAT ignored the said findings in a summary and cryptic manner. They also contended that the Assessing Officer has brought adequate material on record to justify the additions. Following Table may be perused to highlight the point:-

DB ITA No.	*Assessm -ent Year*	*Sale of IMCL*	*Sale Of IMFL & Beer*	*Total Sale*	*Income as per Assessee (Return Income)*	*Addition made by A.O*	*Addition sustained by CIT (A)*	*Addition sustained by ITAT*
231/2005	**1996-97**	**9,22,33,239/-**	**21,68,61,926/-**	**30,90,95,165/-**	**43,03,820/-**	**12,87,655/-**	**1,30,000/-**	**2,00,000/-**

DB ITA No.	*Assessm -ent Year*	*Sale of IMCL*	*Sale Of IMFL & Beer*	*Total Sale*	*Income as per Assessee (Return Income)*	*Addition made by A.O*	*Addition sustained by CIT (A)*	*Addition sustained by ITAT*
236/2005	**1996-97**	**3,26,95,853/-**	**2,53,90,736/-**	**5,80,86,589/-**	**1,64,693/-**	**7,26,520/-**	**75,000/-**	**75,000/-**
218/2005	**1997-98**	**-**	**-**	**1,50,68,031/-**	**50,488/-**	**9,55,289/-**	**1,00,000/-**	**3,00,000/-**
254/2005	**1997-98**	**-**	**-**	**8,09,03,720/-**	**4,75,011/-**	**7,00,000/-**	**50,000/-**	**2,00,000/-**
24/2008	**1998-99**	**-**	**-**	**7,55,95,918/-**	**4,70,288/-**	**8,96,570/-**	**1,00,000/-**	**1,00,000/-**

20. Counsel for the revenue placed reliance on (2012) 344 ITR 653 (Guj) Director of Income Tax (Exemption) Vs. Shia Dawoodi Bohra Jamat; (2011) 331 ITR 301 (Allahabad) Commissioner of Income Tax Vs. Deepak M Kothari; (2005) 2SCC 329 Mangalore Ganesh Beedi Works Vs. The Commissioner of Income Tax, Mysore & Anr. & judgment of this Court reported in 199 CTR 422 (Raj) Commissioner of Income Tax Vs. Sunil Talwar Murlidhar & Party.

21. On the strength of the aforesaid judgment, they contended that the appeals filed by the revenue deserve to be allowed or in the alternatively the matter may be remitted to the ITAT to decide the matter afresh for passing a speaking order.

22. Per-contra, ld. counsel for the assessees contended that even the Assessing Officer had no material to make such huge additions and the estimation, if at all is to be fair and reasonable and when huge additions were made without any apparent basis or evidence, both the appellate

authorities, after considering the similarly situated cases or/and other material, had allowed the appeals by giving certain relief. They contended that it is not that the entire addition has been knocked off by the CIT(A) or by the ITAT but additions by and large have been sustained and it cannot be said that the ITAT has not applied its mind. They also contended that once the CIT(A) had given cogent reasons, then the ITAT need not give its own reasons being a higher appellate authority. They also contended that a higher appellate authority can affirm the order of the lower appellate authority by following the same and even may mention "allowed" or "dismissed" without even giving facts and circumstances. They contended that the complete record except sale vouchers was there, and question of any addition does not arise and both the CIT(A) as well as ITAT have come to a reasonable conclusion of income which could have been earned by an assessee on the given facts and circumstances. They contended that the ITAT can always interfere with best judgment of the AO being final fact finding authority. How and in what manner the estimation of the income is to be adjudged is within the realm of ITAT.

23. Ld. counsel for the assessees, in support of their cases, relied upon the judgments in the case of CIT Madras Vs. Mahalakshmi Textile Mills Ltd.: 66 ITR 710(SC); CIT Vs. Gotan Lime Khanij Ugyog: 256 ITR

243 (Raj.); CIT Vs. Jewels Emporium: (2004) 186 CTR 464 (Raj.); Kansara Bearing P. Ltd. Vs. ACIT: 270 ITR 235 (Raj.); Malapani House of Stones Vs. CIT: 264 ITR 764 and CIT Vs. Dr. AP Bahal: 322 ITR 71 (Raj.).

24. We have carefully considered the arguments advanced and have perused the impugned orders and material on record. As regards rejection of books of accounts, cogent reasons have been assigned by all the three Income-tax Authorities and we see no reason to take a different view. It is well settled that in a best judgment assessment there is always a certain degree of guess work. The authorities concerned should make a honest and fair estimate of the income even in a best judgment assessment and should not act arbitrarily. It is equally true that assessee is himself to be blamed as he did not submit proper accounts.

25. It is no doubt true that it was the duty of the assessee to place all facts truthfully before the assessing authority and if he fails to do his duty, he cannot be allowed to call upon the assessing authority to prove conclusively what turnover he has actually suppressed but, at the same time, Sec.145 of the Act, 1961 confers sufficient powers upon the AO to make such computation in such manner as he determines for

deducing the correct profit and gains. This means that where accounts are prepared without disclosing true and correct sale/income, it is the duty of the AO to determine the taxable income by making such computation as he thinks fit and it is therefore not only the right but the duty of the assessing officer to act in exercise of its judicious discretion within the ambit of law for determining the correct taxable income.

26. It is also true that while determining the correct taxable income, It is estimate against estimation, but that should be supported by some justification which is initial duty caste upon AO and when the appeals are being preferred either before the CIT (Appeals) or before the ITAT who is the final fact finding authority, the finding of AO could not ordinarily be disturbed except under perversity. But the CIT (Appeals) or the ITAT as the case may be when taking decision for reversing either finding of fact recorded by the AO or by the CIT (Appeals) then it was obligatory upon the CIT (A) or the Tribunal to have discussed factual finding appreciated by the AO or CIT (A) and placed for consideration by the assessee or by the Revenue as the case may be in its proper perspective and is expected from the authority holding appellate jurisdiction to exercise its judicious discretion based on due appreciation of material on record and being fact finding authority, the finding of the AO or the CIT (Appeals), ordinarily will not be disturbed

except on the ground of perversity.

27. Every law that provides for some form of adjudication also usually provides for appeal in one form or the other against orders passed by the lower authorities. This is based on the concept of equity and recognition that every authority is fallible. The mechanism of appeal provides safeguard against erroneous, unjust or invalid orders. The appeal proceedings ordinarily embrace all proceedings whereby an appellate authority is called upon to review, affirm, reverse or modify the decisions of the lower or subordinate authority.

28. Under the Scheme of Act appellate proceedings are treated as a continuation of the proceedings initiated by the subordinate authority. Therefore, the law applicable to the proceedings before the subordinate or original authority is continued to be played before the appellate authority.

29. It is true that proceedings before the CIT (Appeals) are considered to be an extension of the initial assessment proceeding. Therefore apart from the powers specifically vested in the CIT (A), the CIT (A) is empowered to make further enquiry as he thinks fit or may direct the AO to make further enquiry and submit report thereof. In fact

the power of the CIT (A) is co-extensive with the power of AO. He can do what the AO can do or could have done in the assessment proceedings.

30. The CIT (A) may confirm, reduce, enhance or annul the assessment. The CIT (A) while making an order in writing is required to state the facts of the case, the points for determination, the decision thereon as well as the reasoning underlying the decision. Thus, he is in fact required to pass a speaking order. In absence of reasonable verification by CIT (A) obviously based on appreciation of material on record, the very purpose of legislation in providing appeal before the Appellate Tribunal (second appellate) will remain empty formality. Either of the party aggrieved by an order of CIT (Appeals) may file further appeal to the ITAT. The Tribunal is the last and final fact finding authority under the scheme of Act, 1961. This fact needs to be kept in mind when presenting the matter before the ITAT that no fresh facts would be considered by High Court or by Supreme Court.

31. In the instant case the CIT (Appeals) in some of the cases and in some of the cases ITAT has made certain lump sum deductions or additions to the income computed by the AO and we find that the ld.

Tribunal rejected the basis adopted by the AO on the ground that the AO has no cogent material to adopt GP rate or NP rate different than such rate disclosed by the assessee, nor any material has been brought on record by the AO to reject the turn over disclosed by the assessee and at the same time, the ITAT has taken the very same figures of turnover which were not acceptable as correct and rejected the books of accounts.

32. It is true that the matter of estimate cannot be interfered with by this Court being a finding of fact and some amount of indefiniteness and application of rule of thumb is bound to be there but where the deduction itself being lump sum is not in the realm of guesswork and, therefore, this Court could not have interfered with and the matter would have rested at that. But unfortunately the Tribunal has not acted on estimates but has proceeded on books of accounts in arriving its own conclusion which is apparent manifest misconception about nature of best judgment assessment and end conclusion of the Tribunal is founded on premise which itself has been rejected as credible and in the end, the conclusion stands vitiated.

33. The ITAT enjoins special status under the income tax jurisdiction. The ITAT is a quasi-judicial body whose duties and functions are very

vital in the enforcement of the direct tax laws. It is a final fact finding body and second appellate authority.

34. The ITAT is vested with all the powers of the Income Tax Authorities referred to under Sec. 131 by virtue of Sec.255(6). The same section further clarifies that any proceedings before the ITAT shall be deemed to be judicial proceedings within the meaning of Sections 193 and 228 and for the purpose of Sec.196 of the Indian Penal Code. The ITAT has also been deemed to be a Civil Court for all purposes of Sec. 195 and Chapter XXXIV of Code of Criminal Procedure. The ITAT, being a judicial body, while exercising judicial powers under the statute, is not empowered to employ its jurisdiction arbitrarily. Whatever it does, must be done in consonance with the sound judicial principles and in accordance with accepted doctrine applicable to judicial bodies. Any appeal against the order of the ITAT involving only a substantial question of law can be filed by either of the parties before the High Court, In the case, where no substantial question of law is involved, then order passed by the ITAT attains finality. Therefore, onerous duty is casted on the Tribunal to pass speaking, reasonable and orders shorn of any arbitrariness.

35. It would be appropriate to quote few orders passed by the ITAT.

In the case of CIT Vs. Ram Singh & Party (DB ITA 117/2004) the ITAT passed order in the following terms:-

> *"The solitary grievance in both the appeals is related to trading addition made on account of country liquor by applying section 145. The AO made the addition of Rs.11,89,764/-. But the same was reduced by the CIT(A) to Rs.1,50,000/-. By following the earlier decisions of the Tribunal, we are of the view that the addition is still looking on higher side. Therefore, by modifying both the orders of the lower authorities we restrict the addition to Rs.1 lac only.*
>
> *ITA 2216/JP/96- Ram Singh & Party*
> *ITA 2162/JP/96-By the Department*
>
> *In both the appeals, the first grievance is related to the trading addition made on account of country liquor by applying section 145. The AO made the addition of Rs.10,32,239/- on estimate basis under the head of country liquor account. The same was reduced by the CIT (A) to Rs.1,50,000/-. However, the addition is still looking on higher side. By following our earlier order in a number of cases, we modify both the orders of the lower authorities and restrict the addition to 1 lac. Thus the assessee gets further relief of Rs.50,000/-.*
>
> *The second grievance of both the parties is related to the trading addition on account of IMFL and Beer account. The AO made the addition of Rs.12,35,921/-. But the CIT*

(A) has reduced it to Rs.1 lac by following the Tribunal's order. However, the addition is <u>still looking on higher side.</u> Therefore, by modifying both the orders of the lower authorities we restrict the addition to Rs.75,000/- Thus, the assessee will get further relief of Rs.25,000/- on adhoc basis. Thus appeal filed by the assessee is partly allowed and the appeal filed by the department is dismissed."

36. In the case of CIT Vs. M/s. Amin Mohd. & Party (DB ITA 244/2005) the ITAT observed as under:-

"By considering the rival submissions and considering the material available on record, we are of the view that in the liquor business the location, time, quality, quantity and turnover are relevant. In the instant case, we uphold the application of section 145 for the reasons mentioned in the order of the A.O. However, the addition <u>made is looking on higher side</u>. Therefore, by keeping in mind the doctrine of equity, justice and good conscious, we modify both the orders of the lower authorities and restrict the addition to Rs.2,00,000/- (Rs.Two Lakhs) only.

37. In the case of Bhanwar Ali Habib & Party Vs. CIT (DB ITA 293/2005) the ITAT observed as under:-

"5.In the circumstances mentioned above, we modify the orders of lower authorities and by <u>keeping in mind the doctrine of equity justice and good conscious</u> restrict the additions as

mentioned below:-

ITA NO.	*ADDITION MADE BY THE AO*	*ADDITION SUSTAINED BY THE CIT (A)*	*ADDITION SUSTAINED BY THE ITAT*
308/JP/2003	Rs. 4848300/-	Rs. 200000/-	Rs. 1000000/-
309/JP/2003	Rs. 45981187/-	Rs. 200000/-	Rs. 8000000/-
789/JP/2003	Rs. 30356401/-	Rs. 500000/-	Rs. 7000000/-
310/JP/2003	Rs. 3529450/-	Rs. 200000/-	Rs. 1000000/-
311/JP/2003	Rs. 35761582/-	Rs. 200000/-	Rs. 7500000/-
790/JP/2003	Rs. 7614428/-	Rs. 100000/-	Rs. 1500000/-
375/JP/2003	Rs. 34865660/-	Rs. 200000/-	Rs. 1000000/-
374/JP/2003	Rs. 2534180/-	Rs. 200000/-	Rs. 500000/-

38. On perusal of the above, orders it as apparent and patent that the ITAT has not even recorded the arguments advanced by the parties nor has it come out with the discernible basis as to why adhoc stated addition has been sustained. There is no recording of facts and there is no discussion about any comparable cases or the past history or working for the adhoc addition and deletion. There is no reason assigned as to why Tribunal does not agree with the finding recorded by AO or CIT(A). We fail to understand as to how Tribunal has arrived to a conclusion in confirming, enhancing, reducing or deleting the estimation of income arrived at by CIT(A) & AO. The Tribunal is supposed to set out reasons in support of its decision by narrating full facts and discussing the issues in detail so that the person aggrieved knows why it has come to a particular conclusion.

39. Similar view has been considered by this Court in (2005) 199 CTR (Raj) 422 Commissioner of Income Tax Vs. Sunil Talwar Murlidhar & Party and followed in (2005) 199 CTR (Raj.) 427. In Sunil Talwar's case supra, it has been observed which reads ad infra-

> *In our opinion, on the face of it, it is contradictory in terms that the very foundation on which the books of account rejected by the AO and which order has been affirmed by the Tribunal, should be taken to be the basis for accepting the assessee's results because no material was produced by the AO. It is to set at naught the initial presumption which at least shifted the burden on the assessee to prove that results declared by his books of account are still correct. The burden of proving exact facts to sustain the additions made on best judgment with definiteness is to convert best judgment, which is in the very nature a guesswork, to an assessment in accordance with rejected books of account to a definiteness. The tribunal has failed to consider the undisputed and unquestionable fact on which the AO has proceeded to make the assessment, even the fact was not disputed by the assessee that cost price was verifiable for carrying the guesswork. Therefore, in our opinion, the decision of the Tribunal in deleting the additions made by the AO as reduced by the CIT (A) cannot be sustained in law.".*

40. The principles fully hold the present case also. In the entire order the Tribunal has not recorded any finding of fact and no reasons are assigned as to why the Tribunal does not agree with the finding recorded by the AO or CIT (Appeals) as the case may be.

41. The Hon'ble Apex Court in the case of Kranti Associates (P) Ltd. Vs. Masood Ahmed Khan: (2010)9 SCC 496, while dealing with the requirement of passing reasoned order by an authority whether administrative, quasi-judicial or judicial, has laid down as under:-

> *a. In India the judicial trend has always been to record reasons, even in administrative decisions, if such decisions affect anyone prejudicially.*
>
> *b. A quasi-judicial authority must record reasons in support of its conclusions.*
>
> *c. Insistence on recording of reasons is meant to serve the wider principle of justice, that justice must not only be done it must also appear to be done as well.*
>
> *d. Recording of reasons also operates as a valid restraint on any possible arbitrary exercise of judicial and quasi-judicial or even administrative power.*
>
> *e. Reasons reassure that discretion has been exercised by the decision maker on relevant grounds and by disregarding extraneous considerations.*
>
> *f. Reasons have virtually become as indispensable a component of a decision making process as observing principles of natural justice by judicial, quasi-judicial and even by administrative bodies.*

g. Reasons facilitate the process of judicial review by superior Courts.

h. The ongoing judicial trend in all countries committed to rule of law and constitutional governance is in favour of reasoned decisions based on relevant facts. This is virtually the life blood of judicial decision making justifying the principle that reason is the soul of justice.

i. Judicial or even quasi-judicial opinions these days can be as different as the judges and authorities who deliver them. All these decisions serve one common purpose which is to demonstrate by reason that the relevant factors have been objectively considered. This is important for sustaining the litigants' faith in the justice delivery system.

j. Insistence on reason is a requirement for both judicial accountability and transparency.

k. If a Judge or a quasi-judicial authority is not candid enough about his/her decision making process then it is impossible to know whether the person deciding is faithful to the doctrine of precedent or to principles of incrementalism.

l. Reasons in support of decisions must be cogent, clear and succinct. A pretence of reasons or `rubber-stamp reasons' is not to be equated with a valid decision making process.

m. It cannot be doubted that transparency is the sine qua non of restraint on abuse of judicial powers. Transparency in decision making not only makes the judges and decision makers less prone to errors but also makes them subject to broader scrutiny. (See David

Shapiro in Defence of Judicial Candor (1987) 100 Harward Law Review 731-737).

n. Since the requirement to record reasons emanates from the broad doctrine of fairness in decision making, the said requirement is now virtually a component of human rights and was considered part of Strasbourg Jurisprudence. See (1994) 19 EHRR 553, at 562 para 29 and Anya v. University of Oxford 2001 EWCA Civ 405, wherein the Court referred to Article 6 of European Convention of Human Rights which requires, "adequate and intelligent reasons must be given for judicial decisions".

o. In all common law jurisdictions judgments play a vital role in setting up precedents for the future. Therefore, for development of law, requirement of giving reasons for the decision is of the essence and is virtually a part of "Due Process".

42. We have noticed following observations of the Karnataka High Court in CIT Vs. Gauthamchand Bhandari reported in (2012) 347 ITR 491,499:-

> *"We cannot avoid observing that of late the quality of orders that are come out from the Tribunal in exercise of its appellate power under section 256 of the Act are found to be wanting and in many respect and many a times the orders are very prefecture, even non-speaking orders and has no correlation to the fact situation that prevails in a given case.*

We also notice that the members of the Tribunal have developed an unhealthy habit of quoting totally unrelated judgments which are not applicable at all to the facts of the case, to pass orders not otherwise sustainable on facts or in law. We strongly deprecate such a tendency on the part of the members of the Tribunal, which is quite naturally a professional Tribunal comprised of expert members, one member from the Revenue side and another member from the accounting side, with considerable experience in their respective fields and to whom we can attribute expertise. We feel sorry that the confidence posed by the Legislature is not being justified by passing orders that are outcome from the Tribunal now-a-days. It is high time the method of recruitment to the Tribunal is also reviewed by the authority concerned and at least henceforth it is ensured that the members of some standing, integrity and competence are put in place as members of the Tribunal and not all and sundry.

The Legislature, particularly the Union Parliament may also take note of such tendency on the part of the Tribunal and ensure for suitable legislative measure so that the purpose and the object with which such Tribunals are constituted really subserve not only the interest of aggrieved assessee but also to ensure that the Revenue's interest is not simply scarified or jeopardized by errant members.

Registrar General of this court is directed to send copies of this judgment to the Law Commission of India, Secretary to Department of Revenue, Ministry of

Finance,. Government of India, Secretary to Government, Ministry of law and Parliamentary Affairs, Government of India and the Central Board of Direct Taxes, New Delhi."

43. The impugned orders passed by the Tribunal do not satisfy the requirements enunciated by the Apex Court noticed here-in-above.

44. It is no doubt true that in an order of affirmation, repetition of the reasons elaborately may not be necessary but even then the arguments advanced/points urged deserves to be dealt with. Reasons for affirmation have to be indicated, though in appropriate cases they may be briefly stated. Recording of reasons is part of fair procedure and reasons are harbinger between the mind of the maker of the decision in the controversy and the decision or conclusion arrived at and they always substitute subjectivity with objectivity and as observed in Alexander Machiniery (Dudley) Ltd. Crabtree, 1974 L.C.R. 120, failure to give reasons amounts to denial of justice and this is what was also abserved by the Apex Court in 2005 (2) SC 329 Mangalore Ganesh Beedi Works Vs. CIT & Anr.

45. We find the judgments of the ITAT being the stereo typed, non-speaking, unreasoned, arbitrary and whimsical, and we have no option

except to remand the matter back to the ITAT to re-visit the issue afresh de-novo in accordance with the guidelines, referred to herein above and as summarized herein above.

46. Resultantly, in our considered view, all the impugned orders passed by the ITAT, wherein appeals (Schedule-A) have been filed either by the revenue or by the assessees cannot be sustained in the eyes of law and are hereby quashed & set aside to be decided afresh and de-novo in accordance with law. The Cross Objection No.100/2011 filed in DB ITA No.372/2005 also stands disposed of in the above terms. We also direct the ITAT to decide all the matters expeditiously but in no case later than six months from the date parties are called upon to put their appearance before the ITAT. However, it is made clear that the ITAT may not be influenced/inhibited by any of the observations, referred to herein above and may decide independently on merits in accordance with law. Parties are directed to appear before the ITAT on 10/03/2014. No costs.

[J.K. RANKA],J **[AJAY RASTOGI],J.**

Dsr/Raghu/p.29/

Schedule A to Judgment in
Income Tax Appeal No.117/2004
CIT Vs. Ram Singh

S. No.	Income Tax Appeals	Title
1	117/2004	CIT Vs. Ram Singh & Party
2	118/2004	CIT Vs. Ram Singh & Party
3	119/2004	CIT Vs. Hai Singh Amar Singh & Party
4	120/2004	CIT Vs. M/s Trilok Chand Roop Narain & Party
5	121/2004	CIT Vs. M/s. Dwarka Prasad Hemraj & Party
6	122/2004	CIT Vs. Hari Singh Amar Singh & Party
7	126/2004	CIT Vs. Bharat Singh & Party
8	127/2004	CIT Vs. Trilok Chand Roop Narain & Party
9	128/2004	CIT Vs. Bharat Singh & Party
10	188/2004	Bhagwan Das Brijendra Singh & Party Vs. CIT
11	36/2005	CIT Vs. Mangat Ram Bhagirath Mal & Party
12	38/2005	CIT Vs. M/s Raja Ram Jaidev & Party
13	45/2005	CIT Vs. Madu Ram & Party
14	48/2005	CIT Vs. Raja Ram Manohar & Party
15	70/2005	CIT Vs. M/s. Jora Ram Damodar Lal & Party
16	75/2005	CIT Vs. Bhoopendra Saxena & Party
17	80/2005	CIT Vs. M/s Wali Mohd. & Party
18	81/2005	CIT Vs. M/s. Bhajan Lal & Party
19	39/2008	CIT Jaipur II Vs. M/s Veerji Iqbal & Party
20	101/2005	CIT Vs. M/s Banna Ali Girdhari Singh & Party
21	104/2005	CIT Vs. M/s Banwari Lal & Party
22	112/2005	CIT Vs. M/s Banna Ali Girdhari Singh & Party
23	113/2005	CIT Vs. M/s. Birbal Ram Ram Chandra & Party
24	118/2005	CIT Vs. M/s Vijay Pal Om Prakash & Party
25	122/2005	CIT Vs. M/s. Bhura Ram & Party
26	123/2005	CIT Vs. M/s. Bhura Ram & Party
27	132/2005	CIT Vs. M/s Badri Lal Purshottam Agarwal & Party
28	218/2005	CIT Vs. M/s Raja Ram Bhajan Lal & Party
29	340/2005	CIT Vs. M/s Jai Mal Ram & Party
30	145/2005	CIT Vs. Birbal Ram Ram Chandra & Party
31	150/2005	CIT Vs. M/s Tara Chand & Party
32.	159/2005	CIT Vs. M/s. Habib Mohd. Raju Khan & Party
33.	163/2005	CIT Vs. M/s. Habib Mohd. Raju Khan & Party
34.	167/2005	CIT Vs. Bhanwar Ali Habib Mohd. & Party
35.	185/2005	CIT Vs. M/s. Babudeen & Party

S. No.	Income Tax Appeals	Title
36.	207/2005	CIT Vs. M/s Anwar Hussain Ibrahim Ali & Party
37.	228/2005	CIT Vs. M/s Jhaman Das & Party
38.	229/2005	CIT Vs. Hemant Sharma & Party
39.	231/2005	CIT Vs. M/s Meghraj Singh Pukhraj Sisodia & Party
40.	236/2005	CIT Vs. M/s Meghraj Singh Surendra Pal Singh & Party
41.	244/2005	CIT Vs. M/s Amin Mohd. & Party
42.	293/2005	M/s Bhanwar Ali Habib Mohd. & Party Vs. CIT
43.	317/2005	CIT Vs. M/s Om Singh Rathore & Party
44.	318/2005	CIT Vs. M/s Om Singh Rathore & Party
45.	344/2005	CIT Vs. M/s Jai Mal Ram & Party
46.	346/2005	CIT Vs. M/s Ajay Kumar Sethi & Party
47.	358/2005	CIT Vs. M/s Surja Ram Meel Rajendra Singh
48.	368/2005	CIT Vs. M/s Raja Ram Rajendra Bhandari & Party
49.	369/2005	CIT Vs. M/s Banna Ali Girdhari Singh & Party
50.	7/2006	CIT Vs. M/s Banna Ali Girdhari Singh & Party
51.	21/2006	CIT Vs. M/s Bhajan Lal & Party
52.	41/2006	M/s Habib Mohd. Raju Khan & Party Vs. CIT
53.	67/2006	CIT Vs. M/s NM & Party
54.	5/2007	CIT Vs. M/s Narendra Singh Hari Singh & Party
55.	372/2005	CIT Vs. M/s Mahesh Kumar & Party
56.	6//2007	CIT Vs. M/s RS Bhandari Kishan Sharma & Party
57.	151/2008	CIT Vs. M/s Raja Ram Bhajan Lal & Party
58.	11/2008	CIT Vs. M/s Raja Ram & Party
59.	15/2008	CIT Vs. M/s Babudeen & Party
60.	24/2008	CIT Vs. M/s Ramavtar & Party
61.	40/2008	CIT Vs. M/s Sadhu Singh & & Party
62.	309/2005	CIT Vs. M/s NM & Party
63.	46/2008	CIT Vs. M/s NM & Party
64.	60/2008	CIT Vs. M/s Sunil Khan & Party
65.	156/2008	CIT Vs. M/s Harjinder Singh & Party
66.	226/2008	CIT Vs. M/s Bhagirath Mal Jakhar & Party
67.	260/2008	CIT Vs. M/s Raja Ram Rajendra Bhandari & Party
68.	329/2008	CIT Vs. M/s Bhagirath Mal Jakhar & Party
69.	338/2008	M/s Harjinder Singh & Party Vs. ACIT
70.	345/2008	CIT Vs. M/s Mahendra Singh & Party
71.	448/2008	CIT Vs. M/s Jai Mal Ram & Party

S. No.	Income Tax Appeals	Title
72.	472/2008	M/s Harjinder Singh & Party Vs. ACIT
73	582/2008	CIT Vs. M/s Banna Ali Girdhari Singh & Party
74.	883/2008	CIT Vs. M/s Ramavtar & Party
75.	483/2009	CIT Vs. M/s Habib Mohd. & Party
76.	254/2005	Amin Mohd. & Party Vs. CIT
77.	586/2009	CIT Vs. M/s Birbal Ram Rajendra Poonia & Party
78.	149/2010	CIT Vs. M/s Habib Mohd. & Party
79.	191/2011	CIT Vs. M/s Birbal Ram Rajendra Poonia & Party
80.	682/2008	CIT Vs. M/s Banna Ali Girdhari Singh & Party
81.	100/2011 (Cross Objection) In IT Appeal-372/2005	M/s. Mahesh Kumar & Party Vs. CIT

(J.K. Ranka), J. **(Ajay Rastogi), J.**

Certificate: All corrections made in the judgment/order have been incorporated in the judgment/order being e-mailed.

/Raghu, PA.