**IN THE INCOME TAX APPELLATE TRIBUNAL,
JAIPUR BENCHES, "B" BENCH, JAIPUR**

**BEFORE SMT. ANNAPURNA GUPTA, ACCOUNTANT MEMBER
&
SHRI T. R. SENTHIL KUMAR, JUDICIAL MEMBER**

**ITA No.1081/JPR/2025
(Assessment Year: 2016-17)**

ITO Ward 1 Bharatpur	Vs.	Anil Sharma Prop. M/s H.R. Infra Projects 316, Krishna Nagar, Bharatpur
स्थायीलेखासं./जीआइआरसं./PAN/GIR No:BFTPS 7006D		
Appellant	..	Respondent

**C.O. No.33/JPR/2025
(Arising out of ITA No.1081/JPR/2025)
(Assessment Year: 2016-17)**

Anil Sharma 316, Krishna Nagar, Bharatpur	Vs.	ITO Ward 1 Bharatpur
स्थायीलेखासं./जीआइआरसं./PAN/GIR No: BFTPS 7006D		
Appellant	..	Respondent

Assessee by :	Sh. Rajeev Sogani, CA
Departmentby :	Ms. Namita Patel, JCIT

Date of Hearing	27.07.2026
Date of Pronouncement	26.10.2026

O R D E R

Per Annapurna Gupta, AM:-

The present appeal filed by the Revenue and the cross objection of the assessee arise against the order passed by the National Faceless Appeal Centre (NFAC), Delhi(hereinafter referred to as "Ld. CIT(A)"), dated 29.05.2025under Section 250of the Income Tax Act, 1961 (hereinafter referred to as "the Act") for Assessment Year 2016-17.

2. The cross-objection is noted to be delayed for filing by 3 days. An application by the assessee seeking condonation of the delay has been filed before us, the contents of which are reproduced hereunder:-

> *Assessment proceedings u/s 143(3) were completed on 22.11.2018 in the case of assessee by making additions of Rs 3,91,61,175. Ld. CIT(A)/NFAC partly allowed the appeal of the assessee by deleting the additions to the tune of Rs 1,88,24,970 and confirming the rest amounting to Rs 2,57,52,770 (3,91,61,175-1,88,24,970).*
>
> *Revenue's appeal against the order of Id. NFAC/CIT(A) was served upon the Respondent on 28.08.2025. While preparing the cross objections, due to inadvertence and omission on part of the Chartered Accountant handling the matter, the same could not be filed within the prescribed limitation period.*
>
> *The cross objections were required to file appeal before the Hon'ble ITAT before 27.09.2025. However, the present cross objectionshas been filed on 30.09.2025, with the delay of 3 days.*
>
> *The delay is purely accidental and not deliberate. A humble prayer is made that there is a reasonable cause for delay. The delay is not wilful.*
>
> *Reliance is placed on the judgement of Hon'ble Supreme Court in the case of Vidya Shankar Jaiswal vs. ITO [2025] 343 CTR (SC) 39 wherein it was held that "both the tribunal and the High Court ought to have adopted justice oriented and liberal approach By condoning the delay of 166 days and therefore, both the impugned*

orders are set aside by condoning the delay And Tribunal is directed to decide the appeal in accordance with law.

Reliance is placed on the judgement of Hon'ble Supreme Court in the case of Collector, Land Acquisition vs. Mst. Katiji [1987] 167 ITR 471 wherein it was held that the legislature has conferred the power to condone delay by enacting Section 5 of the Indian Limitation Act of 1963 in order to enable the courts to do substantial justice to parties by disposing of matters on 'merits'. In paragraph 3 of the report it has been held as under:

"3. The legislature has conferred the power to condone delay by enacting Section 5 of the Indian Limitation Act of 1963 in order to enable the courts to do substantial justice to parties by disposing of matters on 'merits'. The expression "sufficient cause" employed by the legislature is adequately elastic to enable the courts to apply the law in a meaningful manner which subserves the ends of justice that being the life-purpose for the existence of the institution of courts. It is common knowledge that this Court has been making a justifiably liberal approach in matters instituted in this Court. But the message does not appear to have percolated down to all the other courts in the hierarchy. And such a liberal approach is adopted on principle as it is realized that:

1. Ordinarily a litigant does not stand to benefit by lodging an appeal late.

2. Refusing to condone delay can result in a meritorious matter being thrown out at the very threshold and cause of justice being defeated. As against this when delay is condoned the highest that can happen is that a cause would be decided on merits after hearing the parties.

3. "Every day's delay must be explained" does not mean that a pedantic approach should be made. Why not every hour's delay, every second's delay? The doctrine must be applied in a rational common sense pragmatic manner.

4. When substantial justice and technical considerations are pitted against each other, cause of substantial justice deserves to be preferred for the other side cannot claim to have vested right in injustice being done because of a non-deliberate delay.

5. There is no presumption that delay is occasioned deliberately, or on account of culpable negligence, or on account of mala fides. A litigant does not stand to benefit by resorting to delay. In fact he runs a serious risk.

6. It must be grasped that judiciary is respected not on account of its power to legalize injustice on technical grounds but because it is capable of removing injustice and is expected to do so.

Making a justice-oriented approach from this perspective, there was sufficient cause for condoning the delay in the institution of the appeal...."

In view of the above, a very humble prayer is made for condoning the delay of 3 days in filing the appeal before ITAT, Jaipur Bench.

3. Ld. Counsel for the assessee stated before us that while preparing the cross objections, due to inadvertence and omission on part of the Chartered Accountant handling the matter, the cross-objection could not be filed within the prescribed limitation period.

4. Considering the averments made by the assessee before us, having regard to the explanation furnished, the short duration of the delay and the interest of substantial justice, we are satisfied that the delay is neither intentional nor deliberate. Accordingly, the delay of 3 days in filing the cross-objections is hereby condoned. Order was pronounced in the Open Court. The cross-objection is accordingly admitted for adjudication.

5. Briefly stated the facts relating to the case are that the assessee's income was assessed in scrutiny assessment conducted by the Assessing Officer (AO) and order passed u/s 143(3) of the Act making addition/disallowances on account of the following:-

- Unexplained gifts received amounting to Rs.24,06,121/-
- Unexplained expenses amounting to Rs.74,36,425/-
- Unexplained sundry creditors amounting to Rs.2,93,18,629/-

6. The assessee income accordingly was assessed at Rs.4,45,77,740/- after making the above additions to the returned income of the assessee of Rs.54,16,560/- .

7. The matter was carried in appeal before the Ld. CIT(A), who confirmed all the additions made to the income of the assessee except the

addition made on account of unexplained sundry creditors on which he allowed relief of Rs.1,88,24,970/-, confirming the addition of the remaining amount of Rs.1,04,93,659/-.

8. Aggrieved by the order of the Ld. CIT(A), the Revenue has come up in appeal before us, challenging the deletion of addition made of unexplained sundry creditors to the extent of Rs.1,88,24,970/- raising the following grounds of appeal:-

1. "Whether on the facts and in the circumstances of the case and in law, the Id. CIT(A) was justified in deleting the addition of Rs. 1,88,24,970/- made by the AO on account of sundry creditors on the basis of trial balance submitted by the assesse was not according to audited books of accounts, audit report & ITR etc.?"

2. "Whether on the facts and in the circumstances of the case and in law, the Id. CIT(A) was justified in appreciating the specific finding given by the Assessing Officer regarding sundry creditor in spite of CIT(A) admitted that the appellant failed to produce list of sundry creditors, ledger accounts of concerned creditors in its books, nature of transaction etc. both during assessment and appeal proceedings?"

3. "Whether on the facts and in the circumstances of the case and in law, the Id. CIT(A) was justified in appreciating the specific finding given by the Assessing Officer in remand report proceedings upon the additional evidences submitted by the assesse during appeal proceedings under Rule 46A of the I.T.Rules, 1962?"

9. While the assessee has filed cross-objection challenging the additions confirmed by the Ld. CIT(A) raising following grounds of appeal:-

1. In the facts and in the circumstances of the case and in law, the Id. CIT(A)NFAC has erred in confirming the action of the Id. AO in not completing the assessment on best judgment basis in accordance with the mandate of section 144. The action of the Id. CIT(A)NFAC is illegal, unjustified, arbitrary and against the facts of the case. Relief may please be granted by properly estimating the income in accordance with section 144.

2. In the facts and in the circumstances of the case and in law, the Id. CIT(A)/NFAC has erred in confirming the action of the Ld. AO in not completing the assessment on best judgment basis in accordance with the mandate of section 144 in spite of impliedly invoking

the provisions of section. 145(3). The action of the Id. CIT(A)/NFAC is illegal, unjustified, arbitrary and against the facts of the case. Relief may please be granted by properly estimating the income in accordance with section 144.

3. In the facts and in the circumstances of the case and in law, the ld. CIT(A)NFAC has erred in confirming the action of the ld. AO in adding the sum of Rs. 24,06,121 received as a gift from the assessees grandmother as unaccounted income under the head Income from Other Sources. The action of the ld. CIT(A) /NFAC is illegal, unjustified, arbitrary and against the facts of the case. Relief may please be granted by quashing the addition of Rs. 24,06,121.

4In the facts and in the circumstances of the case and in law, the ld. CIT(A)NFAC has erred in confirming the action of the ld. AO in disallowing direct expenses of Rs. 74,36,425 as unexplained bogus expenses. The action of the Id. CIT(A)/NFAC is illegal, unjustified, arbitrary and against the facts of the case. Relief may please be granted by quashing the addition of Rs. 74,36,425.

5. In the facts and in the circumstances of the case and in law, the ld. CIT(A)/NFAC has erred in confirming the action of the ld. AO in adding a sum of Rs. 1,88,24,970 out of outstanding creditors (total addition -Rs. 2,93,18,629) as unexplained expenses introduced out of unaccounted income of the assessee. The action of the Id. CIT(A)NFAC is illegal, unjustified, arbitrary and against the facts of the case. Relief may please be granted by quashing the addition of Rs. 1,88,24,970.

6. The Assessee craves his right to add, amend OR alter any of the grounds on OR before the date of hearing.

10. In the assessee's cross objection before us, one of the grounds raised relates to the contention that the assessment in the present case has been wrongly framed u/s 143(3) of the Act, while it ought to have been framed u/s 144 of the Act ,as best judgment assessment. Further, during the course of hearing before us, arguments were raised to the effect that once best judgment assessment is made, estimating the income of the assessee, no other addition can be made to the income of the assessee. Thus, vide this contention, the argument raised by the Ld. Counsel for the assessee the additions made in the hands of the assessee are challenged

and stated to be not sustainable. Since this argument, of the assessment being wrongly framed u/s 143(3) of the Act, goes to the root of the assessment framed in the present case and impacts/effects all the additions made by the AO, most of which were confirmed by the Ld. CIT(A), we consider it fit to first deal with this contention raised by the assessee in its cross-objection in Ground No.1 and 2. Accordingly, we shall first take up the cross-objection of the assessee and deal first with Ground No.1 and 2 raised by the assessee therein.

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11. Vide ground No.1 and 2, the assessee has contended that in the present case assessment ought to have been framed u/s 144 of the Act by resorting to best judgment of the AO and no separate disallowance of expenses or sundry creditors or any addition on account of gift ought to have been made in the hands of the assessee.

12. The basis for raising this argument before us was that admittedly the assessee had not sufficiently participated in the assessment proceedings, filing only part reply to notices issued to it, had not furnished his books of accounts, vouchers or any documents worth its while, and in the absence of any material on the basis of which the income of the assessee could have been verified and assessed by way of a scrutiny assessment, the AO ought to have resorted to best judgment assessment. The case of the ld. Counsel for the assessee was that in the absence of any vouchers and books of accounts produced by the assessee, the AO himself had held that all expenses incurred by the assessee were

not verifiable and had gone on to disallow 25% of the said expenses. The contention of the ld. Counsel for the assessee was that when there was no material with the AO to correctly assess the income of the assessee, since the assessee neither produced any books of accounts nor vouchers nor did he file proper submissions to the notices issued to it, the AO ought to have rejected the books of accounts of the assessee by invoking Section 145(3) of the Act and resorted to best judgment assessment as per Section 144 of the Act. In this regard, our attention was drawn to the provisions of Section 145(3) which reads as under:-

> **…….**
> ***Method of accounting.***
> ***145…****….*
> *(3) Where the Assessing Officer is not satisfied about the correctness or completeness of the accounts of the assessee, or where the method of accounting provided in sub-section (1) has not been regularly followed by the assessee, or income has not been computed in accordance with the standards notified under sub-section (2), the Assessing Officer may make an assessment in the manner provided in section 144.*
> *……*

12.1. And the provisions of Section 144 of the Act which reads as under:-

> **……**
> ***Best judgment assessment.***
> ***144.*** *(1)] If any person—*
> *(a) fails to make the return required under sub-section (1) of section 139 and has not made a return or a revised return under sub-section (4) or sub-section (5) or an updated return under sub-section (8A) of that section, or*
>
> *(b) fails to comply with all the terms of a notice issued under sub-section (1) of section 142 or fails to comply with a direction issued under sub-section (2A) of that section, or*
>
> *(c)* ***having made a return, fails to comply with all the terms of a notice issued under sub-section (2) of section 143****,*
>
> ***the Assessing Officer, after taking into account all relevant material which the Assessing Officer has gathered, shall, after giving the assessee an oppor- tunityof***

being heard, make the assessment of the total income or loss to the best of his judgment and determine the sum payable by the assessee on the basis of such assessment *:*

Provided *that such opportunity shall be given by the Assessing Officer by serving a notice calling upon the assessee to show cause, on a date and time to be specified in the notice, why the assessment should not be completed to the best of his judgment :*

Provided further *that it shall not be necessary to give such opportunity in a case where a notice under sub-section (1) of section 142 has been issued prior to the making of an assessment under this section.*

(2) The provisions of this section as they stood immediately before their amendment by the Direct Tax Laws (Amendment) Act, 1987 (4 of 1988), shall apply to and in relation to any assessment for the assessment year commencing on the 1st day of April, 1988, or any earlier assessment year and references in this section to the other provisions of this Act shall be construed as references to those provisions as for the time being in force and applicable to the relevant assessment year.

.....

13. Submissions in writing were also filed before us, which are reproduced hereunder:-

4.1. It is submitted that the Id. CIT(A) failed to appreciate the "Best Judgment" principles mandated under Section 144 when the books are effectively rejected, and erroneously sustained additions that result in a commercially impossible Net Profit rate of over 38.24% (CIT(A) Order/Page 15) in a civil construction business.

4.2. Ld. CIT(A)'s finding is a classic example of placing form over substance. The conclusion that the AO "nowhere suspected business results" is factually incorrect and legally contradictory to the AO's own actions.

4.3. Ld. CIT(A) erred in validating this procedural irregularity by stating the Appellant "can't demand rejection." The Appellant is not demanding rejection for the sake of it, but demanding adherence to the statutory consequences of the AO's findings. If the AO says books were not produced, he must frame a Best Judgment assessment.

4.4. L.d. CIT(A) stated that the AO did not reject the books. However, in the very same order, the AO disallowed 25% of the total direct expenses (Rs. 74,36,425) on the grounds that they were "unverifiable" and "bogus".

4.5. By upholding the fiction that books were "accepted," the CIT(A) allowed the AO to cherry-pick: taxing the turnover as per books but disallowing expenses on an estimate. This resulted in an assessed profit of Rs. 1,18,40,532 on a turnover of Rs. 3.09 Crores, yielding an NP rate of 38.24%. (CIT(A) Order/Page 15). This is commercially absurd for a civil

contractor and proves that the "acceptance" of books was a facade to sustain an unreasonable addition.

4.6. It is submitted that one cannot simultaneously "accept" the books of account as true and correct while simultaneously holding that one-fourth of the business expenditure recorded in those books is "bogus." The two positions are mutually exclusive. If the books are reliable, the entries therein (including expenses) must be accepted. If the expenses are estimated or disallowed on an ad-hoc basis because vouchers are missing, the books effectively stand rejected.

4.7. The jurisprudence of Income Tax law recognizes the doctrine of "Implied Rejection." When an Assessing Officer resorts to estimation of profit or ad-hoc disallowances due to defects in the books (such as non-production of vouchers), he is, in substance, invoking Section 145(3). The failure to explicitly quote "Section 145(3)" in the order does not change the nature of the assessment. The Hon'ble Jaipur Bench of ITAT in M/s Rishabh Constructions (P) Ltd ITA No. 581/JP/2009 [CLC 7-8] held that once books are rejected-impliedly or specifically the only course available is a best judgment assessment.

4.8. Ld. CIT(A) distinguished Choudhary Bros (supra) solely on the ground that the AO explicitly rejected books in that case. It is submitted that this is patently incorrect. In the Choudhary Bros (supra), there was no specific rejection of books of account as in the present case. However, the Jurisdictional ITAT held that by implication, books of account of the assessee were rejected by the assessing officer.

4.9. The Id. AO noted in the assessment order that the appellant "failed to produce any books of account" despite repeated notices. Section 144(1)(b) of the Act states that if any person fails to comply with a notice issued under Section 142(1), the Assessing Officer "shall" make an assessment of the total income to the best of his judgment.

4.10. By noting non-compliance but framing the order under Section 143(3), the AO attempted to bypass the safeguards of Section 144 (which requires a fair estimate) to make punitive ad-hoc additions.

4.11. The distinction is not merely academic. In a regular assessment where books are accepted, specific additions are made based on evidence of concealment. In a Best Judgment Assessment (following book rejection), the AO is tasked with estimating the income fairly, typically by applying a Net Profit (NP) rate comparable to the industry or past history.

4.12. When assessment is made on estimate basis by rejecting books of account, the Id. AO cannot make piecemeal additions from the same rejected books. Either the books are accepted and additions are made based on specific defects, or the books are rejected and income is estimated on a reasonable basis.

14. Ld. DR on the other hand relied on the order of the Ld. CIT(A) and drew our attention to para 9.5.3 and 9.5.4 and to para 9.6.3-9.6.4 of the order of the Ld. CIT(A) are as under:-

> ……
> *9.5.3 During appeal proceedings, the appellant contended that AO has erred in not completing the assessment u/s 144 of Income Tax Act, 1961 after impliedly invoking provisions of section 145(3) and instead proceeded to make specific disallowances arbitrarily. The appellant submits that in the present case, the AO has rejected the books of account, and the non-compliance with the notice issued under section 142(1) should have resulted in framing the assessment under the Best Judgment provisions as per section 144. The appellant contends that once the books of account are rejected, the only course available is to complete the assessment by adopting the best judgment method under section 144, and in support of this, reliance is placed on judicial precedents including M/s Choudhary and Brothers vs. ITO and M/s Rishabh Constructions (P) Ltd.*
>
> *9.5.4 I have carefully examined contentions of appellant. It is noticed that during course of assessment proceedings, the appellant filed part information wrt various issues. The AO specifically noted in the assessment order that appellant failed to file books of accounts, bills in support of expenditure claimed during the year but he nowhere suspected business results of appellant. After examining information filed by appellant wrt gifts received during the year, direct expenditure claimed, sundry creditors outstanding, the AO issued show cause notice on 25-10-2018, proposing to treat above items as unexplained in hands of appellant. Therefore, it was clear fromshow cause notice issued by AO that there was no intention on part of AO to reject books of accounts. When AO chose not to reject books of accounts, appellant can't demand rejection of books and can't infer implied rejection when facts, language of assessment order speaks otherwise. There is no explicit or implicit rejection of books of accounts in the present case. The AO based on information filed by appellant chose to make addition while finalising assessment u/s 143(3). Therefore, contention of appellant that there is implicit rejection of books, hence assessment should have been completed u/s 144 is rejected. Consequently, Grounds of appeal relevant to the issue are dismissed.*
> ……
> *9.6.3 During appeal proceedings, the appellant argues that since books of accounts are not furnished and direct expenditure is disallowed by the AO on estimate basis, it amounts to rejection of books of accounts, while rejecting the books, the AO did not make any effort to estimate the income based on reasonable parameters such as past history, nature of business, and industry comparable. The appellant submitted that his declared net profit rate of 14.23% for the year under consideration is significantly higher than his declared and accepted net profit rate of 7.87% in the immediately preceding year (A.Y. 2015-16) and also higher than the net profit rate of 2.91% to 4.91% declared by his principal contractor M/s Rameshwar Prasad Sharma for the relevant years. The appellant also relies on various*

judicial precedents including CIT v. Gotan Lime Khanij Udyog (256 ITR 243), CIT v. Jain Construction Co. and CIT v. Bhawan & Path in support of his submissions.

9.6.4 I have carefully examined contentions of appellant. It is noticed that the appellant has not disputed the fact that it had failed to furnish bills/ documents in support of expenditure claimed to the extent of Rs.2,97,45,699/- for the year. It is settled law that as far as expenditure claimed by assessee is concerned, onus is on assessee to prove genuineness of the same by providing cogent evidence in support of the same. In the present case, the appellant had undisputedly failed to furnish any evidence in support of expenditure claimed during the year. When no documentary evidence is filed, question of AO pointing specific defect or deficiency in bills/documents maintained by appellant does not arise. It is not the case of appellant that it has filed bills but AO ignored them. The Appellant is in agreement with the fact that it failed to produce documentary evidence wrt above heads of expenditure. Nowhere in the assessment order, AO has mentioned that he is rejecting books of accounts. Therefore, when there is no specific mention of rejection of books, it can't be implied. Case of M/s Choudary and Brothers Vs ITO ITA 583/JP/2009 is distinguishable on facts. In that case, AO has rejected books of accounts. Instead of estimating the profit, went on to disallow certain portion of expenditure. In that Case, Hon'ble ITAT upheld rejection of books by AO. In the present case since there is no rejection of books, above case is not at all relevant. As far as disallowance of 25% of Rs 2,97,45,699/-is concerned, I am of considered view that AO has been reasonable in restricting the disallowance to only 25% of total direct expenditure incurred under above heads of expenditure in the light of fact that appellant failed to produce any evidence. Consequently, Ground of appeal relevant to the issue is dismissed.

…….

15. Referring to the same, he contended that there was no intention of the AO to reject the books of accounts of the assessee and the assessee cannot demand rejection of books nor can he infer implied rejection when the facts and language of the assessment order speak otherwise. It was pointed out that in the absence of any evidence filed by the assessee, there was no question of the AO pointing out any defect or deficiency in the documents mentioned by the assessee and therefore no question of rejection of books of accounts and no question therefore of best judgment being framed in terms of provision of Section 144 of the Act.

16. We have heard the rival contention. The issue for our consideration is whether ;

- the facts of the present case warranted invocation of section 145(3) of the Act, i.e. rejection of Books of accounts of the assessee and
- whether as a consequence best judgement assessment ought to have been done as per section 144 of the Act;
- And the AO therefore ought to have estimated profits/income of the assessee by applying a reasonable/justifiable net profit rate

17. There is no explicit invocation of section 145(3) of the Act by the AO. The Revenue denies therefore books of accounts being rejected by the AO. The assesses case however is that the rejection of books of accounts was implied when in the absence of the Books of accounts being produced by the assessee, the AO disallowed 25% of all expenses incurred by the assessee, being non verifiable.

18. The law with regard to best judgment assessment as contained in Section 144 of the Act is that if a person fails to comply with the terms of notice issued u/s 142(1) of the Act or fails to comply with the terms of notice issued u/s 143(2) of the Act, then AO shall make the assessment to the best of his judgment. Section 145(3) of the Act referred to by the ld. Counsel for the assessee deals with the situationwhere the AO is not satisfied about the correctness or completeness of accounts of the assessee or where the method of accounting as prescribed in Sub-Section (1) of Section 145 of the Act is not regularly followed by the assessee then Section 145(3) of the Act empowers the AO to make best judgment

assessment in terms of Section 144 of the Act. Section 145(3) of the Act therefore is a sub set of section 144 of the Act ,prescribing a circumstance not specifically covered u/s 144 of the Act, where provisions of section 144 would apply.

19. To fully understand and comprehend the circumstance in which section 145(3) comes into play, it is relevant to read the sub section along with the entire section 145 of the Act. For understanding the import of section 145(3) of the Act therefore the entire section 145 of the Act is reproduced hereunder:

> .....
> ***Method of accounting.***
> ***145.*** *(1) Income chargeable under the head "Profits and gains of business or profession" or "Income from other sources" shall, subject to the provisions of sub-section (2), be computed in accordance with either cash or mercantile system of accounting regularly employed by the assessee.*
> *(2) 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 assessees 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, or where the method of accounting provided in sub-section (1) has not been regularly followed by the assessee, or income has not been computed in accordance with the standards notified under sub-section (2), the Assessing Officer may make an assessment in the manner provided in section 144.*
> .....

20. Section 145(1) & (2) prescribe the method of accounting to be followed for computing income chargeable to tax under the head “Income from Business & Profession”. It states that accounting is to be done as per cash or mercantile system as regularly followed by the assessee and in accordance with the Income Computation and Disclosure Standards notified by the Central Government. Thereafter sub section (3)

states that where the assessee is found not complying with the accounting as prescribed in sub section (1) & (2) or the AO is not satisfied with the correctness and completeness of the Books , then he can resort to best judgment assessment. As per section 145 therefore, as the assessing officer examines the accounts of the assessee, he has to consider the following questions:-

- whether the assessee has regularly employed a method of accounting
- Even if regular adoption of a method of accounting is there , whether the annual profit can properly be deduced from the method employed
- Whether the accounts are correctly maintained
- Whether the accounts maintained are complete in the sense that there is no significant omission therein.

20.1. If the answer to the above is in thenegative then the AO can make a best judgement assessment in the manner provided u/s 144 of the Act.

20.2. Thus Section 145(3) of the Act is invoked when on examination of Books of accounts of the assessee, the conditions noted in sub section (3) are found to exist.

21. In the facts of the present case, undoubtedly and admittedly, the assessee has neither furnished his books of accounts nor any vouchers in support of his claim of expenses, or for that matter to establish the genuineness of his creditors or the gift received by him. It remains as a matter of fact that the assessee remained non-compliant during

assessment proceedings. Such facts do not warrant rejection of Books of accounts as per section 145(3) of the Act. When the Books of accounts admittedly have not been produced before AO, there arises no question of the AO arriving at any satisfaction at all about the correctness or completeness of the Books of accountsor the method of accounting as prescribed in Sub-Section (1) of Section 145 of the Act not being regularly followed for maintenance of Books of accounts**.** Therefore, we agree with the Ld. CIT(A),that there is no rejection of Books of accounts in the present case, since the said fact has not been stated by the AO in the order passed, nor do the facts demonstrate existence of conditions to warrant rejection of Books of accounts.

22. The argument of the Ld. Counsel for the assessee that the fact that the AO disallowed 20% of all expenses incurred shows that he had in effect rejected the Books of accounts of the assessee, merits no consideration for the reasons stated above. Disallowance of expenses is a mere methodology adopted by the AO for arriving at the correct income of the assessee in the circumstances before him, where no books of accounts were produced by the assessee for verification by the AO of the claim of income returned to tax during the year by the assessee

23. The reliance placed by the ld. Counsel for the assessee on the decision of the ITAT Jaipur Benches in the case of **Choudhary and Brothers Vs. ITO in ITA No.583/JPR/2009 order dated 30.09.2010** for his case of there being implied rejection of books of accounts, we find has been rightly rejected by the Ld. CIT(A) stating that the facts of the said

case were clearly distinguishable. We have noted that in the facts of the said case, the AO had mentioned the defects in the books under each head for disallowances, and the Ld. CIT(A) agreed with the defects pointed out by the AO in the books of account maintained by the assessee, and also observed further defects in the books of accounts maintained by the assessee. The ITAT accordingly held that all the observations about the defects in the maintenance of account by the Lower Authorities showed that the books of accounts maintained by the assessee were not worth relying for deducing the correct income, and thus by implications, books of account of the assessee were treated to be rejected. In the facts of the present case, the books of accounts were not produced before the AO at all and therefore there is neither any question of any defects being pointed out in the same nor is a matter of fact any defect was pointed out by the AO in the books of the assessee, therefore no reliance can be placed on the decision of the ITAT Jaipur Benches in the case of Choudhary & Brothers (Supra) for making the case of implicated rejection of books of accounts.

24. We accordingly hold that there was no rejection of books of accounts of the assessee by the AO, implied or otherwise, and accordingly reject this contention raised before us by the Ld. Counsel for the assessee. Having held so, however we find that in the absence of any cooperation by the assessee for the assessment of its income, undoubtedly the provisions of Section 144 of the Act are invoked and the AO is empowered to assess the income of the assessee to the best of his

judgment. The contention of the ld. Counsel for the assessee before us is that the AO ought to have estimated the net profits of the assessee based on past data or industrial results or whatever. The law only provides that the AO should assess the income of the assessee to the best of his judgment in a judicious manner and should not exercise his powers arbitrarily, making ad hoc disallowance or additions without any basis at all. The AO acts in a quasi judicial capacity and the object of the assessment proceedings is to determine the true and correct income liable to tax of an assessee. Powers of best judgment have to be exercised in a judicious manner, there is no doubt about it. But the fact that best judgment assessment has to be compulsorily done by estimating the profits, adopting the net profit rate, is definitely not the only prescribed method of framing assessment. That is best left for the AO to do. The assessee at the most can challenge the best judgment assessment pointing out arbitrariness in the exercise of power by the AO.

25. In the present case, we have noted that the AO has disallowed 25% of the entire expenses incurred by the assessee, and has even made addition of sundry creditors, and on account of unexplained gifts.

26. As far as the ad hoc disallowance of 25% of the total expenses incurred by the assessee is concerned, there is no justification given by the AO for disallowing 25% of the total expenses incurred. Even the Ld. CIT(A) has summarily stated the disallowance to be justified without giving any basis or reasoning for the same. Therefore, as far as the

disallowance of 25% of the expenses is concerned, we agree with the ld. Counsel for the assessee that the disallowance made is arbitrary.

27. So far as the issue of disallowance of sundry creditors is concerned, the Ld. CIT(A) has noted the sundry creditors which arose during the year to be far more than the total expenses debited by the assessee. The excess of sundry creditors therefore surely do not relate and have not arisenin the course of business carried out by the assessee but are credits of unexplained nature.

28. So also for the gift received by the assessee which again is a credit, the source of which has not been allegedly explained by the assessee.

29. The books of accounts of the assessee not being rejected, credits in the Books of accounts can be considered for separate addition to be made to the income of the assessee. For that matter, even where books of accounts are rejected and income estimated, the law is settled, that amounts of cash credits could be assessed to tax as income from undisclosed sources in addition to business income computed by estimate. The Hon'ble Apex Court in the case of **Kale Khan Mohannad Hanif Vs. CIT 50 ITR 1** has categorically held that "taxing authorities were not precluded from treating the amounts of the credit entries as income from undisclosed sources simply because the entries appeared in the books of a business whose income they had previously computed on a percentage basis". The Hon'ble Apex Court held that amounts of cash credit could be assessed to tax as income from undisclosed sources in addition to the business income computed by estimate. In the facts of the said case, the

AO had found the accounts of the assessee to be not complete and reliable and assessed the gross profits of the business on the basis of certain percentages. The question before the Hon'ble Apex Court was:-

> *"Whether having regard to the fact that the Income-tax Officer has assessed the income on a percentage basis, he was justified in treating the said sums of Rs.41,300 and Rs.11,000 as profits from an undisclosed source?".*

30. The Hon'ble Apex Court answered the question as under:-

> *……*
> *In the case for the assessment year 1947-48 the corresponding question was in identical terms except that the figures mentioned in it were Rs. 19,575 and Rs. 20,000. The High Court answered the question in the affirmative, and in our view rightly, for we do not think that any other answer is possible.*
>
> *We are in some difficulty in appreciating the point of this question also. The question would seem to suggest that because the income from a disclosed source has been computed on the basis of an estimate and not on the basis of the return filed in respect of it, an income represented by a credit entry in the books of account of that source cannot be held to be income from another and undisclosed source. We do not see why it cannot be so held. It appears from the judgment of the High Court that the reason given in support of the suggestion was that if that income was held to be income of an undisclosed source, the result would be double taxation of the same income which the Income-tax Act does not contemplate. Apparently, it was said that there would be double taxation because it was assumed that the same income had once been earlier taxed on the basis of an estimate. This reason is obviously fallacious, for if the income is treated as one from an undisclosed source which the question postulates, it is not treated as income of the disclosed source which had previously been assessed to tax and, therefore, there is in such a case no double taxation. It is not a case where the income sought to be taxed was held to be undisclosed income of a disclosed source, the income of which source had previously been taxed on the basis of an estimate. If it were so, the question of double taxation might have been legitimately raised. That, however, is clearly not the case here as the question as framed itself shows.*
>
> *We concede that the question as to the source from which a particular income is derived is one which has to be decided on all the facts of the case. Hence the question whether income represented by an entry in the books of a business is income of that business or of another business would have to be decided on the facts which showed the business to which it belonged. But quite clearly the answer to that question would not depend on whether the income from the first mentioned business had been computed on the basis of a return filed or of an estimate of the income made by the taxing authorities. This, however, is what the question as framed suggests, and that suggestion is in our view wholly without foundation. Therefore, it cannot be said that the taxing authorities were precluded from treating the*

amounts of the credit entries as income from undisclosed sources simply because the entries appear in the books of a business whose income they had previously computed on a percentage basis. That is why we think that the answer to the question as framed must be in the affirmative.

As we have earlier said, the question as to the source from which a particular income is derived has to be decided on all the facts of the case. In the present case, the Income-tax Officer held the income represented by the credit entries to be income from undisclosed sources, that is, neither from the manihari (general merchandise) nor from the bidi business of the assessee which he had disclosed. This view was upheld by the Appellate Commissioner and by the Tribunal excepting as to two of the amounts earlier mentioned. It was open to the assessee to raise the question that the finding that those amounts were income received from undisclosed sources was not based on any evidence or was, for other reasons, perverse. It appears that he did raise some questions of this type before the Tribunal for reference to the High Court but the Tribunal did not think that those questions legitimately arose and did not refer them to the High Court. The assessee accepted the decision of the Tribunal and did not move the High Court to direct a reference in regard to those questions under section 66(2). Those questions, therefore, cannot be raised in this court. We have dealt with the reference made on the basis that the finding that the amounts of the credit entries were income received from undisclosed sources was disputed only on the ground that the income from the business had been computed on the basis of an estimate. In the circumstances of the case we could not have done anything else.

…….

31. This proposition was also reiterated by the Hon'ble Apex Court in the case of **CIT Vs. Devi Prasad Vishwanath Prasad 72 ITR 194.**

32. In the light of the above discussion, we hold that

- the rejection of books of accounts was neither done by the AO nor did the facts of the case warrant rejection of books of accounts u/s 145(3) of the Act
- the AO ought to have resorted to best judgment assessment in the present case where he found that the books of accounts were not furnished by the assessee
- the Books may not be disregarded altogether

- The assessment may be adjusted to cure the extent of the infirmity found, so as to make it best judgement.
- in the facts of the present case, the disallowance of 25% of the total expenses incurred by the assessee was an arbitrary exercise of power by the AO
- the addition made on account of unexplained sundry creditors and unexplained gift could have been separately made even after resorting to best judgment assessment by the AO.

33. Therefore, with respect to the issue of ad hoc disallowance of expenses finding the same to have been arbitrarily made by the AO without any basis and justification, it is considered fit to restore the issue back to the file of the AO to adopt reasonable basis for assessing the profits liable to tax of the assessee. For the remaining addition made by the AO/Ld. CIT(A), we hold that even in the case of best judgment assessment the addition could have been made by the AO/Ld. CIT(A).

34. The ground of appeal No. 1 and 2 raised by the assessee is partly allowed accordingly.

35. Ground No.3 raised by the assessee relates to the addition made to the income of the assessee on account of unexplained gift.

36. The facts relating to the case are that the assessee during assessment proceedings, he had claimed Rs.24,06,121/- from his late grandmother Smt. Ramvati Sharma. In the absence of adequate substantiation of the same, the entire amount was treated as unexplained and added to the income of the assessee. One of the argument raised by the ld. Counsel for

the assessee before us was to the effect that where best judgment is adopted by the AO and income is estimated no other addition based on the books of accounts of the assessee can be made. This argument has already been rejected by us above, while dealing ground No.1 and 2 of the assessee.

37. Taking up the arguments on the merits of the issue, we have noted that the assessee had substantiated its explanation of having received gift to the tune of Rs.24,06,121/- by way of filing affidavit of his uncle Sh. Jagdish Sharma younger son of his grandmother wherein he stated that the gift was sourced out of the following:-

- Agricultural income of his mother Rs.9,27,121/-
- Loan amount returned by RP Sharma Contractors and Partnership Firm of Rs.5,54,000/-
- And sale proceeds of plots sold by his mother of Rs.9,25,000/-

38. As evidence of agricultural income earned by his grandmother, the assessee submitted details of jama bandi records of lands from which it was so earned. As evidence of gift having been out of sale proceeds of plot, a notarized ikrarnama of the same was furnished and as evidence of amount having been given out of advance reflected in the books of RP Sharma Contractor, the copy of tax audit report of RP Sharma for the preceding two years and for the impugned year were filed.

39. The Ld. CIT(A) has rejected the explanation of the assessee noting the following defects:-

- It is noticed that appellant though filed affidavit of his uncle in support of receipt of gift, such affidavit lacks basic details of mode of gift to appellant.
- Source for gift in hands of Smt. Ramvati Devi Sharma is stated to be ;
    - Sale proceeds of plot which was sold on 15.05.2015. Out of that an amount of Rs.9,25,000/- is said to have been gifted to appellant. However, date on which such amount is gifted to appellant is nowhere mentioned.
    - An amount of Rs.9,27,121/- is said to be out of agricultural income of Rs. 19,26,290/-. Out of that why she chose to gift only Rs.9,27,121/- is not clear. Date on which such amount is gifted to appellant is nowhere mentioned.
    - It is stated that loan returned by RP Contractors Rs 5,54,000/- is stated to have been gifted to appellant. However, mode of return of such amount by Partnership firm, evidence for returning the amount, date of gift is nowhere explained. Further verification of column 31(a) of Tax audit report of R P Contractors shows that during the year 2013-14, it had received Rs. 10,00,000 from her as loan and in F.Y.2014-15, no loan from her was reported and the tax audit report does not show any repayment of loans made to her during the year. The 3CD report for F.Y. 2015-16 reflects a loan of Rs. 27,79,242/- from Smt. Ramvati, yet it also states that no loan was squared up in that year. No bank statements of either Smt. Ramvati or the appellant have been submitted to demonstrate a clear money trail showing how this loan or any repayment was transferred to the appellant. If loan is not repaid, how gift of Rs.5,54,000 is made is not known.

- It is not clear whether entire gift of Rs.24,06,121/- was received in cash or partly through bank transfers. It is also not clear whether entire gift of Rs.24,06,121/- was given in one go or was given on different dates to appellant.
- The affidavit of appellant's uncle though states that she is in the habit of making frequent gifts to appellant and his father, other family members, the affidavit is not supported by evidence for such frequent gifting by Smt. Ramvati Devi Sharma. Hence, averments made in the affidavit cannot be considered authentic in the absence of important details and relevant evidence in support of the same.
- During the year under consideration, Smt. Ramvati Devi Sharma was alive. The appellant is assessed to tax. Therefore, if any gift amount is shown in the return of income, AO is bound to ask for evidence in the form of gift deed. Why written gift deed is not prepared is not known.
- Oral gifts cannot be considered valid except Hiba under Muslim Law without any supporting evidence. In present case, though appellant stated that the gift amount is given in the form of oral gift, the appellant failed to furnish at least dates on which such gift has been given by his grandmother.

40. We have gone through the findings of the Ld. CIT(A) for rejecting the assessee's explanation of gift of Rs.24,06,121/- received from his grandmother. We have noted that the assessee had even mentioned the source of money available with his grandmother for gifting to him as

from agricultural income, advance given to RP Sharma Contractor and Partnership firm having been returned to her and sale proceeds of plot, substantiating the same with documentary evidences. None of the documents have been found to false. The findings of the Ld. CIT(A) only raise doubts regarding the gift given, as in the Ld. CIT(A) noting that the affidavit of the uncle confirming the fact of gift given by his mother to his nephew is not reliable because it lacks the basic details of mode of gift, the date on which the gift is given, and why she would gift an odd amount of Rs.9,27,121/- out of her agricultural income, no money trail having been established of RP Sharma Contractors having returned loan to her, which in turn was gifted to her grandson. Ld. CIT(A) also states the fact of there being no proper gift deed.

41. Admittedly the case of the assessee is that his grandmother before passing away allegedly had gifted these amounts to him, the grandson. The assessee has produced documents explaining the source of money available with the grandmother for making these gifts/documents which have not been found to be false by the authorities below. The uncle of the assessee has confirmed the fact of the assessee having received from his grandmother. Surely there is no requirement of gift being given only by way of a gift deed. The uncle has stated on oath the fact of gift being given by his mother to his nephew and he has also explained the source from where his mother has given this gift. There is no requirement for the mode of giving gift also to be stated by the uncle.

42. In the light of the above, we are of the view that the source of gifts stands adequately explained with evidence and the addition made on this account is therefore not sustainable. The addition made of Rs.24,06,121/- is directed to be deleted.

43. Ground of appeal No.3 is allowed.

44. Ground No.4 raised by the assessee relates to the disallowance of 25% of a direct expenses incurred by the assessee. We have dealt with this issue in ground No.1 and 2 above. Since we have directed the AO to adopt a reasonable and just basis for estimating the income of the assessee, this ground raised by the assessee is allowed for statistical purposes.

45. Ground No.5 raised by the assessee relates to the disallowance of sundry creditors, which the AO had disallowed to the tune of Rs.2,93,18,629/-, while the Ld. CIT(A) restricted the disallowance to Rs.1,88,24,970/-.

46. As stated above, no books of accounts, documents, vouchers or details were furnished by the assessee. The genuineness of the sundry creditors was not established. Both the AO and the Ld. CIT(A) noted the assessee to have sundry creditors which were more than the total expenses incurred by the assessee and the surplus accordingly was treated by them as unexplained creditors and added to the income of the assessee. While the AO worked out the unexplained credits to the tune of Rs.2,93,18,629/- noting the assessee to have shown total sundry creditors of Rs.6,64,77,283/- as at the end of the year out of which

Rs.1,48,49,380/- were opening sundry creditors and thus deriving therefrom the creditors arising during the year to be the difference between the two i.e. Rs.5,16,27,903/-. Noting against the same expenses incurred by the assessee to the tune of Rs.2,97,45,699/-, the AO noted the sundry creditors to be almost 200% of the expenses incurred and therefore he treated the excess as unexplained sundry creditors. Out of the total expenses of Rs.2,97,45,699/- claimed by the assessee the AO having disallowed 25% as bogus, he considered the expenses treated by him as genuine i.e. Rs.2,23,09,274/-, to be relatable to the sundry creditors outstanding as at the end of the year, and accordingly reduced the same from the sundry creditors arising during the year. Thus, out of the sundry creditors arising during the year of Rs.5,16,27,903/-, he reduced the sundry creditors arising out of the expenses to the tune of Rs.2,23,09,274/- and therefore arrived at the unexplained credits to the tune of Rs.2,93,18,629/- which was added to the income of the assessee.

47. Before the Ld. CIT(A) the assessee furnished its trial balance from which the Ld. CIT(A) noted that creditors arising during the year was Rs.3,28,02,933/-.The Ld. CIT(A) considered this figure of sundry creditors and reduced the creditors on account of expenses incurred by the assessee to the tune of Rs.2,23,09,274/-, the balance was treated as unexplained credits which amounted to Rs.1,04,93,659/-. The Ld. CIT(A) took note of the facts produced by the assessee before him of the actual sundry creditors arising during the year from the trial balance of the assessee and reduced therefrom the creditors arising on account of

expenses incurred by the assessee and treated the balance as unexplained credits.

48. The only argument of the assessee before us is that, once best judgment assessment is resorted to no separate addition on account of sundry credits can be made. This argument has already been rejected by us above. The assessee admittedly has not demonstrated to the authorities below the fact of the sundry creditors arising out of his business activity. This fact is admitted. No books of accounts have been produced, no ledgers have been produced, no vouchers have been produced to the authorities below except the details of sundry creditors .In no manner assessee demonstrated that alleged sundry creditors of Rs.3,28,02,933/- arose from his business activities. Therefore, to the extent the sundry creditors can be attributed to the expenses incurred by the assessee in the course of its business, the assessee is entitled to benefit of the same as sundry creditors. The remaining are rightfully be treated as unexplained credits in the books of the assessee.

49. On the issue of expenses claimed by the assessee which were disallowed by the AO, we have restored the issue back to the AO to determine the income of the assessee a reasonable basis and it is only thereafter, the credits remaining unexplained can be determined. Therefore, this issue is also restored back to the AO to work out the sundry credits to be added to the income of the assessee after determining the expenses which can be safely attributed or estimated to have been incurred by the assessee in the course of its business.

50. Before parting, we made deal with the contention of the Revenue also in its appeal. The only dispute is with regards to the credits during the year which were considered by the AO and the Ld. CIT(A) for working out unexplained credits. While the AO had considered the credits during the year to the tune of Rs.5,16,27,903/-, the Ld. CIT(A) had considered credits during the year of Rs.3,28,02,933/-. The assessee had furnished explanation to the Ld. CIT(A) that out of the total credits of Rs.5,16,27,903/- the same included balance of overdraft taken by the assessee against the fixed deposits of Rs.2,41,97,454/-. Evidence in this regard by way of confirmation by the Bank of the overdraft outstanding at the end of the year was furnished by the assessee which was considered by the Ld. CIT(A) and accordingly reduced the amount of sundry credits arising during the year by the amount of bank overdraft and he took the figure of actual sundry credits arising during the year as per the trial balance of the assessee.

51. The Revenue has not controverted the fact that the outstanding sundry creditors included the balance of bank overdraft as per the trial balance furnished by the assessee and the fact that the assessee had substantiated the outstanding balance with the bank statement.

52. In the light of the same, we do not see any infirmity in the order of the Ld. CIT(A) for having reduced from the sundry credits arising during the year, the balance of bank overdraft outstanding at the end of the year, since the bank overdraft is not in the nature of sundry creditors, which relates to the business liability arising on account of the day-to-day

business activity carried out by the assessee. Overdraft facility being loan taken, whose genuineness the assessee had also established, the same rightly had not been considered by the Ld. CIT(A) for determining the sundry credits arising during the year. Therefore, we do not find any infirmity in the working adopted by the Ld. CIT(A) for considering sundry creditors arising during the year of Rs.3,28,02,933/- and reducing therefrom the credits attributable to expenses incurred by the assessee during the year to arrive at the figure of credits remaining unexplained for making the addition to the income of the assessee.

53. Ground of appeal No.5 is therefore allowed for statistical purposes.

54. In effect, the cross-objection of the assessee is **partly allowed for statistical purposes.**

ITA No.1081/JPR/2025

55. In Department's appeal, the only issue is with regard to deletion of sundry creditors amounting to Rs.1,88,24,970/-, which has already been dealt with by us in ground No.5 at para Nos. 45-53 wherein we have found no merit in the contention of the Revenue, finding the Ld. CIT(A) to have deleted the addition of Rs.1,88,24,970/- on account of alleged unexplained sundry creditors, considering the facts before him, which have remained uncontroverted before us.

56. Grounds No.1-3 raised by the Revenue are therefore dismissed.

57. In effect, the appeal of the Revenue is **dismissed**.

58. In the combined result, the appeal of the Revenue in ITA No.1081/JPR/2025 is **dismissed** and the cross objection of the assessee in CO No.33/JPR/2025 is **partly allowed for statistical purposes.**

Order pronounced in the Open Court on 26.10.2026

Sd/-	Sd/-
(T.R. Senthil Kumar)	(Annapurna Gupta)
JUDICIAL MEMBER	ACCOUNTANT MEMBER

Dated 26.10.2026
Mittali, Sr. PS
Copy forwarded to:

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

By Order,

Asst. Registrar
ITAT, Jaipur