

**IN THE INCOME TAX APPELLATE TRIBUNAL,
KOLKATA 'A' BENCH, KOLKATA**

**Before Shri P.M. Jagtap, Accountant Member
and Shri A.T. Varkey, Judicial Member**

**I.T.A. No. 269/KOL/2017
Assessment Year: 2010-2011**

Assistant Commissioner of Income Tax,.....Appellant
Circle-26(1), Kolkata,
Aayakar Bhawan Dakshin,
2, Gariahat Road (South),
Kolkata-700 068
-Vs.-

M/s. Future Distributors,.....Respondent
P-46, Hide Road Extn.,
Brace Bridge, Taratalla,
Kolkata-700 088
[PAN: AACFF 0828 R]

Appearances by:

Shri P.K. Srihari, CIT, D.R., for the Appellant
Shri S.K. Tulsian, Advocate, for the Respondent

Date of concluding the hearing : June 05, 2018
Date of pronouncing the order : June 22, 2018

O R D E R

Per Shri P.M. Jagtap, A.M. :-

This appeal is preferred by the Revenue against the order of Id. Commissioner of Income Tax (Appeals), Siliguri dated 30.12.2016 and the solitary issue involved therein relating to the deletion by the Id. CIT(Appeals) of the trading addition made by the Assessing Officer is raised by the Revenue by way of the following grounds:-

- (1) *That on the facts and in circumstances of the case and in law, the Id. CIT(A)-7, Kolkata erred in allowing relief to the assessee by holding that action is neither sustainable on facts nor on law.*
- (2) *That on the facts and in circumstances of the case and in law, the Id. CIT(A) has erred in directing the Assessing Officer to delete the addition.*

2. The assessee in the present case is a partnership firm, which carried on the business of buying, selling, trading or otherwise dealing in all kinds of lottery tickets during the period from 01.06.2009 to 31.05.2011. A survey under section 133A was carried out at the business premises of the assessee on 27.01.2010, during the course of which certain books of account and loose papers were impounded. Thereafter the return of income for the year under consideration was filed by the assessee on 12.10.2010, wherein profit from the business of dealing in lottery tickets was shown by the assessee at Rs.88,00,00,000/- before depreciation and interest and after claiming deduction on account of depreciation and interest, total income of Rs.63,96,81,915/- was declared by the assessee. On the basis of the documents impounded during the course of survey, the evidences collected during the course of assessment proceedings and the statements of the concerned persons recorded under section 131, the Assessing Officer recorded certain adverse findings and observations in the assessment order, which as summarised by the Id. CIT(Appeals) in his impugned order, are as under:-

"(1) Vide show cause notice dated 28.02.2013 addressed to Mr. Santiago Martin (reproduced by the AO at page 6 of the assessment order), the AO alleged that Mr. Santiago Martin was the de facto conductor/organizer of Bhutan Lotteries. He had allegedly conducted the entire business operations under the garb of various entities called sole purchaser, wholesaler & main seller to give the impression that they were mere sellers of lottery tickets and not the main conductor of lottery.

2. Mr. S. Martin alongwith his cahoots Sri Vira and Sri Chowrasia had masterminded a complex tax evasion network. The business of selling Bhutan Lottery tickets changed hands every two years from one entity to another without any just cause or reason. This makes reconciliation of balances of different entities a virtual impossibility and gives the assessee a free hand to claim journal entry adjustments whenever caught in a tax bind. (page 2 of the assessment order).

3. Mr. S. Martin had got the printing of Bhutan Paper Lottery done at various printing presses and payments for the entire printing cost of around Rs. 75 crores were allegedly borne by him during the A.V. 2010-11 from account no. 5002 with Bhutan National Bank. The Royal Government of Bhutan had not given a single prize in the entire year while Mr. S. Martin had given prizes of Rs.10.16 crores on behalf of the RGB from the account with the Bhutan National Bank (pages 6 & 7 of the assessment order).

4. The transportation cost of the tickets were borne by the marketing entities created by Mr. S. Martin viz. M/s. Future Distributors, M.A.V. Associates/ Vira Enterprises, Angilica Distributors, Teesta Distributors (page 7 of the assessment order).

5. Future Gaming Solutions India Pvt. Ltd. (FGSIPL), the sole purchaser had in its Final Audited Accounts claimed to have purchased Bhutan Lottery Tickets at the discounted price of Rs.2,800 crores and sold the same at Rs. 2814 crores to the wholesalers i.e. at 0.50% higher than its purchase price to sham paper entity and washed its hands of the whole business without accounting for the loss or profit from the same (page 7 of the assessment order).

6. The agreement between the sole purchaser and wholesaler, whether it is M/s. Pema Lhaden, MAC Solutions Pvt. Ltd., Best & Co. etc., is on net sales basis and further the agreement between the wholesaler and the main seller is also on net sales. Accordingly, the loss from the unsold tickets belongs to the sole purchaser and similarly, the prize winnings from the unsold tickets belong to the sole purchaser. However, FGSIPL, the main purchaser in A.Y. 2010-11 has neither claimed any loss from the unsold tickets of Bhutan Lottery, nor it has shown any income by way of prize winnings from the unsold tickets (page 8 of the assessment order). The addendum to agreement dated 15.05.08 changing the basis of sales between RGB and FGSIPL from 'all sold basis' to 'actual sold basis' is forged and undated reducing its evidentiary value to nil. (page 15 of the assessment order).

7. The marketing companies i.e. main sellers, adjust the winnings from the unsold tickets against the sales proceeds receivable from the dealers and stockists by claiming to have given prize winnings beyond the 70% declared by the Royal Government of Bhutan. The prize winning tickets declared for each lottery draw at 70% of the gross lottery size are called PWT. These are the actual prize winning amount payable on sold and unsold tickets. However, the marketing entities account for two types of prize winning tickets i.e. PWT & PWT1. Those actually payable to the genuine winners are called PWT and the imaginary winnings of unsold tickets which belong to the Martin group are called PWT1 (page 10 of the assessment order).

8. Payments Statement Summary (Bill Rate) from 18.01.2010 to 24.01.2010 of all the 122 stockists

Sl.No.	Stockist	Despatch	Unsold	US%	Net sales	N.S. amount	Super	Special	Balance
1	2	3	4	5	6	7	8	9	10
122	All	748860500	283704575	37.88	465155925	386474138	114910895	14013683	257549560

As per above details the net sales realization at 83 paisa per ticket is Rs.386474138/-
PWT1 payable is Super + Special of Rs.12,89,24,578/-

PWT payable (62% of 70% of Gross tickets i.e. 74,88,60,500)= Rs.32,50,05,457/-

Total PWT payable Rs.45,39,30,035

Net loss in the draw Rs. 6,74,55,897/- (Rs. 45,39,30,035 - 38,64,74,138)"

(page 10 of the assessment order)

This leads to an impossible situation wherein at times more than 100% of the sales is payable as prize money.

9. In the Audited Accounts of FGSIPL signed by Mr. Martin, the sales shown in the consolidated P&L A/c have a schedule showing state-wise sales of different Lotteries, but no such schedule is given for the purchase of lotteries. This is done allegedly to keep the door open for manipulation of figures from all sold to actual sold and vice versa whenever any of the entities in the chain of lottery business is caught up in tax investigation (page 15 of the Assessment Order).

10. The Government of Bhutan earns only Rs. 23.60 crores from weekly royalty payments while mere seller of tickets of Mr. S. Martin through his web of entities earns Rs. 178 crores declared profits i.e. Rs. 27 crores in FGSIPL, 100 crores in Future Distributors, Rs. 47 crores in M.A.V Associates, Angilica Distributors, Teesta Distributors and around 4 crores in Pema Lhaden Enterprise (page 17 of the assessment order).

11. Miss Pema Lhaden is a 20 years old girl. Her signatures in the account opening form do not tally with her other signatures in her agreements with MLAL and Future Distributors. She has not rendered any service at all to the entire chain of lottery selling entities. However, Rs. 104 crores were transferred to her bank account in Axis Bank, Shyambazar, Kolkata, Rs. 66 crores being from Future Distributors. PLE is nothing but a front entity created by the Mr. Martin. The appellant firm did not upload the information pertaining to unsold tickets to PLE (page 17 of the assessment order).

12. The CBI had conducted inquiries into the entire Bhutan Lottery Affair on the basis of which His Highness, Jigme Khasar Namgyel Wangchuk has banned the same (page 17 of the assessment order).

13. The assessee could not explain the source of Rs. 4 crores spent in cash in constructing a Bunglow at 121, Jessore Road (page 18 of the assessment order).

14. From the impounded materials (FDO-1), it was seen that the assessee had funded lakhs of rupees for purchase of personal items from 5 star hotels by Mr. Jagesh Dhamija and his wife and claimed the same as business promotion expenses.

15. The assessee exchanges its PWT earnings from unsold tickets with cash from the stockists and gives them credit in their accounts as PWT1 plus a few crumbs thrown in as credit notes for helping the assessee in evading income tax. The co-operative agreement between the stockists and the appellant firm is mutually rewarding i.e. the stockists also gets a chance to pocket part of the cash collected from the Lottery buying public on its onward journey to the coffers of the organizer of the lottery either in cash or by way of credit notes of Rs.1,56,84,015/-. (page 18 of the assessment order).

16. The assessee has intentionally fabricated its accounts to conceal its income from winnings on unsold tickets.

3. On the basis of the above adverse findings/observations recorded by him, the Assessing Officer arrived at a conclusion that the business of conducting of lotteries was virtually outsourced by the Royal Government of Bhutan to the Private Group to which the assessee firm belonged on royalty basis. He held that the entire chain of income, from that accruing to the Directorate of Lotteries, Bhutan, the sole purchaser, the wholesaler and the main seller was so arranged on the basis of Bernoullis Theorem that the lottery business conducted by the Group would always give a net profit of 8% to 10% of the total size of lottery tickets. He held that the assessee-firm, however, created a web of transactions routed through bogus/paper/front entities to distance its actual profits from the lottery business of 8% to 10% and master minded a complex tax evasion network. In this regard, the objection raised by the assessee that the Bernoullis Theorem is not applicable in the case of the lottery business was not found to be sustainable by the Assessing Officer and overruling the same, he proceeded to reject the books of account of the assessee under section 145(3) of the Act and estimated the income of the assessee by applying the said theorem. Accordingly, the gross profit from the entire business of Bhutan Lotteries was estimated by the Assessing Officer at Rs.400 crore as under:-

"Face value of lottery tickets printed and claimed to have been purchased from the Royal Gov t: of Bhlltan-Rs.3,800 crores (Total no. of lottery tickets is also taken as around 3800 as more than 99% of the draws consisted of rupee 1 per ticket.

The discounted rate of invoice value of the tickets of Rs.3,800 crores is shown as Rs.2,800 crores i.e. (74% of the face value).

The Royal Govt. of Bhutan is to declare and shown to have declared prize winnings at 70% of the gross lottery size i.e. (70% of Rs.3800 crores) which is Rs.2660 crores.

Facts and figures of M/s. Future Distributors, M.A. V. Associates (alias Vir a Enterprise). Angelica Distributor, Teesta Distributor (Marketing companies i.e. main sellers who actually collect the money from the public through dealers and stockists)

Lottery tickets actually sold 62% of 3800= 2356 tickets, Sales realization @ 86.5 paise average per ticket= RS.2050 crores (sale prices shown to vary from 81 paise to 94 paise per ticket)

Prize winnings tickets attributable the said tickets is 62% of 2660 i.e. the total prize winning tickets of Rs.1650 crores, will go to the holders of the tickets actually sold by these marketing entities.

Gross profit RS.2050 crores minus RS.1650 crores = Rs.400 crores (total earnings from the entire business of Bhutan lotteries)"

4. From the above gross profit estimated at Rs.400 crores, royalty paid to Royal Government of Bhutan amounting to Rs.110 crores and the actual selling expenses spent by the marketing entities amounting to Rs.20 crores were deducted by the Assessing Officer and the net profit from the entire business of Bhutan Lotteries was worked out by him at Rs.270 crores. The net profit of Rs.270 crores so worked out was divided by the Assessing Officer between the assessee-firm and the other distributors in the ratio of their sales and accordingly, the net profit of the assessee from the business of dealing in lottery tickets was arrived at by the Assessing Officer at Rs.197 crores being 73% of RS.270 crores (before depreciation and interest) as against the net profit of Rs.88 crores shown by the assessee in the return of income. After allowing deduction on account of depreciation and interest, the total income of the assessee from the business of dealing in lottery tickets was determined by the Assessing Officer at Rs.1,72,96,81,920/- for the year under consideration in the assessment completed under section 143(3)/144 vide an order dated 22.03.2013 resulting into trading addition of Rs.109 crore.

5. Against the order passed by the Assessing Officer under section 143(3)/144 of the Act, an appeal was preferred by the assessee before the Id. CIT(Appeals) challenging the trading addition made therein.

During the course of appellate proceedings before the Id. CIT(Appeals), a detailed submission was made on behalf of the assessee pointing out that each and every adverse finding/observation recorded by the Assessing Officer was not correct/tenable and the so-called defects pointed out by him in the books of account maintained by the assessee were actually not there. This point-wise submissions made on behalf of the assessee along with the paper book filed in support were forwarded by the Id. CIT(Appeals) to the Assessing Officer with a direction to verify the same and offer his comments. In the remand report dated 12.03.2014 submitted to the Id. CIT(Appeals), the Assessing Officer offered his comments on the written submissions filed by the assessee as well as on the documents placed in the paper books. When the remand report submitted by the Assessing Officer was confronted by the Id. CIT(Appeals) to the assessee, the later also filed its written submission offering the counter comments.

6. After taking into consideration all the submissions made by the assessee as well as by the Assessing Officer in the light of material available on record, the Id. CIT(Appeals) proceeded to consider and decide the issue relating to the trading addition made by the Assessing Officer. In this regard, he recorded his findings in respect of each and every point raised in the assessment order after taking into consideration the comments made by the Assessing Officer and the submissions made on behalf of the assessee. On the basis of the said findings recorded by him, the Id. CIT(Appeals) held that an attempt was made by the Assessing Officer to draw a nexus between S. Martin and the Royal Government of Bhutan for chain of lottery business, but he had failed to make a direct inference to the role of the assessee in this behalf. He observed that there were a number of entities involved in the lottery business like Martin Lottery Agencies Limited, M/s. Pema Lhaden Enterprise, the assessee, various stockists, retailers, etc. which were assigned separate functions in the chain as per the separate agreements and nothing adverse had been pointed out with respect of the returns of the said entities, which were

separately assessed to tax under different jurisdiction. He held that all these entities in the lottery chain had maintained separate books of account, which were duly audited by the independent Chartered Accountants and there was not even a single instance that was pointed out by the Assessing Officer of any un-reconciled balance. He noted that even the insufficiency of disclosure, as pointed out by the Assessing Officer, was in relation to FGS IPL, which was again assessed under separate jurisdiction and this matter was irrelevant for rejection of books of account of the assessee. He held that the allegations made by the Assessing Officer might raised some doubts in relation to the profitability of the various entities including the assessee but in the absence of clear inference, the rejection of books of account of the assessee was not justified.

7. The Id. CIT(Appeals) further held that there was no material brought on record by the Assessing Officer, which could lead to rejection of books of account of the assessee and estimation of profit as made by the Assessing Officer in the assessment order. Reliance in this regard was placed by the Id. CIT(Appeals) on the decision of the Hon'ble Supreme Court in the case of CIT -vs.- Realest Builders & Services Limited [307 ITR 202], wherein it was held that if the Assessing Officer comes to the conclusion that there is under-estimation of profits, he must give facts and figures in that regard and demonstrate to the Court that the impugned method of accounting adopted by the assessee results in under-estimation of profits and is, therefore, rejected. Reliance was also placed by him on certain other judicial pronouncements wherein it was held that the Assessing Officer while making assessment to the best of his judgment must make it according to the rules and reason, justice and law and the assessment must be legal and regular. It was held that the expression "best judgment assessment" is a faculty to decide matters with wisdom, truth and legality and must have a reasonable nexus to the available material and the circumstances of each case.

8. The Id. CIT(Appeals) accordingly held that the provisions of section 145(3) of the Act were invoked by the Assessing Officer without placing sufficient evidences and materials on record to substantiate his findings. He held that the rejection of books of account under section 145(3) of the Act by the Assessing Officer thus was neither sustainable on facts nor in law. He consequently deleted the trading addition of Rs.109 crore made by the Assessing Officer to the total income of the assessee and allowed the appeal of the assessee on this issue. Aggrieved by the order of the Id. CIT(Appeals), the revenue has preferred this appeal before the Tribunal.

9. The Id. D.R. strongly relied on the order of the Assessing Officer in support of the revenue's case on the issue involved in this appeal. He submitted that specific and material defects were pointed out by the Assessing Officer in the books of account and other records maintained by the assessee and even the other circumstances were also taken note of by him while rejecting the books of account of the assessee. He invited our attention to the adverse findings/observations recorded by the Assessing Officer in this regard in the assessment order as summarized by the Id. CIT(Appeals) in his impugned order and contended that the action of the Assessing Officer in rejecting the books of account of the assessee on the basis of such adverse findings/observations was fully justified. He contended that the Id. CIT(Appeals), however, failed to appreciate the said adverse findings/observations recorded by the Assessing Officer and held the action of the Assessing Officer in rejecting the books of account of the assessee as unjustified on the basis of certain aspects pointed out by the assessee, which were totally irrelevant. He contended that the estimate of the income as made by the Assessing Officer was on sound and convincing basis and without pointing out any specific deficiency in such estimate, the Id. CIT(Appeals) has deleted the entire trading addition made by the Assessing Officer accepting the income declared by the assessee. He urged that the impugned order of the Id. CIT(Appeals) giving relief to the assessee on this issue thus is liable to

be set aside and that of the Assessing Officer deserves to be restored being fair and reasonable.

10. The Id. counsel for the assessee, at the outset, explained the entire *modus operandi* of the business through which the lottery tickets issued by the Royal Government of Bhutan were distributed. He submitted that the Royal Government of Bhutan had appointed M/s. Martin Lottery Agencies Limited (earlier known as Future Gaming Solutions India Pvt. Limited and now as Future Gaming and Hotel Services Pvt. Limited) as its sole purchaser to sell all types of conventional paper lotteries all over Bhutan and India. The said sole purchaser appointed two wholesalers namely M/s. Megha Distributor for the State of Kerala and M/s. Pema Lhaden Enterprise for Bhutan and West Bengal.' M/s. Pema Lhaden Enterprise, a proprietary concern of Ms. Pema Lhaden of Phuentsholing, appointed the assessee-firm as the main seller of Bhutan Paper Lotteries in the State of West Bengal in terms of agreement dated 01.06.2009. The assessee-firm appointed more than 100 stockists in the area of South Bengal for the sale of paper lottery tickets and the said stockists in turn engaged various persons as sub-stockists, who again appointed retailers to sell the lottery tickets. The Id. counsel for the assessee submitted that all these arrangements/agreements between sole purchaser, wholeseller, main seller, stockists, sub-stockists and retailers were on net sale basis or actual sale basis and accordingly the unsold tickets, if any, were required to be returned back for ultimate destruction by the Royal Government of Bhutan. He submitted that the assessee firm thus only dealt with M/s. Pema Lhaden Enterprise (PLE) and stockists and it had no connection either with the sub-stockists and/or with the retailers. He submitted that PLE used to raise weekly bills/invoices on the assessee in respect of actual sold paper lottery tickets while the assessee in its turn used to raise weekly bills/invoices on each of the stockists only in respect of actual sold paper lottery tickets.

11. On the basis of the entire modus operandi of Bhutan Lottery chain as explained by him, the Id. Counsel for the assessee pointed out that specific roles were performed by each and every entity involved in the said chain including the assessee. He contended that the Assessing Officer failed to understand and appreciate this modus operandi and rejected the books of account of the assessee and estimated the income of the assessee at higher amount without realizing the limited role specifically played by the assessee in the entire chain of lottery business. He contended that the entire exercise of rejection of books of account of the assessee and estimation of income of the assessee by the Assessing Officer was based on suspicion, surmises, conjectures, assumptions and presumptions and there is hardly any allegation made by the Assessing Officer while rejecting the books of account of the assessee, which is against the assessee per se. He submitted that the said allegations are either against M/s. Martin Lottery Agencies Limited or M/s. Pema Lhaden Enterprise or FGSIPL or even the Royal Government of Bhutan, who are all distinct and separate assessable entities. He contended that the allegations made by the Assessing Officer against them or unfounded doubts regarding the figures depicted by the audited books of account have no relevance or significance whatsoever to the tax assessment of the present assessee and the same, therefore, cannot form the basis of rejection of books of account of the assessee. He contended that the Assessing Officer has failed to pinpoint even a single defect in the books of account of the assessee or in the method of accounting followed by it in order to justify the extreme step of rejection of books of account of the assessee-firm and completion of assessment under section 144 of the Act. He contended that the Assessing Officer has not been able to highlight any particular or definite errors in the figures of purchases, sales, expenses, etc. reflected in the audited books of account of the assessee and in the absence of any corroborative evidence brought on record by him in support of his allegations, the rejection of books of account of the assessee was completely unfounded and unsustainable.

12. A reference was made by the Id. Counsel for the assessee to the provisions of section 145(3) of the Act to point out that the Assessing Officer is empowered to reject the books of account of the assessee and make a best judgment assessment under section 144 only if he gives a definite finding that the books of account are unreliable, incorrect or incomplete or proper method of accounting or notified accounting standards have not been regularly followed by the assessee. He contended that the books of account of the assessee thus cannot be rejected by the Assessing Officer under section 145(3) of the Act unless he points out specific defects or discrepancies in the accounts of the assessee or in the method of accounting followed by the assessee. He contended that this requisite conditions were not satisfied by the Assessing Officer in the present case and the Id. CIT(Appeals), therefore, was fully justified in holding that the action of the Assessing Officer in rejecting the books of account of the assessee was not correct or sustainable.

13. The Id. Counsel for the assessee invited our attention to the detailed submissions filed by the assessee during the course of appellate proceedings before the Id. CIT(Appeals) to meet each and every objection raised by the Assessing Officer and allegations made by him. He contended that the said submission filed by the assessee was appreciated by the Id. CIT(Appeals) in the correct perspective while holding that the provisions of section 145(3) were invoked by the Assessing Officer without placing sufficient evidence on record to substantiate his findings/observations. He contended that the Id. CIT(Appeals) accordingly held the rejection of books of account by the Assessing Officer under section 145(3) of the Act and consequent addition of Rs.109 crores made to the income of the assessee on estimation basis under section 144 as unsustainable in law as well as on the facts of the case. He contended that this finding of the Id. CIT(Appeals) having been arrived at after an in-depth analysis of relevant facts and figures on record deserves to be upheld.

14. The Id. Counsel for the assessee also challenged the estimation of income of the assessee as made by the Assessing Officer under section 144 resulting into the trading addition of Rs.109 crores. He contended that the Assessing Officer tried to estimate the consolidated profit of all the marketing entities in the lottery chain by totally rejecting the corresponding figures of purchases, sales, expenses, etc. as shown in the audited books of account of such entities and replacing them with imaginary figures having no basis whatsoever. He contended that the Assessing Officer failed to appreciate the fact that various entities involved in the lottery chain were all separate and distinct legal entities, which were assessable to tax in different jurisdiction. He contended that the Assessing Officer while making his estimation thus rejected the book results not only of the assessee but also of other entities, which were separately assessed to tax under different jurisdiction. He submitted that the regular assessments in the case of the said entities were duly completed by the concerned Assessing Officer, but the Assessing Officer failed to take note of the same. He also pointed out other defects and deficiencies in the estimate of the income of the assessee as made by the Assessing Officer including the imaginary ratio of 73: 27 adopted by the Assessing Officer while allocating the consolidated net profit to the assessee. He contended that while allocating 73% of the consolidated net profit of lottery business to the assessee, the Assessing Officer completely disregarded the existence of the entities at the upper tier of the lottery chain and included even their income in the hands of the assessee. He contended that no specific comment was offered by the Assessing Officer in respect of these defects and deficiencies pointed out by the assessee and in the remand report submitted to the Id. CIT(Appeals), the Assessing Officer actually suggested the addition under section 40(a)(ia) of the Act to the income as declared by the assessee in the return thereby accepting the defects and deficiencies pointed out by the assessee in the estimate made by him. He submitted that the issue relating to the addition under section 40(a)(ia) has already been

examined by the Tribunal in the appeal filed by the assessee against the order of the Id. CIT passed under section 263 and on such examination, the same is held to be unsustainable on different grounds.

15. We have considered the rival submissions and also perused the relevant material available on record. It is observed that the books of account of the assessee were rejected by the Assessing Officer on the basis of certain adverse findings/observations recorded in the assessment order and the income of the assessee from the business of purchase and sale of lottery tickets was estimated by him to the best of his judgment resulting into the impugned trading addition. In the appeal filed before the Id. CIT(Appeals), the trading addition made by the Assessing Officer was challenged by the assessee, *inter alia*, on the ground that the action of the Assessing Officer in rejecting the books of account was totally unfounded and unsustainable as the adverse findings/observations recorded by the Assessing Officer were based on suspicion, surmises, conjectures, assumptions and presumptions. The said adverse findings/observations recorded by the Assessing Officer as summarized by the Id. CIT(Appeals) in his impugned order, are already extracted by us hereinabove. In this regard, a detailed submission was filed by the assessee in writing before the Id. CIT(Appeals) offering its explanation and clarification in respect of each and every adverse findings/observations recorded by the Assessing Officer. The said submission filed by the assessee was forwarded by the Id. CIT(Appeals) to the Assessing Officer along with paper book for the later's comments. In the remand report submitted to the Id. CIT(Appeals), the Assessing Officer offered his comments and when the same were confronted by the Id. CIT(Appeals) to the assessee, the later offered his counter-comments in the rejoinder. After summarising each of the comments made by the Assessing Officer and the submissions of the assessee in this regard, the Id. CIT(Appeals) recorded his findings in respect of each and every point in his impugned order as under:-

"I have perused the assessment order, submissions made by the Ld. A/R of the appellant, Remand reports of the AO and rejoinder to reply to the remand report. It has been observed that in the backdrop of assessment, the AO basically held that books of accounts of the appellant were fabricated, manipulated and fudged and alleged that Shri S. Martin along with his Co-Partners viz. M/s. Shantilal Vira (HUF) and Shri Motilal Chourasia, had master minded, a complex tax evasion network, by fudging accounts and fabricating evidence, in relation to Bhutan Lottery business. Observations of the AO and counter submission of the appellant, alongwith observation of the undersigned in this relation can be summarized as below:

1. A.O.'s Comment Mr. Santiago Martin was the de facto conductor/organizer of Bhutan Lotteries. He had allegedly conducted the entire business operations under the garb of various entities called sole purchaser, wholesaler & main seller to give the impression that they were mere sellers of lottery tickets and not the main conductor of lottery.

Appellant's Submission This is merely an «unproven and unsubstantiated allegation resulting from surmises, conjectures and suspicion of the AO and contrary to the conclusive evidences on record. The ground reality is that the Royal Government of Bhutan was the actual conductor of the Bhutan Lotteries. The AO has doubted the entire Bhutan Lottery Chain and the dealings between all the intermediaries in the lottery chain disregarding the duly executed and signed agreements on record. He has arbitrarily at his whims and fancies built up a story of a grand collusion between the RGB and all the intermediaries in the lottery chain without bringing on record a single piece of corroborating evidence to substantiate his allegations.

Findings: It is appreciable that the A.O. has tried to unearth the hidden modus operandi behind the whole chain of Bhutan lottery business. However, it has been observed that findings of the A.C. are not supported by sufficient corroborating evidences. There are a number of entities involved in the lottery business like Martin Lottery Agencies Ltd. (FGSIPL), M/s Pema Lhaden Enterprise, the appellant, various stockists, retailers etc. Many/most of the entities have more than one stakeholder/separate stakeholder. There are separate agreements and separate function assigned to each entity in the chain. Therefore the allegations are not proved.

2. A.O.'s Comment - The business of selling Bhutan Lottery tickets changed hands every two years from one entity to another without any just cause or reason. This makes reconciliation of balances of different entities a virtual

impossibility and gives the assessee a free hand to claim journal entry adjustments whenever caught in a tax bind.

Appellant's Submission - The said allegation is totally baseless, unproven and unsubstantiated. The business of selling of Bhutan Lottery Tickets changed hands due to the change in the composition of the partnership firms. All the intermediaries in the lottery chain have duly offered for taxation the profits arising from their dealings in the Bhutan Lotteries in their respective returns of income. All the entities in the lottery chain have maintained detailed books of accounts which have been audited by independent Chartered Accountants. The balances of different entities are easily verifiable and the AO has not pointed out any single instance of any un-reconciled balance. The appellant firm has not claimed any incorrect journal entry adjustment as blandly alleged by the AO.

Findings: The appellant has also submitted audited annual accounts of various entities in the chain of Bhutan Lottery business. It has been observed that contention of the A.O. that business of selling Bhutan Lottery tickets changed hands every two years from one entity to another to make reconciliation of balances of different entities impossible, does not hold good. Exact reason behind the alleged practice of changing hands every two years could not be established by the A.O. during assessment or in his remand report. It is for the assessee to organize his business the way he pleases.

3. A.O.'s Comment - Mr. S. Martin had got the printing of Bhutan Paper Lottery done at various printing presses and payments for the entire printing cost of around Rs. 75 crores were allegedly borne by him during the A. Y. 2010-11 from account no. 5002 with Bhutan National Bank.

Appellant's Submission - In terms of Clause 3(5) of the Lotteries (Regulation) Rules, 2010 and also Clause V of the agreement dated 15.05.2008 between the RGB and MLAL, the lottery tickets were printed by the RGB directly at security printing presses under its own seal and cover. As per the specific terms of the said agreement, the entire costs of printing of the Royal Government of Bhutan Lotteries were to be borne by the RGB. Mr. S. Martin or any of the marketing entities in the lottery chain had no role to play in the printing of these tickets. In terms of clause VII of the Agreement between the RGB and MLAL (FGSIPL), the liability for payment of prizes to winners was that of the RGB. In terms of sub-clause (iii) to Clause VII of the said agreement, prizes upto Rs. 5000 per ticket were required to be disbursed directly by the sole purchaser (FGSIPL) and reimbursed by the RGB by adjusting the same

against the consideration payable by the Sole Purchaser for the purchase of the lottery tickets to the RGB. Further in terms of sub-clause (v) to Clause VII, prizes above Rs. 5000/- were paid to the winners directly by the RGB. The bank account with Bhutan National Bank Ale. No. 5002 was held in the name of FGS IPL and not by Mr. Martin.

In accordance with the terms of the agreement between the RGB and MLAL/FGS IPL, FGS IPL adjusted the disbursed prize monies upto Rs.5,000/- (both PWT & PWT-1) against the purchase consideration to be paid to the RGB by submitting the relevant prize winning tickets. Such entries are clearly reflected in the account of the RGB in the books of FGS IPL. All the payments made by FGS IPL from its bank account in Bhutan National Bank A/c. No. 5002 and debited to the account of the RGB in the books of the FGS IPL were towards the purchase consideration of lottery tickets from the RGB. For the sake of easy accounting, the cost components in such purchase value borne by the RGB viz. printing and paper charges, prize monies exceeding Rs. 5000/-, balance sale proceeds paid to RGB etc. were specified separately by way of narration in the account of the RGB in the books of FGS IPL. Without prejudice to the above, it is further submitted that the controversy as to whether prize monies exceeding Rs. 5000/- were disbursed by the RGB or by Mr. Martin or by FGS IPL have no significance or relevance to the assessment of the appellant firm. The same, therefore, cannot form a basis for rejection of books of accounts of the appellant firm.

Findings: It has been observed that the A.C., while making assessment, has not referred to any expenses, which may have been wrongly claimed by the appellant for printing_Lottery tickets. The A.O in this regard, has tried to draw a nexus between Mr. S. Martin and the Royal Government of Bhutan for chain of lottery business, but failed. to mak~_ a -direct inference to the role of the appellant in this behalf. It is possible that one of the entities is making payment on behalf of RGB and debits the accounts of RGB to that extent no adverse inference can be drawn on that basis.

4. A.O.'s Comment - The transportation cost of the tickets were borne by the marketing entities created by Mr. S. Martin.

Appellant's Submission - In order to avoid wastage of time in delivering, loading and unloading the tickets from the printing presses to the premises of FGS IPL and then again from the premises of FGS IPL to the various Area Distributors, FGS IPL requested the RGB to deliver the tickets directly from the printing presses to the Area Distributors on behalf of FGS IPL and agreed to bear the transportation charges as charged by the transporters. Therefore, transportation charges from the

printing presses to the premises of the Area Distributors were borne by FGS IPL. As far as the assessee-firm is concerned, it only paid for the transportation charges from its premises to the premises of the various stockists in compliance with the terms of the agreements with the various stockists. The AO has not pointed out any violation in the terms of agreements by the appellant firm or any false claim of transportation charges by the appellant in its books of accounts.

Findings: It has been observed that the A.O., while making assessment, has not referred to any expenses, which may have been wrongly claimed by the appellant under the head Transportation. As similar to previous point, the A.O. has tried to draw a nexus between Mr. S. Martin and the Royal Government of Bhutan for chain of lottery business but failed to make a direct inference to the role of the appellant in this behalf.

5. A.O.'s Comment - Future Gaming Solutions India Pvt. Ltd. (FGS IPL) claimed to have purchased Bhutan Lottery Tickets at the discounted price and sold the same to the wholesalers at 0.50 % higher than its purchase price, which are allegedly sham paper entity and washed its hands of the whole business without accounting for the loss or profit from the same.

Appellant's Submission - The figures cited by the AD are imaginary and incorrect. The profits arising from such business after allowing for the expenses are duly offered by FGS IPL in its return of income. The said transactions are duly reflected by FGS IPL in their audited books of accounts and assessment for the said year has been completed by the Income-tax Department. FGS IPL is a separate and distinct assessee under the Income-tax Act having a distinct PAN. The profits of other intermediaries at the lower tiers of the lottery chain after FGS IPL have been reflected by them in their respective audited accounts and returns of income. Assessments of all the intermediaries at the lower tiers of the lottery chain after FGS IPL have also been completed by the Income-tax Department. Therefore, the AD's allegation that FGS IPL has washed off its and/ or not accounted for the entire profits from the lottery operations is unfounded, unsubstantiated, baseless and contrary to the evidences on record. Without prejudice to the above, the unfounded allegation as to whether FGS IPL has fully disclosed its profits from the sale of the lottery tickets cannot form a basis for rejection of books of accounts of the appellant firm u/s 145(3). Any alleged understatement of profits by FGS IPL, if at all, can only have implications on the assessment of FGS IPL and not on the assessment of the present appellant firm. As far as the present appellant is concerned, the

AD has not been able to challenge any of the figures viz. purchases, sales, expenses etc. recorded in the audited books of accounts of the appellant by bringing on record conclusive evidence to prove that these are erroneous or the method of accounting followed by the appellant is incorrect.

Findings: It has been observed that the A.O. has worked out certain figures in relation to chain of lottery business, putting in question the accountability for profit or loss of the whole chain in this business. Assumptions taken by the A.O. in this regard are countered by the appellant and hence the resultant figures, which cannot be authenticated at this stage. But, figures worked out by the A.O. in this behalf are related to Future Gaming Solution India Pvt. Ltd., which is a company and assessed under separate jurisdiction. Contention of the appellant that the AO has not challenged figures recorded in its audited books of accounts holds good.

6. A.O.'s Comment - FGS IPL, the main purchaser in A. Y. 2010-11 has neither claimed any loss from the unsold tickets of Bhutan Lottery, nor it has shown any income by way of prize winnings from the unsold tickets. The addendum to agreement dated 15.05.08 changing the basis of sales between RGB and FGS IPL from 'all sold basis' to 'actual sold basis' is forged and undated.

Appellant's Submission - The AD has not drawn any adverse inference against the appellant firm on the issue of prize winnings on unsold tickets. Further, the allegation that FGS IPL has pocketed prizes on unsold tickets without disclosing the same in its return of income cannot form a basis for rejection of books of accounts of the present appellant firm. The assessee cannot be fastened with an exorbitant liability on account of baseless allegations made against another entity.

Findings:- This contention of the A.O. is in connection with FGS IPL, assessed under separate jurisdiction and does not hold good in relation to the appellant.

7. A.O.'s Comment - The prize winning tickets declared for each lottery draw at 70% of the gross lottery size are called PWT. These are the actual prize winning amount payable on sold and unsold tickets. However, the marketing entities account for two types of prize winning tickets i.e. PWT & PWT1. Those actually payable to the genuine winners are called PWT and the imaginary winnings of unsold tickets which belong to the Martin group are called PWT1.

Appellant's Submission - The average percentage of prize winnings on the MRP of tickets as per the original scheme framed by the RGB for the F. Y. 2009-10 comes to 73.31% as

against 70% alleged by the AO. The average percentage of 73.31 % being the prize structure as per the original scheme of the RGB includes both PWT (i.e. prizes on normal tickets) and PWT-1 (i.e. prizes on super and special tickets). The actual prizes (both PWT +PWT1) won out of tickets sold by the appellant firm comes to 75.52% of the face value of tickets sold by the appellant firm which more or less corresponds to the average prize structure of 73.31 % as per the scheme. Therefore, the allegation of the AD that prize monies actually payable to the genuine winners are called PWT and the imaginary winnings of unsold tickets which belong to the appellant group are called PWT1 is factually incorrect and far from reality.

Moreover, subsequent to the completion of the assessment on 22.03.2013, the AO in his remand report dated 1'2.03.2014 has alleged that PWT-1 was a part of the total prize structure and was payable to the sellers of tickets by way of commission requiring deduction of tax at Source u/s 194G of the Act. According to the AD, since the assessee had failed to deduct tax at source on the reimbursements of PWT-1 amounting to Rs.551.30 crores made to the stockists, the said amount was disallowable in terms of section 40(a)(ia) of the Act and hence calling for enhancement of the assessed. Therefore, the AO deviated from the earlier stand taken in the assessment order that PWT-1 represented prizes on unsold tickets. This highlights the shifting stands taken by the Departmental Authorities in respect of implication of PWT-1 to suit their own convenience merely with the intention of somehow fastening an exorbitant tax liability on the appellant firm.

Findings: Assumptions taken by the A.O. in this behalf are countered by the appellant. It has been observed that assumptions taken by the A.O. are not substantiated by the material on record. Submissions made by the appellant and documents and details submitted in this regard were sent to the AO for verification. But, the A.O., in his remand report submitted to this office, has failed to categorically counter the figures given by the appellant on the basis of material on record and made recommendation for enhancement of assessment on account of disallowance u/s 40(a)(ia) of the Act. In the appellant's own case for A.Y. 2010-11, M/s. Future Distributors Vs. Principal CIT (I.T.A No. 277/KOL/2016), the Hon'ble Kolkata ITAT held that as per the terms and conditions of the agreements entered into between the assessee and its stockists, the assessee-firm and the stockists were acting on principal to principal basis. The contract between the assessee and the stockists was that of purchase and sale of lottery tickets and not that of rendering services on commission. The

amount in question representing the disbursal of prize monies on lottery tickets thus was not liable to be disallowed under section 40(a)(ia) in the facts and circumstances of the case.

Respectfully following the binding judgment of jurisdictional tribunal in assessee's own case the allegation made in remand report is also rejected.

8. A.O.'s Comment - Assumptions given by the assessee lead to an impossible situation wherein at times more than 100% of the sales is payable as prize money.

Appellant's Submission - The AO has generalized the average figures pertaining to a period of one week to the entire year and disregarded the actual audited figures for the entire year. The average sales price per ticket for AY. 2010-11 can be worked out only if the figures for the entire year are considered as against a limited period of one week wherein tickets having a lower MRP may have been sold. The total value of prizes won (PWT + PWT1) out of draws of tickets sold by the appellant during AY. 2010-11 was Rs.1326.81 crores which works out to an average of 75.51 % of the face value of tickets sold by the appellant. Average PWT payable out of tickets sold by the appellant during A.Y. 2010-11 works out to 44.14% of face value as against 70% arbitrarily considered by the AO. Therefore the total prize monies (PWT + PWT-1) payable out of tickets sold by the appellant during this period comes to (20,53,19,825+12,89,24,578)=33,42,44,403/- as against Rs.45,39,30,035/- wrongly assumed by the AO. and Net Profit in the draw comes to (38,64,74,138 - 33,42,44,403) = Rs. 5,22,29,735/- as against a loss of Rs. 6.74 crores considered by the AO.

Findings: It has been observed that the A.O., on the basis of certain assumptions, tried to work out that the ratio taken for the lottery business, which are impractical and hence fictitious. However, the appellant contested that the assumptions taken by the A.O. are related to very small period, (even that is based on wrong assumptions) and not realistic for whole episode As the A.O did not challenge the figures shown in appellant's books of account with placing substantial material on record, it is hard to verify A.O.'s claim of assumptions.

9. AO.'s Comment - In the Audited Accounts of FGS IPL, the sales shown in the consolidated P&L A/c have a schedule showing state-wise sales of different Lotteries, but no such schedule is given for the purchase of lotteries. This is done allegedly to keep the door open for manipulation of figures from all sold to actual sold and vice versa.

Appellant's Submission - The details of state-wise purchase of different Lotteries by FGS IPL for AY. 2010-11 are enclosed at pages 771-772 of PB-V. Even otherwise, sufficiency or otherwise of disclosures made in the audited books of accounts of FGS IPL cannot form a basis for rejection of books of accounts of the present appellant firm.

Findings: The appellant has submitted details of state-wise purchase of different lotteries by FGS IPL. The undersigned opine that insufficiency of certain disclosures in the audited annual accounts may not be taken as basis for rejection of books of accounts. Moreover, insufficiency of disclosure, as pointed out by the A.O. was in relation to FGS IPL, which is again assessed under separate jurisdiction and this question is irrelevant for rejection of books of accounts of the appellant.

10. A O.'s Comment - The Government of Bhutan earns only Rs. 23.60 crores from weekly royalty payments while mere seller of tickets through his web of entities earns Rs. 178 crores declared profits i.e. Rs. 27 crores in FGS IPL, 100 crores in Future Distributors, Rs. 47 crores in M.AV Associates, Angilica Distributors, Teesta Distributors and around 4 crores in Pema Lhaden Enterprise.

Appellant's Submission - If in the process, other persons, who are part of the chain in the entire process of organizing and conducting paper lotteries by the RGB have made substantial profits, which may have exceeded the yield to the RGB by way of minimum guarantee, the same cannot be a ground to doubt the genuineness of the entire operations in this respect or draw any adverse inference against the appellant firm herein.

Findings: This contention, related to total profitability of the entities in the whole chain of lottery business, may raise some doubts in relation to profitability of these entities, including the appellant. But the same, in absence of clear inference may not be taken as substantial ground for rejection of books of accounts of the appellant. Most of these intermediaries are getting assessed in India and nothing adverse have been pointed out w.r.t. returns of these intermediaries.

11. A.O.'s Comment - Miss Pema Lhaden's signatures in the account opening form do not tally with her other signatures in her agreements with MLAL and Future Distributors. She has not rendered any service at all to the entire chain of lottery selling entities. However, Rs. 104 crores were transferred to her bank account in Axis Bank, Shyambazar, Kolkata, Rs.66 crores being from Future Distributors. PLE is nothing but a front entity created by the Mr. Martin.

Appellant's Submission - The AD erred in arbitrarily drawing adverse inference as to the identity of Miss Pema Lhaden. As regards the alleged differences in her signatures at different places, no copies of the relevant documents have been supplied by the AO. If the AO had any doubt regarding the alleged differences in her signatures, he could have directly made a reference either to Miss Pema Lhaden or to the RGB for making necessary verifications. The amounts paid by the appellant firm to PLE were in respect of purchase of lottery tickets from PLE after claiming adjustments in respect of disbursed prize monies in compliance with the terms of the agreement between the appellant firm and PLE. No adverse inference can be drawn against the appellant in this respect. The information about the unsold tickets was required to be conveyed by the stockists to the appellant firm at least 45 minutes before the respective draws through its website/ email. The appellant firm, in turn conveyed such information back to PLE through their authorized representative physically in the form of CD, before the respective draws conducted by the RGB.

Findings: The A.O. has pointed out payment to Ms. Pema Lhaden, for Rs.66 crores by the appellant. But, he has not questioned the nature of payment, claim of expenditure by the appellant in this behalf and supporting documents. Ledger of Ms. Pema Lhaden or M/s. Pema Lhaden Enterprise, in the books of the appellant, has not been commented upon during assessment. Moreover, contention of the AO that Pema Lhaden is nothing but front entity created by S. Martin, could not be substantiated by material on record.

12. AO.'s Comment - The CBI had conducted inquiries into the entire Bhutan Lottery Affair on the basis of which His Highness, Jigme Khasar Namgyel Wangchuk has banned the same.

Appellant's Submission - Not even a single charge-sheet or any CBI case was filed against the assessee-firm. All the said cases pertained to sale of state Lotteries in the State of Kerala. None of the cases pertained to sale of lottery tickets in West Bengal. The Bhutan Lottery was not banned by the RGB as alleged by the AO but it was discontinued/ closed by the RGB w.e.f. 18th August, 2011 in the larger interest of the country. The closure of the Bhutan Lottery was the sole and exclusive decision of the RGB and the reasons for closure are best known to the RGB.

Findings: This comment of A.O. is informative in nature and does not pertain relevance to the assessment made by him. No information has been provided by the AO which could lead us to rejection of books of accounts of the assessee or estimation of

profit suggested by AO in assessment order. If in future the investigating agency give some finding which has a material bearing on the case, appropriate action can be taken in the hands of assessee as per law.

13. AO.'s Comment - The assessee could not explain the source of Rs. 4 crores spent in cash in constructing a Bunglow at 121, Jessore Road. Appellant's Submission - The godowns at 121, Jessore Road is the sole and exclusive property of Mr. Martin. The appellant firm has no right, title and/ or interest in the said property. The source of the said investment is duly disclosed by Mr. Martin in his tax records. Since the appellant-firm is not connected or concerned with the investment in the said property in any manner whatsoever, no adverse inference can be drawn against the appellant firm in this respect.

Findings: The assessment order itself could not draw any inference against the appellant, as the property relates to Mr. S. Martin, who is again assessed separately.

14. A O.'s Comment - From the impounded materials, it was seen that the assessee had funded lakhs of rupees for purchase of personal items from 5 star hotels by Mr. Jagesh Dhamija and his wife and claimed the same as business promotion expenses.

Appellant's Submission - The said expenses have been duly reflected in the books of accounts under the head 'sales promotion'. Any doubts in the mind of the AO regarding the allowability of the said expenses could have at best resulted in disallowance of the said expenses. The same cannot however, form a basis for rejection of the books of accounts of the appellant-firm.

Findings - This being a small amount, cannot result in rejection of books of Accounts and estimation of profit at such a huge figure. The AO may examine purchase of personal items from 5 star hotels by Mr. Jagesh Dhamija and his wife and disallow appropriate amount out of this.

15. A.O.'s Comment - The assessee exchanges its PWT earnings from unsold tickets with cash from the stockists and gives them credit in their accounts as PWT1 plus a few crumbs thrown in as credit notes for helping the assessee in evading income tax.

Appellant's Submission - The net amount payable by the stockiest to the appellant firm on weekly basis, was paid by each of them mostly by account payee cheques/ drafts/ RTGS transfers. While making such payments, the stockiest were also required to return the prize winning tickets against which they

had disbursed prizes of the value not exceeding Rs. 5000 per ticket. Further, the stockiest were also required to return to the appellant firm, all unsold tickets which the appellant firm, in its turn, used to return to PLE for ultimate destruction thereof by the RGB. Therefore, the credit given by the appellant to the stockiest against the consideration due on sales of tickets to them were towards the reimbursements of disbursed prize monies (both PWT & PWT-1) upto Rs. 5000/- and not towards prizes on unsold tickets as wrongly alleged by the AO.

The reference to credit notes of Rs.1,56,84,015/- made by the AO is wholly incorrect and misleading. The sum of Rs. 1,56,84,015/- is the aggregate value of Debit Notes issued by the appellant firm to its stockists and not Credit Notes.

Findings: The A.O., in his assessment order, has not substantiated his contention with materials available on record. Ledger accounts of stockists in the books of appellant are also not cross verified with the books of stockists. There is no material placed on record to substantiate that the appellant exchanged its PWI earnings from unsold Tickets with cash from the stockists and gives them credit in their accounts as PWT1.

16. A.O.'s Comment - The assessee has intentionally fabricated its accounts to conceal its income from winnings on unsold tickets.

Appellant's Submission - The AO has not pin pointed even a single defect or discrepancy in the accounts of the assessee and has not brought on record any evidence whatsoever to prove that the books of accounts of the appellant did not depict the actual state of affairs. Therefore, the allegation that the appellant had fabricated its accounts is wholly unsubstantiated and unproven.

In the present case, it has been observed that the AO has gathered various information in relation to the course of business of the appellant. But, majority of comments or allegations made by the A.O. in support of his assessment order are related to Mr. Santiago Martin, Future Gaming Solutions India Pvt. Ltd. or other entities in the chain of lottery business, which are separately assessable and no direct and reasonable inference has been made to the state of affairs of the appellant. The A.O. has pointed out certain expenses, which are wrongly claimed in his opinion. But, here also, he has not substantiated the same".

16. We have carefully perused the findings recorded by the Id. CIT(Appeals) on each and every relevant aspect of the matter after taking

into consideration the stand of the Assessing Officer and the submissions made by the assessee. As found by the Id. CIT(Appeals), various adverse findings recorded by the Assessing Officer were not supported by sufficient corroborating evidence. As noted by him, there were a number of entities involved in the entire chain of lottery business and there were separate agreements whereby separate functions were assigned to each and every entity in the chain. All these entities had maintained separate books of account, which were duly audited and they were assessed to tax separately in different jurisdiction. Although an attempt was made by the Assessing Officer to draw a nexus between S. Martin and the Royal Government of Bhutan in conducting the lottery business, there was nothing brought on record to implicate the assessee or to draw any inference against the assessee. Moreover, insufficiency of disclosure in the audited annual accounts as pointed out by the Assessing Officer was in relation to other entities and as rightly held by the Id. CIT(Appeals), the same was not relevant for rejection of books of account of the assessee. Even the allegation made by the Assessing Officer that Miss Pema Lhaden was nothing but a front entity created by S. Martin, could not be substantiated by him by bringing any material on record as found by the Id. CIT(Appeals). As further found by the Id. CIT(Appeals), even the comments made by the Assessing Officer in the remand report were informative in nature having no relevance to the assessment made by him and there was no information that had been provided by him, which could lead to the rejection of books of account of the assessee or the estimation of profit as made by the Assessing Officer. On the basis of these findings of facts specifically recorded by him in the impugned order, the Id. CIT(Appeals) arrived at a conclusion that the action of the Assessing Officer in rejecting the books of account of the assessee by invoking the provisions of section 145(3) of the Act without placing sufficient evidence and material on record to substantiate his findings was not sustainable either in law or on the facts of the case. At the time of hearing before us, the Id. D.R. has not been able to rebut or controvert these findings of fact recorded by the Id. CIT(Appeals) and has mainly relied on

the order of the Assessing Officer as well as the remand report submitted by the Assessing Officer to the Id. CIT(Appeals).

17. In the case of CIT -vs.- Realest Builders & Services Limited (supra) relied upon by the Id. CIT(Appeals) in his impugned order, the Hon'ble Supreme Court has held that if the Assessing Officer comes to the conclusion that there is under-estimation of profits, he must give facts and figures in that regard and demonstrate that the impugned method of accounting adopted by the assessee results in under-estimation of profits and is, therefore, liable to be rejected. In the case of CIT -vs.- Paradise Holidays [325 ITR 13 (Del.)] cited by the Id. Counsel for the assessee, the assessee had been maintaining regular books of account, which were duly audited by an independent Chartered Accountant and the financial results were fully supported by the assessee with its books of account and vouchers. In these facts and circumstances of the case, it was held by the Hon'ble Delhi High Court that the accounts which are regularly maintained in the course of business and are duly audited, free from any qualification by the auditors, should normally be taken as correct unless there are adequate reasons to indicate that they are incorrect or unreliable. It was held that the onus is upon the Assessing Officer to show that either the books of account maintained by the assessee were incorrect or incomplete or method of accounting adopted by him was such that true profits of the assessee cannot be deduced therefrom. In the present case, this onus was not discharged by the Assessing Officer as rightly found by the Id. CIT(Appeals) while holding that the action of the Assessing Officer in rejecting the books of account of the assessee without placing sufficient material and evidence on record to substantiate his findings was not sustainable.

18. As rightly contended by the Id. Counsel for the assessee, the action of rejecting the books of account of the assessee was mainly based on the allegations made by the Assessing Officer and that too against the other entities involved in the chain of lottery business and not against the

assessee *per se*. The said allegations made by the Assessing Officer had no relevance or significance to the tax assessment of the assessee and the same, therefore, were not sufficient to form a basis of rejection of books of account of the assessee as rightly held by the Id. CIT(Appeals). The Assessing Officer had failed to find out any specific or material defects in the books of account of the assessee or in the method of accounting followed by the assessee and in the absence of the same, we find ourselves in agreement with the Id. CIT(Appeals) that the action of the Assessing Officer in rejecting the books of account of the assessee and estimating the income of the assessee at a higher figure was not sustainable either in law or on the facts of the case. We, therefore, uphold the impugned order of the Id. CIT(Appeals) deleting the trading addition made by the Assessing Officer by holding that the action of the Assessing Officer in rejecting the books of account of the assessee itself was totally unfounded and unsustainable.

19. As regards the estimation of income of the assessee from the lottery business as made by the Assessing Officer, it is observed that the same was done by him supposedly on the basis of Bernoullis Theorem. As submitted on behalf of the assessee before the Id. CIT(Appeals) as well as before the Tribunal, the said Theorem, although a popular one, was not applicable with exact precision in the facts of the assessee's case and the Assessing Officer had started his calculation of estimated consolidated group income with an imaginary figure of number of lottery tickets purchased from the Royal Government of Bhutan. He also made the estimates by applying incorrect and imaginary ratios to arrive at a totally distorted and baseless figure of the assessee's estimated income. As submitted on behalf the assessee, the Assessing Officer proceeded to with a pre-conceived notion that Mr. S. Martin was a defacto conductor of Bhutan Paper Lotteries refusing to accept the authenticity and veracity of the duly signed and executed agreement between the Royal Government of Bhutan and the entities of Mr. S. Martin. He also refused to give any

credence whatsoever to the various confirmations and certificates issued by the Royal Government of Bhutan.

20. As further submitted on behalf of the assessee before the Id. CIT(Appeals) as well as before us, the Assessing Officer completely failed to appreciate the fact that various marketing entities in the lottery chain were all separate distinct legal entities, which were duly assessed to tax and proceeded to estimate the consolidated profit of all the marketing entities in the lottery chain by totally rejecting their book results and replacing them with imaginary figures having no basis whatsoever. While estimating the consolidated net profit of all the marketing entities in the chain taken together, he did not allow deduction for the purchase consideration paid to the Royal Government of Bhutan from the estimated sale consideration and also assumed prices paid of winning lottery tickets as an expense of the marketing entities instead that of Royal Government of Bhutan, which had actually reimbursed the said expenses to the marketing entities. This consolidated net profit of all the marketing entities taken together as worked out by the Assessing Officer on the basis of imaginary figure was then divided by the Assessing Officer in the ratio of 73:27, i.e. 73% was assessed in the hands of the assessee-firm while the balance 27% was claimed to be belonging to other marketing entities. As submitted on behalf of the assessee, the said ratio had no basis whatsoever and while assessing 73% of the estimated consolidated net profits from sale of lottery tickets all over India and Bhutan to the assessee, the existence of the entities at the upper-tier of the lottery chain was completely ignored by the Assessing Officer and their profit margins were also assumed in the hands of the assessee-firm. As noted by the Assessing Officer himself at page no. 17 of the assessment order, the said marketing entities had disclosed a total profit of about Rs.178 crores in their respective returns of income filed for the assessment year 2010-11. Moreover, the Assessing Officer assumed the entire estimated profits from sale of lottery tickets all over India and Bhutan in the hands of the assessee-firm and other distributor entities in the ratio of 73:27 ignoring

the vital fact that the said Enterprise dealt with Bhutan Lottery tickets only in the State of West Bengal. It is pertinent to note here that even the Assessing Officer himself in the remand report submitted to the Id. CIT(Appeals) accepted that the total income of the Martin Group from Bhutan Lottery was taken as Rs.400 crore and the assessee-firm's as Rs.172 crore in view of the incorrect information from the assessee and incomplete data.

21. In the case of Dhakeswari Cotton Mills -vs.- CIT [26 ITR 775] cited by the Id. Counsel for the assessee, it was held by the Hon'ble Supreme Court that while making the best judgment assessment, the Income Tax Officer is not entitled to make a pure guess and make an assessment without reference to any evidence or any material at all. It was held that there must be something more than bare suspicion to support the best judgment assessment. Reiterating this view, it was held by the Hon'ble Supreme Court in the case of State of Kerala -vs.- C. Velukutty [60 ITR 239] that though there is an element of guess-work in a 'best judgment' assessment, it shall not be a wild one, but shall have a reasonable nexus to the available material and the circumstances of each case.

22. If the relevant facts of the present case as discussed above, are considered in the light of the ratio laid down by the Hon'ble Supreme Court in the cases of Dhakeswari Cotton Mills (supra) and State of Kerala -vs.- C. Velukutty (supra), we find merit in the contention of the Id. Counsel for the assessee that the estimate of the income of the assessee from the business of purchase and sale of lottery tickets as made by the Assessing Officer at a completely distorted and imaginary figure on the basis of wild assumptions, surmises and conjectures without bringing on record any cogent evidence in support was unsustainable in law as well as on the facts of the case and the Id. CIT(Appeals), therefore, was fully justified in deleting the trading addition made by the Assessing Officer on the basis of the said estimate. We, therefore, uphold the impugned order

of the Id. CIT(Appeals) giving relief to the assessee on this issue and dismiss this appeal of the Revenue.

23. In the result, the appeal of the Revenue is dismissed.

Order pronounced in the open Court on June 22, 2018.

**Sd/-
(A.T. Varkey)
Judicial Member**

**Sd/-
(P.M. Jagtap)
Accountant Member**

Kolkata, the 22nd day of June, 2018

*Copies to : (1) Assistant Commissioner of Income Tax,
Circle-26(1), Kolkata,
Aayakar Bhawan Dakshin,
2, Gariahat Road (South),
Kolkata-700 068*

*(2) M/s. Future Distributors,
P-46, Hide Road Extn.,
Brace Bridge, Taratalla,
Kolkata-700 088*

*(3) Commissioner of Income Tax (Appeals), Siliguri
(4) Commissioner of Income Tax- ,
(5) The Departmental Representative
(6) Guard File*

By order

*Senior Private Secretary,
Head of Office/D.D.O.
Income Tax Appellate Tribunal,
Kolkata Benches, Kolkata*

Laha/Sr. P.S.