# Arvind Baloni Vs ITAT and Others

**Court:** High Court Of Punjab And Haryana At Chandigarh

**Date of Decision:** Aug. 21, 2009

**Acts Referred:** Income Tax Act, 1961 â€" Section 260A

**Hon'ble Judges:** Daya Chaudhary, J; Adarsh Kumar Goel, J

**Bench:** Division Bench

**Final Decision:** Dismissed

## Judgement

1. The Assessee has preferred this appeal u/s 260A of the Income Tax Act, 1961 (for short, ""the Act"") against the order dated 27-1-2008,

annexure A-3, passed by the Income Tax Appellate Tribunal, Chandigarh Bench ""A"", Chandigarh in I.T.A. No. 497/Chd/2007 for the assessment

year 2004-05, proposing to raise the following question of law:

Whether on the facts and in the circumstances of the case, the learned Income Tax Appellate Tribunal was right in law in setting aside the order of

the Commissioner (Appeals), and partly allowing the appeal of the revenue by making additions of Rs. 4,32,000 as against the additions of Rs.

6,52,235 in spite of the fact that no reasoning for the same has been given by the Income Tax Appellate Tribunal for the same while ignoring the

rate of profit disclosed by the Assessee in the preceding year.

2. The Assessee is a manpower supplier. He failed to produce books of account during assessment. The assessing officer assessed income equal

to 5 per cent., of the gross receipts. On appeal, the Commissioner (Appeals) held that the book results of the Assessee should have been

accepted. The Tribunal restored the assessment made by the assessing officer, modifying the same equal to 4 per cent., of gross receipts. It was

held that the Commissioner (Appeals) was not justified in interfering with the assessment when books of account had not been produced. No

doubt the best judgment assessment could not be arbitrary, but some guess work was inevitable. Mere fact that the Assessee declared income

which was almost equal to the income assessed in the previous year, could not be conclusive. The Assessee had disclosed gross profit of 6.45 per

cent., and claimed deductions, even though he was receiving 7 per cent., service charges and was being reimbursed salary, wages, ESI and EPF

which had been claimed as deductions. The Tribunal reduced the assessed income to 4 per cent., of the turnover.

3. We have heard learned Counsel for the parties.

4. Learned Counsel for the Appellant submitted that rate of 4 per cent., of the turnover was arbitrary as in the earlier year, the Assessee had been

assessed at lower income and consistency had to be maintained. Reliance is placed on the judgments of the Madhya Pradesh High Court in

Assistant Commissioner of Income Tax Vs. Gendalal Hazarilal and Co., and the Madras High Court in R.V.S. and Sons Dairy Farm v. CIT

(2003) 130 Taxman 615 (Mad).

5. We are unable to accept the submission.

6. The rate to be applied, having regard to features of an individual case, depends on the facts of each case. In the absence of reasons being

perverse, the finding of the Tribunal is final. The assessment for the previous year may be a guide but is not binding for making assessment for

subsequent years. The judgments relied upon are on individual fact situations.

7. We are unable to hold that any substantial question of law arises.

8. The appeal is dismissed.