

**In the Income-Tax Appellate Tribunal,  
Agra Bench, Agra**

**Before: Shri A.D. Jain, Judicial Member And  
Shri Dr. Mitha Lal Meena, Accountant Member**

**ITA No.108/Agr/2015  
Assessment Year: 2011-12**

M/s Rishav Shelters (P) Ltd. 22 – Jawahar Nagar, Khandari, Agra. PAN – AACCR 9448 Q <b>(Appellant)</b>	vs.	The JCIT, Range-4, Agra  <b>(Respondent)</b>
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**ITA No. 121/Agr/2015  
Assessment Year: 2011-12**

The JCIT, Range-4,Agra  <b>(Appellant)</b>	vs.	M/s Rishav Shelters (P) Ltd. 22 – Jawahar Nagar, Khandari,Agra. PAN – AACCR 9448 Q <b>(Respondent)</b>
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<b>Appellant by</b>	Shri Pankaj Gargh, Advocate
<b>Respondent by</b>	Shri Waseem Arshad, Sr. D.R.

<b>Date of Hearing</b>	18.06.2018
<b>Date of Pronouncement</b>	14.08.2018

**ORDER**

**Per Dr. Mitha Lal Meena, A.M.:**

These appeals are filed by the Assessee and Revenue against the order of Id. CIT(A)-II, Agra, for AY 2011-12.

2. The assessee has taken the following grounds of appeal in ITANo.108/Agr/2015:

**Ground No. 1**

- (i) *Because the Ld. CIT(Appeals) has erred both on facts and in law in confirming the decision of the Assessing Officer in passing the Assessment Order u/s 144 of the Act.*
- (ii) *Because the Ld. CIT(Appeals) has further erred in rejecting the appellants specific submission and the ground that no show cause notice to complete the assessment u/s 144 of the Income Tax Act was issued and as such the assessment framed u/s 144 of the Income Tax Act is wrong, bad in law, arbitrary, without jurisdiction, against the principles of natural justice and deserves to be cancelled.*

**Ground No. 2**

- (i) *Because the Ld. CIT(Appeals) has wrongly, illegally and arbitrarily confirmed the action of the Assessing Officer in rejecting the books of accounts by invoking the provisions of section 145(3) of the Income Tax Act.*
- (ii) *Because considering the facts of the case and the legal position the invoking of the provisions of section 145(3) of the Income Tax Act and rejection of books of account is wrong, arbitrary and bad in law.*

**Ground No. 3**

- (i) *Because the Ld. CIT(Appeals) has wrongly, illegally and arbitrarily decided to take the net profit rate @ 6% of the gross receipt. Considering the facts of the case the profit as shown should have been accepted.*
- (ii) *Because the Ld. CIT(Appeals) has legally erred in rejecting the submission filed by the appellant and the fact that no defect or discrepancy was pointed out by the Assessing Officer in the Audited Balance Sheet, Profit & Loss Account with its schedules which were on record of the Assessing Officer.*
- (iii) *Because under the facts and circumstances of the case and the legal position the decision of Ld. CIT(Appeals) for taking net profit rate of 6% on gross receipt is wrong, unjustified, bad in law, arbitrary and highly excessive.*

**Ground No. 4**

- (i) *Because the Ld. CIT(Appeals) has erred both in law and on facts in confirming the action of the Assessing Officer in separately assessing the interest received on FDR and on income tax refund after computing the business income by applying net profit rate of 6% on gross receipt.*
- (ii) *Because under the facts and circumstances of the case interest received on FDR and interest received on income tax refund should have been assessed as business income and should be considered to work out net profit rate. The Ld. CIT(Appeals) has erred in rejecting the same."*

The grounds of appeal raised by the Department in ITA No.121/Agr/2015

are as follows:

1. *That the Ld. CIT(Appeals)-II, Agra has erred in law and on facts in deleting the addition of Rs. 69,66,162/- out of total addition of Rs. 2,78,64,652/- made by the AO after rejecting books of accounts by invoking provisions of section 145(3) of the I.T. Act, 1961 and assessing income from contract work @ 8% only on the basis of NP rate shown by the assessee in preceding two years i.e. m A.Y. 2009-10 & 2010-11 and without going into the merits of the case.*
2. *That the Ld. CIT(Appeals)-II, Agra has erred in law and on facts in deleting the addition of Rs. 69,66,162/- out of total addition of Rs. 2,78,64,652/- made by the AO after rejecting books of accounts by invoking provisions of section 145(3) of the I.T. Act, 1961 and assessing income from contract work @ 8% without appreciating the facts of the case that the assessee failed to produce books of accounts, bills & vouchers not only before the AO but also before the Ld. CIT(A) and the AO rightly assessed income of the assessee @ 8% of gross receipts from contract work.*
3. *That the Ld. Commissioner of Income Tax (Appeals)-II, Agra is erroneous in law and in view of the fact that the assessee did not produce books of account and supporting vouchers neither before the AO nor before the Ld. CIT(A) and in such circumstances the presumptive statutory rate given u/s 44AD provides a good guidance for the purpose of estimation of income which the AO has rightly adopted.*
4. *That the order of Ld. Commissioner of Income Tax (Appeals)-II Agra being erroneous in law and on facts deserves to be quashed and that of the Assessing Officer deserves to be restored.*

3. The counsel for the assessee has not pressed ground no 1, 2 and 4 and hence, these grounds of the assessee are dismissed as not pressed.

4. Thus, the only issue, in the rest of the cross grounds is regarding estimate against estimation of income and therefore, these cross appeals are being disposed of by this consolidated order.

5. The assessee is a civil contractor and engaged in civil construction work. He has e-filed its return of income on 28.09.2011, showing his income at Rs.1,41,61,800/-. The case was selected for scrutiny under CASS.

5.1 During the course of assessment proceedings, the Assessing Officer observed vide para 2 of page-1, of the Assessment Order that assessee has not produced books of accounts and vouchers for verification. He has invoked Section 145(3) of the Act and framed assessment u/s 144 of the Act applying net profit rate of 8% on the gross receipt as against 3.51 % as per audited statement of account shown by the assessee relying on ITAT Mumbai in the case of 'ACIT Vs. Mahesh Enterprises', ITA No. 5059 (Mum.) 2009, wherein it was observed that under the circumstances of rejection of books of account in the case of the assessee being the civil contractor, presumptive statutory rate as provided under section 44AD provides a good guideline for the purpose of estimation, even in the turnover is more than the limit prescribed u/s 44AD.

6. On appeal, the Id. CIT(A), while allowing partly relief to the assessee, adopted NP @ 6% on the gross receipt as against 8% applied by the AO, inter alia, observing vide para 7, as under:

*"7. In Ground No. 5 & 6, the Ld. AR has challenged adopting the NP rate at 8% for computation of estimated income of the assessee after rejecting the books of account. In this regard, the appellant has contended that the Ld. JCIT who passed the impugned assessment order has wrongly & illegally relied upon the provisions of section 44AD of the Act but since the appellant has turnover more than Rs. 1 crore, the provisions of section 44AD would not apply. The AO in the assessment order, by relying upon a decision of Hon'ble ITAT, Mumbai in case of ACIT Vs.*

*Mahesh Enterprises ITA No. 5059 (Mum) of 2009, has applied, NP rate of 8% but no justification has been given for applying this rate even after he himself has reproduced the profit rate shown by the assessee (appellant) in earlier years that has never exceeded 6%. During the course of discussion, the Ld. AR has agreed that the NP rate shown in earlier year may be taken as the basis for estimating the profit during the year under consideration. In earlier year two years i.e. AY 2009-10 & 2010-11, the NP rate shown by the assessee is 5.97% and 6.04%. Therefore, it has been decided to take the NP rate of 6% during the year under consideration instead of 8% taken by the AO. After applying 6% on the contract receipt of Rs.34,83,08,159/-, the profit earned by the assessee comes to Rs.2,08,98,489/- instead of Rs.2,78,64,652/- computed by the AO and accordingly, the assessee gets a relief of Rs.69,66,162/-. In view of my above decision, the AO is directed to adopt the NP rate at 6% and take the net profit of the assessee at Rs.2,08,98,489/- and accordingly, Ground No. 5 & 6 are partly allowed.”*

7. The counsel for the assessee filed two Synopsis along with paper book. The relevant part is reproduced hereunder:

“The appellant most respectfully submit-The assessee is in the business of civil contract work. In the present case the Ld. Assessing Officer framed the assessment u/s 144, invoked provisions of section 145(3) and applied N.P rate of 8% on contract receipts as against 4.03% as per books of accounts.

The Net profit shown includes interest income also. The Assessing Officer has assessed the interest income separately over and above the business income estimated at 8% of contract receipts.

Ld. CIT(A)-

1. Rejected my ground objecting the assessment being framed u/s 144 without giving any show cause notice (Page 9 Para 5 of CIT(A) order).
2. Rejected my ground objecting the rejection of books of accounts invoking section 145(3). (Page 10 Para 6 of CIT(A) order).
3. Estimated the profit rate at 6% considering the past history of the assessee's case (Page 11 Para 7 of CIT(A) order).
4. Confirm the action of the Assessing Officer in assessing the interest income separately over and above 6% of contract receipts. (Page 11 Para 8 of CIT(A) order).

Submission

1. The books of accounts were produced. (Kindly refer Page 12 Para 27 of written submission before Assessing Officer).
2. Books of accounts are duly audited u/s 44AB. Audit report, Balance sheet, Profit & Loss account with schedules were filed. No dispute of this fact. Accounts cannot be audited in the absence of books of accounts. No defect or discrepancy is pointed out. Method of the accounting is same as in the preceding years.
3. Section 44AD is not applicable as the assessee neither comes under the definition of eligible assessee nor comes under the definition of eligible business. Receipts during the year are of Rs.34.83Crores.

4. Kindly refer written submission before CIT(A) starts from Page 6 Para (iii).
5. During the year there was substantial increase in labor charges and the payment made to sub contractors. Details of the same were filed before Ld. Assessing Officer. (Kindly refer Page 30 to 39 of the Paper book).
6. Moreover the reason for decline in N.P rate was also submitted before Ld. CIT(A). (Kindly refer Page 7 Para (viii) of CIT(A) order).
7. The Ld. A.O as well as the Ld CIT(A) has compared the trading results as per the audit report and the Balance sheet filed. These profit results include interest income also.
8. The Ld. A.O as well the Ld. CIT(A) has assessed the interest income separately treating the same to be not related to business and hence the comparative trading results should be calculated and compared after deducting interest income from net profit as shown.
9. From the Profit & Loss account and Balance Sheet the comparative chart has been prepared.( Kindly refer Page 43 of the Paper book).
10. Hon'ble Rajasthan High Court in the case CIT vs. Gotan Line KhanijUdhyoghas held that addition not necessary even though section 145 is invoked
11. Estimation of profit rate cannot be made merely on assumptions, surmises and conjectures. Reliance is placed on CIT vs. Vijay Construction (Allahabad High Court).
12. Hon'ble Jammu &Kasmir High Court in the case of International Forest Company Vs. CIT reported as (1975) 101ITR 0721 held that:

Even if the ITO considered the material placed before him by the assessee to be unreliable keeping in view the comparative statement of accounts of the previous years, he could not proceed to make an arbitrary addition and base his conclusion purely on guess-ivo work. He ought to have related his estimate to some evidence or material on the record as it is now well settled that if the profits shown by the assessee in his return are not accepted, it is for the taxing authorities to prove that the assessee made more profits"

13. It is settled position in law that even while framing assessment after rejecting books of accounts due credence has to be given to the past history of the assessee . In the case of D.M. Brothers Vs CIT reported in (2010) 44 DTK (All) 13 the Hon'ble Allahabad High Court held that:

*"Accounts - Rejection - Estimation of profit rate - 'AO' noticed various discrepancies, hence rejection of books of account was justified- However, additions to the total income shown by the assessee are not necessary concomitant to an order passed under s. 145 —Tribunal has restricted the addition by estimating net profit rate at 3 per cent— Looking to the history of the assessee's case, the net profit rate was in the range of 1.88 per cent to 3 per cent, which was accepted by the 'AO' himself or by the Tribunal which is a final fact-finding authority—Estimation is a question of fact—No interference is called for"*

14. Hon'ble Allahabad High Court in the case of Pragati Engineering Corporation (2013) 85 CCH 048 (All H.C) held "for the reason aforesaid, we are of the view that in the absence of books of accounts, the assessing authority ought to have considered the other documents i.e. auditor report.

15. Hon'ble Madras High Court in the case of K. Kannan Vs ACIT reported in (2013) 39 taxman.com 10 -:

*"Business income—Rate of profit—Applicability of section 44AD— Assessee was Civil Contractor—Assessee could produce only accounts and vouchers in respect of bitumen expenses and handmade vouchers of other expenses—In absence of details and no proper books maintained, 'AO' estimated contract business income at 8 percent gross contract receipts admitted by assessee u/s 44 AD—Other incomes for assessee were assessed as per regular procedure— CIT (A) held that net profit of assessee be assessed at 5 percent—FTAT, noting that assessee had not filed P&L or balance sheet for years and that returns and vouchers produced were defective in nature, confirmed order of assessment taking gross turnover at 8 percent as income of assessee—Held, Section 44 AD states that in case of eligible assessee having business with gross receipts not exceeding Rs 40 lakhs, assessee would be assessed on presumptive basis, to be taxed at 8% on total turnover gross receipts in PY—Assessee's gross contract receipt was more than Rs 40 lakhs for both AYs, which meant, Section 44 AD had no relevance—Assessee had not filed any P&L or balance sheet for relevant AYs along with returns—Even vouchers given by assessee were defective—CIT (A) mainly scaled down such estimate for reason that in earlier AY 3.69% of turnover was considered to be appropriate for assessment—Assessee had no materials to produce in support of his income, only ground thus available on which assessee's income could be assessed was*

*best judgment assessment—Before CIT (A), assessee submitted that his total income was not exceeding 4 percent in preceding year when turnover was low and that high percent of net profit in AY 2006-07 was not possible when turnover was high—Assessee submitted that nature of business was such that they had to face lot of practical difficulties in maintaining bills and vouchers—CIT (A) considered case of assessee as regards profit margin in earlier years to refix income at 5 percent of gross turnover—Tribunal not justified in restoring assessment at 8 percent without any discussion on CIT (A) order— Order of CIT (A) restored"*

16. Hon'ble ITAT, Agra Bench in the case of ACIT Vs Jagdish Prashad Bansal reported as (2012) 34 CCH 0446 (Agra) held that:

*"CIT(A) considering history of assessee and comparable cases was of view that since assessee has not maintained and produced bills and vouchers in respect of various expenses, applied net profit at rate of 6 percent in place of 5.18 percent declared by assessee against receipts and computed income of assessee at Rs.46,20,478/- —Held, assessee did not produce complete bills and vouchers in support of expenses—Therefore, AO was justified rejecting books of account applying provisions of section 145(3)— Assessee did not produce complete bills and vouchers of expenses claimed, therefore, it was reasonable and appropriate for CIT(A) to hold that profit rate of 6 percent was fair and reasonable for purpose of computing business income of assessee—AO had applied exorbitant and unreasonable profit rate of 12.5 percent without considering history of assessee—*

*Profit rate of 6 percent applied by CJT(A) against 5.18 percent shown by assessee could not be said to be unreasonable and exorbitant—Appeal partly allowed."*

In this case AO applied N.P rate of 12.5% which was reduced to 6% by Ld CIT(A) and confirmed by Hon'ble ITAT.

17. Hon'ble ITAT Agra Bench vide order dated 31th August 2017 in the case of Shri Devendra Kumar Vs. ACIT in ITA No. 495/Agra/2015 had the occasion to consider the identical question of application of rate of Profit in the case of Contractor where against reported N.P of 2.21%, AO applied 12%, which in appeal was reduced to 8% by the Ld CIT(A) and in appeal before the Hon'ble ITAT the Hon'ble Bench upon due consideration of the past history of the 'appellant' restricted it to 5.5%. (Para- 6)

18. The trading results as shown may kindly be accepted or reasonable reduction from 6% as confirmed by Ld.CIT(A) be given.

Synopsis -2

Sirs,

It is most respectfully submitted:-Re: Ground No. 3

In the assessment framed u/s 144 of the Act the Assessing Officer estimated and assessed the net profit rate of 8% on contract receipt. The interest income amounting to Rs. 18,15,789/- (1697371+118418) has been separately assessed over and above the estimation of profit rate.

In the Assessment Order at Page 4 the interest income of Rs. 16,97,371/- has been typed as interest on FDR and from there this mistake is being repeated in the grounds taken before Ld. CIT(A) as well as before Hon'ble ITAT. In fact this

amount of interest received is the amount received on loan. The Ld. CIT(A) at page 11 para 7 has reduced the estimation of net profit rate from 8% to 6%. The Ld. CIT(A) while estimating the net profit rate at 6% considered the past history of the case. The comparative trading results have been considered as per the profit & loss account. The comparative figures which have been considered by Ld. CIT(A) are given at Page 29 of the Paper Book.

### Submission

Kindly refer written submission filed before Ld. CIT(A) reproduced in the Appellate Order from page 6 para 3 (The reason for decline profit rate in comparison to immediately preceding year)

Specific ground was taken before Ld. CIT(A) that interest income should have been assessed and included in the business income. Ld. CIT(A) at Page 12 has confirmed the order of the Assessing Officer that the addition of interest income to be made after computing net profit from the contract business.

Since the Ld. CIT(A) confirmed the addition of interest income to be separately made hence the submission before the Hon'ble Bench is that the percentage of net profit as has been considered by Ld. CIT(A) includes interest income also. In the immediately preceding year relevant to AY 2010-11 interest income was of Rs. 32,68,385/- whereas in the year under consideration the interest income is of Rs. 18,15,789/-.

As the interest income has been taken to be assessed separately, the same should be deducted from the net profit to work out the comparative trading results. Kindly refer a comparative chart at Page 43 of the Paper Book.

Hon'ble ITAT Delhi (Special Bench) in case of DCIT Vs Allied Construction reported in 291 ITR (AT) 16 at internal page 19 para (ii) has held "interest income

is separate and independent of contract receipts. Apart from that, by no stretch of imagination could interest income be considered as contract receipt for estimation of income by applying a net profit rate to the contract receipts".

8. Ld. Counsel has made detailed submissions on the facts and circumstances of the case with the citation in support. He has submitted that the AO has estimated the profit at 8.0% as against 3.51 % as was fairly arrived on the basis of books of account duly audited; that he has completely ignored the fact as per record that the turnover was gone up by 90%; that the labour, wages etc work were being done on sub-contract basis; that the books of account were audited and that the past history of the assessee's case or comparable cases.

8.1 The counsel further submitted that while deciding the specific ground with regard to the assessment of the interest income, the Ld. CIT(A) at Page 12 of the impugned order confirmed the finding of the Assessing Officer observing that it is to be assessed separately under the head income from other sources and that the addition of interest income to be made after computing net profit from the contract business which is not justified and against the law. Under the facts and circumstances the addition of interest income should be made separately and the percentage of net profit as has to be considered excluding interest income; that in the immediately preceding year relevant to AY 2010-11 interest income was of Rs. 32,68,385/- whereas in the year under consideration the interest income is of

Rs. 18,15,789/-; and that when interest income has been taken to be assessed separately, then the same shall be deducted from the net profit to work out the comparative trading results as per comparative chart at Page 43 of the Paper Book. For this purpose, he relied on ITAT Delhi (Special Bench) in case of DCIT Vs Allied Construction reported in 291 ITR (AT) 16 at internal page 19 para (ii) where it was held that **"interest income is separate and independent of contract receipts. Apart from that, by no stretch of imagination could interest income be considered as contract receipt for estimation of income by applying a net profit rate to the contract receipts"**.

9. The Id. Counsel for the assessee submitted that the Ld. CIT(Appeals) has arbitrarily decided to take the net profit rate @ 6% of the gross receipt without appreciating the peculiar facts of the case; that the Ld. CIT(Appeals) has erred in rejecting the submission filed by the appellant and the fact that no defect or discrepancy was pointed out by the Assessing Officer in the Audited Balance Sheet, Profit & Loss Account with its schedules which were on record before the Assessing Officer and that considering the facts of the case and the legal position, the decision of Ld. CIT(Appeals) for applying net profit rate of 6% on gross receipt is highly excessive and unjustified. In support, he filed the trading results in the form of digital chart which are reproduced below:

**M/S RISHAV SHELTERS PVT LTD.****22 - JAWAHAR NAGAR, KHANDARI, AGRA  
PROFIT AND LOSS ACCOUNT SUMMARY**

<b>PARTICULARS</b>	<b>AMOUNT AS AT 31.03.2011</b>	<b>AMOUNT AS AT 30.03.2010</b>
<b><u>INCOMES:</u></b>		
Value of Work Done (As per TDS Certificate attached)	348308159	197614470
Interest received from parties	1697371	3268385
Interest on Income Tax Refund	118418	
<b>TOTAL</b>	<b>350123948</b>	<b>200882855</b>
<b><u>EXPENDITURES:</u></b>		
Cost of Construction	327228360.5	182890321.1
Personal Exp.	425807	400167
Administrative Exp.	616732.85	993965.65
Trade Tax deducted	6633121	3939925
Director Remuneration	672000	500600
Depreciation	496897	221314
<b>TOTAL</b>	<b>336072918.3</b>	<b>188946292.7</b>
<b>NET PROFIT</b>	<b>14051029.67</b>	<b>11936562.3</b>

**M/s Rishav Shelters (P) Ltd  
Comparative Chart**

<b>Assessment Year</b>		<b>2011-12</b>	<b>2010-11</b>	<b>2009-10</b>	<b>2008-09</b>
	Receipt (Value of Work Done)	348308159.00	197614470.00	127250050.00	167572483.00
Less :	Net Profit	14051029.00	11936562.00	7602557.00	9187118.00
	Other Income credited to Profit & Loss A/c (Interest Income)	1815789.00	3268385.00	929328.00	2750290.00
		12235240.00	8668177.00	6673229.00	6436828.00

Add:	Depreciation debited to Profit & Loss A/c	496897	221314	169185	148817
		12732137.00	8889491.00	6842414.00	6585645.00
Add:	Trade tax debited to profit & Loss account having no nexus with Trading results.	6633121	3939925	1531622	2273569
		19365258.00	12829416.00	8374036.00	8859214.00
	Percentage of Profit after adding Depreciation and Trade Tax	5.56	6.49	6.58	5.29

**M/s Rishav Shelters (P) Ltd**

**Comparative Chart**

Assessment Year		2011-12	2010-11	2009-10	2008-09
	Receipt (Value of Work Done)	348308159.00	197614470.00	127250050.00	167572483.00
Less:	Net Profit	14051029.00	11936562.00	7602557.00	9187118.00
	Other Income credited to Profit & Loss A/c (Interest Income)	1815789.00	3268385.00	929328.00	2750290.00
		12235240.00	8668177.00	6673229.00	6436828.00
	Net Profit Percentage on gross receipt deducting interest income from net profit	3.51	4.39	5.24	3.84

10. The Id. DR placed strong reliance on the assessment order. He contended that "Once there is material, no substitution of estimate by another."

11. We have heard both the sides, perused the material on records and the judgments relied upon. It is undisputed fact that books of account are rejected by

invoking provisions of Section 145(3) of the Act, pointing out that vouchers were not produced by the assessee for verification. The Id. AR for the assessee has objected to the rejection of the books of account contending that the AO has not brought any specific material evidence on record for drawing such inference, by pointing out as to what vouchers were not verifiable. He further submitted that the AO neither had any evidence, comparable case, to support application of "high profit rate" on gross total receipt nor considered the past history of NP rates of the assessee's own case as above.

12. The Id. DR had neither disputed the facts of the casenor brought any judgement to controvert the contentions raised by the assessee. Now in the facts of the case, besides furnishing Ledger Accounts, 'Audit Report' was available on records and as held and resolved by the Hon'ble Delhi High Court in the case of 'Additional CIT Vs Jay Engineering Works' 113 ITR 389(Del) where the question was whether the report of the auditor could be said to be 'material' on which reliance could be placed by the Income Tax Authorities. The Hon'ble High Court while approving the order of the Tribunal held that in the event books are destroyed, the Tribunal should mainly rely on the Audit Report because the said evidence is admissible under the Indian Evidence Act 1972. It therefore, follows that the 'Audit Report' is material evidence on the basis of which income of the assessee ought to have been computed by the Assessing Authority keeping in mind the past history of the case.

13. The AO who was the Ld. JCIT in the case of the assessee and who passed the impugned assessment order had wrongly and illegally relied upon the provisions of section 44AD of the Act, since the appellant turnover was more than Rs. 1 crore, where the provisions of section 44AD would not apply. The AO in the assessment order, by relying upon a decision of Hon'ble ITAT, Mumbai in case of 'ACIT Vs. Mahesh Enterprises' in ITA No. 5059 (Mum) of 2009, has applied, NP rate of 8% but no justification has been given for applying this rate even after he himself has reproduced the profit rate shown by the assessee in earlier years that has never exceeded 6%. The CIT(A) has noted that the Ld. AR has agreed that the NP rate shown in earlier year may be taken as the basis for estimating the profit during the year under consideration; that in earlier two years i.e. AY 2009-10 and 2010-11, the NP rate shown by the assessee were 5.97% and 6.04% and therefore, he decided to take the NP rate of 6% during the year under consideration instead of 8% taken by the AO, however, he had ignored the peculiar fact of inclusion of interest income in the Net profit shown by the assessee which he decided to assess separately being inclined to the observation of the AO which is not justified.

14. In AY 2010-11, the assessee has shown net profit of Rs.1,19,36,562/- on contract receipt of Rs.19,76,14,470/- giving N.P. rate of Rs. 4.39% as is evident

from the chart tabulated above. Assessment order passed under section 143(3) by the JCIT, Range-4, Agra, in the case of the assessee for AY 2011-12 estimated Net Profit @ 8% and assessing interest income separately over and above the estimated income.

15. It is seen that the AO has neither pointed out any specific deficiency, in the audited statement, audit report, and vouchers nor discussed any comparable case on identical facts, to form the basis for application of a particular net profit rate on the gross total receipts, in the case of the assessee. On perusal of the comparative 'Net Profit Chart' of the assessee's past history on profit rate, as above, it is evident that the Net Profit Rate is reasonably offered by the assessee at 3.51% and 4.39% (Assessed at 8%) before the Id. CIT (A). After considering the decisions cited, the history of the case, and the fact on record, the 90% growth in turnover and wages- labour work of civil construction executed on sub-contract basis, it is factually clear that the profit rate applied by Authorities below at 8% by the AO and 6% by the CIT(A) is on the higher side and is unreasonable.

16. Under the peculiar facts of this case, the finding of the Id. CIT(A) that the addition of interest income to be separately made and the percentage of net profit as has to be considered excluding interest income, although applying the same higher net profit rate inclusive of interest income in the net profit cannot be

justified, once the interest income is assessed separated under the head income from other sources. Therefore, for the purpose of applying NET Profit rate in this case, a revised comparative Net Profit Chart was required to be prepared excluding the interest income being assessed separately to arrive at the actual net profit of the assessee without any impact of interest income which were varying for different years as follows:

### M/s Rishav Shelters (P) Ltd

#### Comparative Chart

Assessment Year	2011-12	2010-11	2009-10	2008-09
Receipt (Value of Work Done)	348308159.00	197614470.00	127250050.00	167572483.00
Net Profit	14051029.00	11936562.00	7602557.00	9187118.00
Other Income credited to Profit & Loss A/c (Interest Income)	1815789.00	3268385.00	929328.00	2750290.00
	12235240.00	8668177.00	6673229.00	6436828.00
Net Profit Percentage on gross receipt deducting interest income from net profit	3.51	4.39	5.24	3.84

17. From the above chart, it can be seen that in the immediately preceding year relevant to AY 2010-11 interest income was of Rs. 32,68,385/- whereas in the year under consideration the interest income was of Rs. 18,15,789/-; that the interest income has been assessed separately, then the same would be deducted from the net profit to work out the Net Profit rate and accordingly the

comparative trading results in terms of % Net Profit would get changed as per comparative chart (APB, 43) as above.

18. In case of 'DCIT Vs Allied Construction', (Supra), ITAT Delhi (Special Bench) held that **"interest income is separate and independent of contract receipts. Apart from that, by no stretch of imagination could interest income be considered as contract receipt for estimation of income by applying a net profit rate to the contract receipts"**.

19. In view of above, we find that it just, fair and reasonable to estimate the income of the assessee at the Net Profit rate of 5.0 % of the gross total receipts for the year under appeal. Thus, the assessee gets relief of 1.0% in estimation of profit rate on the gross total receipts, as against the 6.0 % net profit rate estimated by the Id. CIT (A). Thus, appeal of the assessee is partly allowed.

20. In the result, appeal of the assessee is partly allowed and that of the department is dismissed.

(Order pronounced in the open court as on 14/08/2018)

Sd/-  
**(A.D. Jain)**  
**Judicial member**

Sd/-  
**(Dr. Mitha Lal Meena)**  
**Accountant Member**

Dated: 14.08.2018  
Aks

*Copy of order forwarded to:*

- |  |                           |
|--|---------------------------|
| <i>(1) The appellant</i>               | <i>(2) The respondent</i> |
| <i>(3) Commissioner</i>                | <i>(4) CIT(A)</i>         |
| <i>(5) Departmental Representative</i> | <i>(6) Guard File</i>     |

*By order*

*Assistant Registrar  
Income Tax Appellate Tribunal  
Agra Bench, Agra*

		Date		
1.	Draft dictated / (DNS)	30.07.2018		PS
2.	Draft placed before author	13.08.2018		PS
3.	Draft proposed & placed before the second member			JM/AM
4.	Draft discussed/approved by Second Member.			JM/AM
5.	Approved Draft comes to the Sr.PS/PS			PS/PS
6.	Kept for pronouncement on	14.08.2018		PS
7.	File sent to the Bench Clerk	21.08.2018		PS
8.	Date on which file goes to the AR			
9.	Date on which file goes to the Head Clerk.			
10.	Date of dispatch of Order.			