

**IN THE INCOME TAX APPELLATE TRIBUNAL  
DELHI BENCH: 'B' NEW DELHI**

**BEFORE SHRI N. K. BILLAIYA, ACCOUNTANT MEMBER  
AND  
MS SUCHITRA KAMBLE, JUDICIAL MEMBER**

**I.T.A. No. 4099 /DEL/2016 (A.Y 2012-13)**

Dharam Bir Singh 97, 2 <sup>nd</sup> Floor, Savita Vihar New Delhi ABJPS5642N <b>(APPELLANT)</b>	Vs	ACIT Circle-62(1) New Delhi <b>(RESPONDENT)</b>
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**I.T.A. No. 4174 /DEL/2016 (A.Y 2012-13)**

ACIT Circle-62(1), Room No. 2202, 2 <sup>nd</sup> Floor, Civic Centre, Minto Road New Delhi <b>(APPELLANT)</b>	Vs	Dharam Bir Singh 97, 2 <sup>nd</sup> Floor, Savita Vihar New Delhi ABJPS5642N <b>(RESPONDENT)</b>
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<b>Appellant by</b>	<b>Sh. R. S. Singhvi, CA &amp; Sh. Satyajeet Goel, Adv</b>
<b>Respondent by</b>	<b>Ms. Ashima Neb, Sr. DR</b>

<b>Date of Hearing</b>	<b>26.02.2019</b>
<b>Date of Pronouncement</b>	<b>27.03.2019</b>

**ORDER**

**PER SUCHITRA KAMBLE, JM**

These two appeals are filed by the assessee as well as by the Revenue against the order dated 23/05/2016 passed by CIT(A)-20, New Delhi for Assessment Year 2012-13.

2. The grounds of appeal are as under:-

**I.T.A. No. 4099 /DEL/2016 (Assessee's appeal)**

*"1. That on the facts and circumstances of the case, the CIT(A) was not justified in making addition of Rs. 12,69,185/- by estimating net profit rate at 8% as against declared net profit rate of 6.14 %.*

*(ii) That the impugned addition is illegal and un justified as no such addition was made by the Assessing Officer.*

*(iii) That in any case, the above addition being in the nature of enhancement and in the absence of proper opportunity as required under the law, no such addition is called for.*

*2(i). That on the facts and circumstances of the case, the CIT(A) was not justified in sustaining 10% ad hoc disallowance in respect of claim of travelling, conveyance, telephone and vehicle expenses.*

*(ii) That in the alternative, if the addition on the basis of net profit rate of 8% is sustained, there is no justification for any such disallowance.*

*3(i). That on the facts and circumstances of the case, the CIT(A) is not justified in confirming disallowance of Rs. 60,000/- u/s. 40a(ia) on the alleged ground of non deduction of tax on payment relating to accounting charges.*

*(ii) That impugned disallowance is illegal, arbitrary and without any factual and legal basis.*

*4(i). That on the facts and circumstances of the case, the CIT(A) was not justified in sustaining addition of Rs. 4,80,000/- on account of low withdrawals.*

*(ii) That addition is illegal, arbitrary and or highly excessive."*

**I.T.A. No. 4174 /DEL/2016 (Revenue's appeal)**

*1. In the facts and circumstances, the Ld.CIT(A) has erred in deleting the addition of Rs. 3,43,82,544/- on account of cash payment made u/s 43A(3) of the I T. Act,*

2. *In the facts and circumstances, the Ld.CIT(A) has erred by reducing the addition from Rs. 63,13,469/- to Rs. 12,69,185/- on a/c of sundry creditors.*
3. *In the facts and circumstances, the Ld.CIT(A) has erred in deleting the addition of Rs. 10,63,256/- on a/c of labor and wages*
4. *In the facts and circumstances, the Ld.CIT(A) has erred in reducing the addition from Rs. 1.42,01,990/- to Rs. 60,000/- on a/c of non deduction of TDS u/s 40(a)(ia) of the I.T. Act.*
5. *In the facts and circumstances, the Ld. CIT(A) has erred by reducing the addition from Rs. 15,88,935/- to Rs. 4,80,000/- on a/c of low household expenses.*
6. *That the appellant, craves, leave to add, amend or modify the ground(s) of appeal at any time.*

3. The assessee is an individual and engaged in the small road projects from the government only under the name and style of M/s Prinkle Construction Company. Return of income was filed on 8/10/2012 declaring income at Rs. 40,82,120/-. The return of income was processed u/s 143(1) of the Income Tax Act, 1961. Subsequently, the case was selected for scrutiny under compulsory selection. First notice u/s 143(2) was issued on 6/9/2013 which was served upon the assessee within the stipulated statutory period. For the notices u/s 142(1) along with detailed questionnaire were issued and served on the assessee. In response the assessee and C.A/Authorized Representative of the assessee attended the assessment proceedings from time to time and field details before the Assessing Officer. During the assessment proceedings, the assessee was asked to submit comparative chart of GP/NP ratio for the current Assessment Year and the previous Assessment Years. The following chart was submitted:-

A.Y	Sales	G.P	G.P Ratio	N.P	N.P Ratio
2012-13	6,81,41,288/-	81,45,899/-	11.95%	41,82,118/-	6.14%
2011-12	3,60,20,509/-	55,10,442/-	15.30%	22,00,130/-	6.11%
2010-11	9,36,69,458/-	96,75,004/-	10.33%	21,24,640/-	2.27%

During the course of assessment proceedings, the assessee was asked to produce books of accounts, bills, vouchers, muster rolls, wage sheets, log books etc. for verification. However, the assessee only produced copy of wage sheet, muster-rolls and some random bills. After verification of the same by the Assessing Officer following additions/disallowances was made:-

- (i) Addition u/s 40A (3) amounting to Rs.3,43,82,544/-
- (ii) Disallowance out of labour and wages expenses amounting to Rs.10,63,256/-
- (iii) Disallowance u/s 40(a) (ia) amounting to Rs. 1,42,01,990/-
- (iv) Addition on account of gross receipts amounting to Rs. 4,26,044/-
- (v) Disallowance out of Sundry Creditors amounting to Rs. 63,13,469/-.
- (vi) Addition on account of NIL drawings, amounting to Rs. 15,88,935/-
- (vii) Disallowance out of Travelling and Conveyance Expenses amounting to Rs. 48,045/-.
- (viii) Disallowance out of telephone expenses amounting to Rs. 6,253/-
- (ix) Disallowance out of Vehicle Expenses amount to Rs. 70,000/-

The Assessing Officer also made addition of Rs. 85,00,000/- in violation of Section 269SS of Income Tax Act, 1961. The Assessing Officer assessed the income of the assessee at Rs.6,21,82,660/-.

5. Being aggrieved by the assessment order, the assessee filed appeal before the CIT(A). The CIT(A) partly allowed the appeal of the assessee.

6. The Ld. AR submitted that CIT(A) estimated the net profit @ 8% as against declared net profit rate of 6.14% but has not allowed any expenses to that extent. The Ld. AR agreed that if the expenses are allowed the net profit rate at 8% should be taken into account by the Tribunal. Hence, Ground No. 1 will not be pressed if the same is kept by estimating net profit at 8% as held by

the CIT(A) and, therefore, Ground No. 1 is not pressed to that limited extent of assessee's appeal.

7. As related to Ground No. 4 of the assessee's appeal, the Ld. AR submitted that sustaining addition of Rs. 4,80,000/- on account of low withdrawals is also not justified as the withdrawals were for house hold expenses.

8. The Ld. DR relied upon the order of the Assessing Officer and further submitted that as regards Revenue's appeal. The statutory disallowance has to be kept in mind by allowing the net profit rate 8% as suggested by the Ld. AR during the hearing. But the Revenue is heavily relying on the assessment order and submitted that the assessment order should prevail.

9. We have heard both the parties and perused the material available on record. As regards estimation of net profit at 8%, there is no dispute with the net profit rate which is slightly increased for Assessment Year 2012-13. Thus, we find that the estimation of profit at 8% is reasonable on the facts of the present case and should meet the ends of justice. Once the profit, if estimated on gross receipts, no further addition needs to be made on this account. We, therefore, do not interfere with the findings of the CIT(A) as far the estimation of the profit is concern. However, in our considered opinion, once net profit is estimated as a percentage of sales no further allowance should be made in the profit and loss account. Since, we have confirmed the estimation of net profit at 8%. We do not find any merit in the additions/disallowances made by the Assessing Officer. Thus, Ground No. 1 to 3(ii) are partly allowed. As regards to Ground No. 4(i) to 4 (iii) is concerned the said withdrawals are for household expenses and hence the Assessing Officer as well as the CIT(A) was not right in making this addition. Ground No. 4(i) to 4 (iii) are allowed. As regards to Revenue's appeal is concerned, since we have decided the issues in assessee's appeal the same are also partly allowed as per the issue-wise discussions in the above paras.

10. In result, assessee's and Revenue's appeal are partly allowed for statistical purpose.

**Order pronounced in the Open Court on 27<sup>th</sup> March, 2019.**

Sd/-

**(N. K. BILLAIYA)**  
**ACCOUNTANT MEMBER**

Sd/-

**(SUCHITRA KAMBLE)**  
**JUDICIAL MEMBER**

Dated: 27/03/2019  
*R. Naheed \**

Copy forwarded to:

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

ASSISTANT REGISTRAR

ITAT NEW DELHI

Date of dictation	26.02.2019
Date on which the typed draft is placed before the dictating Member	26.02.2019
Date on which the typed draft is placed before the Other Member	
Date on which the approved draft comes to the Sr. PS/PS	
Date on which the fair order is placed before the Dictating Member for pronouncement	
Date on which the fair order comes back to the Sr. PS/PS	27.03.2019
Date on which the final order is uploaded on the website of ITAT	27.03.2019
Date on which the file goes to the Bench Clerk	27.03.2019
Date on which the file goes to the Head Clerk	