

**IN THE INCOME TAX APPELLATE TRIBUNAL
ALLAHABAD BENCH, ALLAHABAD**

(THROUGH VIRTUAL COURT),

BEFORE SHRI.VIJAY PAL RAO, JUDICIAL MEMBER

**ITA No.16/ALLD/2019
Assessment Year: 2012-13**

M/s Prakash Construction, Kadipur, Pratapgarh PAN-AAIFP3452B	v.	Income Tax Officer, Pratapgarh
(Appellant)		(Respondent)

Appellant by:	Mr. Praveen Godbole, CA
Respondent by:	Mr. A.K. Singh, Sr. DR
Date of hearing:	15.12.2020
Date of pronouncement:	16.12.2020

ORDER

PER SHRI VIJAY PAL RAO, JUDICIAL MEMBER:

This appeal by the assessee is directed against the order dated 22nd March, 2018 of CIT(A) for the assessment year 2012-13. The assessee has raised the following grounds:-

- 1. That in any view of the matter assessment order passed u/s 143(3) of the Act dated on 25.03.2015 is bad both on the facts and in law and by such assessment order income as determined at Rs. 11,28,074/- is highly unjustified in the facts and circumstances of the case.*
- 2. That in any view of the matter income declared in the return on the basis of disclosed books of account reflected in audit report should have been accepted and the finding and observation in respect of books of accounts in the assessment order in Para 2 are general and vague.*
- 3. That in any view of the matter net rate of 8% applied by the Assessing Officer is highly unjustified and incorrect by ignoring the past record/ comparable cases*

when the net rate of 6.86% has been accepted or even less than 6.86% was accepted.

4. That in any view of the matter the determined income at Rs. 11,28,074/- is uncalled and declared income should be accepted as true and correct as the same is based on books.

5. That in any view of the matter interest charged u/s 234A, 234B and 234C of the Income Tax is highly unjustified.

6. That in any view of the matter the appellant reserves his rights to take any fresh ground of the appeal before hearing of the appeal.”

2. The assessee is a partnership firm and is engaged in the civil construction business. The assessee filed its return of income on 28th March, 2013 declaring total income of Rs. 3,75,620/-. During the scrutiny assessment, the AO rejected the books of accounts by invoking the provisions of Section 145(3) and then estimated the income of the assessee by applying net profit rate of 8% on gross receipts / interest and remuneration to partners. Consequently, the AO has computed the total income of the assessee at Rs. 11,28,074/- as against the returned income of Rs. 3,75,620/-. The assessee challenged the action of the AO before the CIT(A) but could not succeed.

3. Before the Tribunal, the learned AR of the assessee has submitted that the AO has applied net profit rate at 8% which is arbitrary and unjustified as the Assessing Officer has not considered any comparable case or past history of the assessee. He has pointed out that for the assessment year 2010-11 and 2011-12, the assessee declared net profit at 2.23% and 5.03% respectively which were accepted by the department. For the year under consideration, the assessee has declared net profit rate at 5.01% which is higher than the average of preceding two years. Thus the learned AR has submitted that the net profit rate applied by the AO is without any basis and liable to be set aside. Since the assessee's net profit rate declared for the year under consideration is better than the preceding years then no addition is called for. In support of his contention he has relied upon the decision of the Jaipur Bench of the

Tribunal dated 12.10.2010 in the case of ACIT vs. Kanhaiya Lal Chaudhary in ITA No. 866/JP/2009. He has also relied upon the decision of Coordinate Bench of this Tribunal dated 26th April, 2016 in the case of Balbir Singh Chauhan vs. ACTI in ITA No. 61 & 107/2013. Thus the learned AR has submitted that the net profit rate applied by the AO at 8% on the higher side and the Tribunal has taken a consistent view that net profit @ 5% on gross receipt is reasonable for estimating the income after rejection of books of accounts.

4. On the other hand, the learned DR has submitted that the AO has applied net profit / interest and remuneration to partners and therefore, after allowing these two deductions, the net profit would be around 5% of the gross receipts. Thus the AO has applied a reasonable rate for estimating the income of the assessee.

5. I have considered the rival submissions as well as relevant material available on record. The AO after pointing out the defects in the books of accounts invoked the provisions of section 145(3) and rejected the book results. After rejecting the books of accounts, the AO is duty bound to frame the assessment on best judgment basis. Therefore, the AO is required to estimate the income of the assessee on the basis of some reasonable and proper criteria. The AO has applied net profit rate of 8% on gross receipts before interest and remuneration to partners however, the AO has not mentioned as to how the net profit rate of 8% is reasonable and proper. The Assessment order is completely silent about the consideration of comparable rate of net profit as prevailing in the particular business or the past history of the net profit declared by the assessee. It is settled proposition on the point the past history of net profit / GP declared by the assessee and accepted by the department is a reasonable and proper guidance for estimation of income after rejection of books accounts. Though there was no scrutiny assessment for the assessment year 2010-11 and 2011-12 however, the net profit declared by the assessee in these preceding years is relevant for estimation of the income for the year under consideration. Once the

Assessing Officer has not pointed out any material to indicate in charge in the business activity of the assessee for this years from earlier years then the net profit declared by the assessee in the preceding years which is not disturbed by the department becomes relevant for estimating the income after rejection of books of accounts. The average of net profit declared for the assessment year 2010-11 and 2011-12 comes to 3.63% whereas for the year under consideration, the assessee has declared net profit at 5.04%. Accordingly, in the absence of any material brought on record by the AO to establish that the net profit declared by the assessee is below the prevailing or expected rate from the business of the assessee the adoption of net profit rate of 8% without any reasonable criteria or basis is not justified. If the profit declared by the assessee is either in line or higher than the past history of profit declared by the assessee then the rejection of books of accounts would not *Ipso Facto* lead to any addition. Accordingly, in the facts and circumstances of the case, the addition made by the AO by adopting an arbitrary rate of net profit is not justified and the same is deleted.

6. In the result, appeal of the assessee is allowed.

Order pronounced in the open Court on 16.12.2020 through video conferencing.

Sd/-

[VIJAY PAL RAO]
JUDICIAL MEMBER

DATED: 16/12/2020

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Copy forwarded to:

1. Appellant –
2. Respondent –
3. CIT(A) , Allahabad
4. CIT
5. DR -

By order
Assistant Registrar

		Date	Initials	
	Original dictation pad is enclosed at the end of file			
1.	Draft dictated on:	15.12.2020		Sr. PS/PS
2.	Draft placed before author:	.12.2020		Sr. PS/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:	.12.2020		Sr. PS/PS
6.	Order pronounced on:	.12.2020		Sr. PS/PS
7.	File sent to the Bench Clerk:	.12.2020		
8.	Date on which file goes to the Head Clerk:			Sr. PS/PS
9.	Date on which file goes to AR			
10.	Date of dispatch of Order:			