

**IN THE INCOME TAX APPELLATE TRIBUNAL  
DELHI BENCH 'A', NEW DELHI**

**Before Ms. Suchitra Kamble, Judicial Member**

**Dr. B. R. R. Kumar, Accountant Member**

**(Through Video Conferencing)**

**ITA No. 1274/Del/2018 : Asstt. Year : 2014-15**

Alok Garg, Akhilesh Kumar, Adv., Chamber No. 206-207, Ansal Satyam, RDC Raj Nagar, Ghaziabad, U.P.	Vs	DCIT, Circle-1, Ghaziabad
<b>(APPELLANT)</b>		<b>(RESPONDENT)</b>
<b>PAN No. AARPG7151K</b>		

**Assessee by : Sh. Akhilesh Kumar, Adv.**

**Revenue by : Sh. V. K. Kataria, Sr. DR**

**Date of Hearing: 17.02.2021**

**Date of Pronouncement: 22.02.2021**

**ORDER**

**Per Dr. B. R. R. Kumar, Accountant Member:**

The present appeal has been filed by the assessee against the order of the Id. CIT(A), Ghaziabad dated 03.11.2017.

2. Following grounds have been raised by the assessee:

*"1. That, Id, CIT(A) erred in sustaining the ad-hoc addition and rejection of book of accounts without appreciating that no defect was found in accounts and there was no finding in terms of S.145 of the Act.*

*2. That, in addition to above Id. CIT(A) grossly erred in sustaining the flat rate of 8% NP which is not only against the past history but is contrary to order dt. 21.04.2017 of Hon'ble ITAT in assessee's own case of earlier year.*

*3. That, without prejudice to above, learned CIT (A) erred in dismissing the appeal without providing proper opportunity of being heard as the AR engaged for representing appeal had fallen ill and could not attend on the last date of hearing on 12.10.2017 and hence assessee was prevented with sufficient cause for non-compliance.*

*It is, therefore humbly prayed that the total additions amounting to Rs. 39,69,579/- may kindly be deleted. Alternatively it is prayed that the addition may kindly be restricted in terms of NP rate finally upheld by Hon'ble ITAT."*

3. Heard the arguments of both the parties and perused the material available on record.

4. The issue stands covered in the case of the assessee in ITA No.7023/Del/2014 for the A.Y. 2010-11 dated 21.04.2017, the relevant findings have been given in paras 4 & 5 which read as under:

*"4. It is the argument of the Id. AR that in respect of the earlier years namely 2000-01, 2003-04, 2006-07, 2007-08 and 2009-10 assessment was completed u/s 143(3) of the Act accepting the profit ratio at 3.31, 1.60, 2.63, 2.39, 2.30 and 2.46 respectively, as such it is not open for the Revenue now to straightaway estimate the profit ratio at 8%. He prayed that it would be in the order of things if profit ratio is estimated at 2.46 which was accepted in the immediately preceding AY 2009-10. Per contra it is the argument of the Ld. DR that the AO has given the cogent reasons for rejection of the books and estimation of 8% of the profit ratio. He submitted that the profit ratio suggested by the assessee at 2.46 which is equivalent to the profit ratio of the AY 2009-10 is too low and*

*cannot be accepted. According to the Ld. DR at the lowest the profit ratio could be around 4%.*

*5. At the outset we find that there is no denial of the completion of the assessment u/s 143(3) of the Act for the years 2000-01, 2003-04, 2006-07, 2007-08 and 2009-10 accepting the profit ratio at 3.31, 1.60, 2.63, 2.39, 2.30 and 2.46. Without going into the merits of the reasons assigned by the AO for rejecting the books of account of the assessee, **we find that for all the years stated above the Department consistently accepted the profit ratio in the business of the assessee is between 1.60 and 3.31 and at no point of time any objection is taken by the AO on the ground that in the kind of business of the assessee average rate of profit would be anything around 8%. In the circumstances, we do not find any rational in the AO estimating the profit at 8% and the consistency of the net profit as was established by the accepted books of account in the business of the assessee was something between 1.60% and 3.31% as such taking a pragmatic view, we find that 3% of the profit ratio of the contract receipt would meet the ends of justice. With this view of the mater, we direct the AO to estimate the profit of the assessee at 3% of the total turnover.**"*

5. Having gone through the turnover of the assessee for the instant year and the order of the Co-ordinate Bench of ITAT In the case of the assessee, we hereby hold that interest of justice would be well served if the GP has been determined at the rate of 3% for this year.

6. We also hereby clarify that the GP rate would not be constant for all the years to come and may vary from year to year based on the various business considerations for any given year.

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

Order Pronounced in the Open Court on 22/02/2021.

Sd/-

**(Suchitra Kamble)**  
**Judicial Member**

**Dated: 22/02/2021**

\*Subodh\*

Copy forwarded to:

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

Sd/-

**(Dr. B. R. R. Kumar)**  
**Accountant Member**

**ASSISTANT REGISTRAR**