

**IN THE INCOME TAX APPELLATE TRIBUNAL
CIRCUIT BENCH, VARANASI
BEFORE SHRI. VIJAY PAL RAO, JUDICIAL MEMBER
AND
SHRI RAMIT KOCHAR, ACCOUNTANT MEMBER
ITA No.164/VNS/2019
Assessment Year: 2013-14**

M/s Rajendra Prasad Srivastava, Sarfuddinpur, Near Railway Station, Azamgarh-276001 PAN-AAKFR2986A (Appellant)	vs.	Asstt. Commissioner of Income Tax, Range-Azamgarh (Respondent)
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Appellant by:	Sh. Hari N. Singh Bisen, C.A.
Respondent by:	Sh. A.K. Singh, Sr. DR
Date of hearing:	11.01.2023
Date of pronouncement:	07.02.2023

ORDER

PER VIJAY PAL RAO, J.M.

This appeal by the assessee is directed against the order dated 09.05.2019 of CIT(A) for the assessment year 2013-14. The assessee has raised the following grounds:-

“1. Because on the fact and circumstances of the case the learned CIT(A) has erred in confirming the addition of Rs. 24,03,763/- as Interest on FDRs pledged for business purposes.

2. Because the disputed additions deserves to be deleted and the finding of the learned Assessing Officer that the interest income earned on FDRs pledged for business purpose should be taxed under the head Income from Other sources should be reversed.

3. Because the impugned assessment order is erroneous in law, contrary to the facts on record and without evidence.

4. Because the appellant reserves right to add/amend any of the grounds of appeal during the hearing of the appeal.”

2. The solitary issue arises from the grounds of appeal is whether in the facts and circumstances of the case, the interest income earned on the FDR pledged with the PWD / Government Departments to be taxed under the head income from business or from other sources. The assessee is a partnership firm and engaged in the business of contract in civil engineering work for PWD, Irrigation and other U.P. State Government Departments. The assessee filed its return of income on 29.09.2013 declaring total income of Rs. 15,63,010/-. The case of the assessee was selected for scrutiny assessment under CASS and consequently a notice under section 143(2) was issued by the Assessing Officer on 12.09.2014. The Assessing Officer rejected the books of accounts by invoking the provisions of section 145(3) of the Income Tax Act and then estimated the business income by excluding the interest income on FDR which was separately assessed as income from other sources. Accordingly, the net profit was estimated by the Assessing Officer at 8% before interest and remuneration paid to partner. Consequently, the Assessing Officer has assessed the total income of the assessee at Rs. 52,91,233/- as against the return of income of Rs. 15,63,010/-. The assessee challenged the action of the Assessing Officer before the CIT(A) and raised various grounds including the assessment of the interest income from FDR by the Assessing Officer as income from other sources instead of business income. The CIT(A) upheld the order of the Assessing Officer on this issue while passing the impugned order.

3. Before the Tribunal, the learned AR of the assessee has submitted that the assessee firm is in the business of contract of civil engineering. The assessee is a Class A contractor in PWD, Irrigation and registered with other U.P. State Government Departments. He has submitted that the assessee earned the interest on the FDR which has been pledged / lien for business purpose with the Government Department and claimed the same interest income of Rs.

24,03,763/- as business income. The Assessing Officer has treated the interest income as income from other sources and separately made the addition of the said amount after estimation of the net profit on the gross receipts. He has further submitted that an identical issue was considered and decided by the CIT(A) for the assessment year 2007-08 vide order dated 14.12.2012. A copy of the said order is placed at page nos. 16 to 27 of the paper book. The CIT(A) for the assessment year 2007-08 accepted the income on FDR pledged with the department as business income and held that the same shall be included in the book profit of the assessee and consequently the issue was decided in favour of the assessee. Thus, the learned AR has submitted that when the FDRs were pledged as security with the Department for business purpose then the interest on those FDRs is a business receipt and shall be part of the net profit of the assessee. He has relied upon the decision of Hon'ble Delhi High Court in the case of **CIT(A) vs. Jaypee DSC Ventures Ltd.**, 17 taxman.com 257 as relied before the CIT(A) being the part of statement of facts.

4. On the other hand, the learned DR has submitted that every assessment year is separate and distinct from each other. The CIT(A) simply allowed the assessee's claim for the assessment year 2007-08 without properly examining the issue and without recording any speaking finding. Hence, such non speaking order rendered in the past cannot have a binding force in the subsequent year. The learned DR has submitted that the assessee has relied upon the decision of non-jurisdictional High Court whereas the judgments of the Hon'ble jurisdictional High Court in the case of **KisanSahkariChini Meal** 282 ITR 617 as well as **Chandpur Sugar Companies Ltd.**, 280 ITR 612 are binding precedents. He has also relied upon the various decisions as under:-

1. [1997] 227 ITR 172 (SC), *Tuticorin Alkali Chemicals & Fertilizers Ltd.*
2. [2000] 243 ITR 192 (Kerala), *NanjiTopanbhai& Co.*

3. [2006] 280 ITR 617 (All.) KisanSahkariChini Mills. Ltd.
4. [2007] 105 ITD 1 (Delhi) (Special Bench), Allied Construction
5. [2010] 325 ITR 201 (Kerela), T.O. Abraham & Co.
6. [2017] 163 ITD 46 (Visakhapatnam-Trib.), G. Raja GopalaRao
7. [2001] 248 ITR 449 (SC), Dr. V.P. Gopinathan”

5. Thus, the learned DR has submitted that interest earned from bank deposit / has to be assessed under the head income from other sources which has been settled by the Hon'ble Supreme Court in the case of **Tuticorin Alkali Chemicals & Fertilizers Ltd. vs. CIT** (supra). Similarly, the Hon'bleKerela High Court in the case of **NanjiTopanbhai& Co.** has held that the interest from the fixed deposit from bank is not a business income but only income from other sources. The learned DR then referred to the Delhi Special Bench decision in the case of **Allied Construction**(supra) and submitted that the Special Bench has held that the interest received on fixed deposit cannot be considered as part of contract receipt estimating the income from business of civil construction contract. On the strength of series of decisions relied upon by the learned DR, he has submitted that the interest income on the FDR even if those FDR are pledged with the department as security cannot be treated as business income but the same has to be assessed as income from other sources. He has relied upon the authorities below.

6. We have considered the rival submissions as well as relevant material on record. The grievance of the assessee against the order passed by the AO as well as the CIT(A) is regarding the estimation of the income made by the AO by adopting net profit @ 8% which was reduced to 6% by CIT(A) and the interest income on FDR was separately assessed as income from other sources. The learned AR of the assessee has forcefully asserted that the interest earned by the assessee on the FDR which has been pledged / lien for the business purpose with the Government department shall be treated as business income of the assessee

for the purpose of calculating the net profit ratio. The Assessing Officer has dealt with this issue in para 7 as under:-

“7. Assessee had shown interest received from Dack of India and State Bank Of India in Its return of income amounting to Rs 23,80,101/-. However on perusal of 26 AS statement, it had been found that assessee had received test of Rs 4,03,763, Assessee have not shown interest from Indian bank in its return of income. The interest income which has been earned on FDR, has the nature of income from other sources. In the case of Commissioner Of Income-Tax is VP. Gopinathan (248 1TR, 449 SC) on 27 February, 2001, Hon'ble Supreme Court of India observed that gross interest received on fixed deposit is income in nature and taxable. Thus, the amount of Rs. 24,03,763/- is included in net profit as income from other sources u/s 56 of Income Tax Act 1951, Penalty proceeding u/s 271(1) (c) is initiated separately for furnishing inaccurate particulars of income.”

7. The assessee challenged the action of the AO before the CIT(A) and contended that the AO has assessed the interest on FDR as income from other sources instead of part of net profit. It was contended that the assessee is a civil contractor and the FDRs were made for providing security to different departments from whom the assessee got the contract work. Thus, it was claimed that it is part and partial of the business of the assessee and should have been considered as part of the business receipt and not as income from other sources under section 56 of the Act. The CIT(A) has dealt with this issue and decided against the assessee as under:-

“During the course of the appellate proceeding the appellant was asked to submit a reply in support of the contention made by it regarding the interest income being of business receipts and not as income from other sources. Nothing has been submitted by the appellant in this regard. The interest received by the civil contractors on FDRs furnished for security purposes is a business receipt and this has been upheld through a no. of judgement of various authorities however it is also pertinent that a very thin line distinguishes this income from classifying it into income from other sources. It is

incumbent upon the appellant to prove that the interest received by it was in fact in the nature of business receipts and not in the nature of income from other sources. A direct nexus has to be established between the bank deposits and the project expenses incurred by the appellant. The appellant has failed to submit any cogent evidence in this regard. Thus, the direct link between the fixed deposits, from which the interest was earned by the appellant, being furnished as a security for entering into the contract has not been established. In view of the above I find no infirmity in the addition made by the AO. The addition made by the AO is upheld and the ground of appeal is rejected.”

8. The CIT(A) has principally accepted the proposition that the interest received by the civil contractor on FDR furnished for security purpose is a business receipt as it has been upheld vide number of judgments of various authorities but the same will be added to net profit worked out by applying net profit rate of 6% on gross contract receipts. It was further observed that the assessee has failed to submit any cogent evidence in this regard. The CIT(A) has thus opined that the direct link between the fix deposit from which interest was earned by the assessee being furnished as security for entering into contract has not been established and consequently the addition made by the AO has been upheld. It is pertinent to note that for the assessment year 2007-08, an identical issue has been considered by the CIT(A) vide order dated 14.12.2012 in para 3.3.4 to 3.4.1 as under:-

“3.3.4 I have considered the ground of appeal, the order of the Assessing Officer and the submissions made. It has been held in AwadeshPratap Singh Abdul Rehman & Bros v. CIT [199] 76 Taxman 106 (All) that where absence of a stock register, cash memos etc., if coupled with other factors like absence of vouchers in support of the expenses and purchases and existence of low profit, may give rise to a legitimate inference that all is not well with the books and the same can be relied upon to assess the income, profits or gains of an assessee, the authorities would be justified in rejecting the account books under section 145(2) and in making the assessment in the manner contemplated in that provision. It has also been held in S.N. Namasivayam Chettiar v. CIT [1960] 38 ITR 579 (SC) that keeping of a stock register is of great importance because that is a means of verifying the

assessee's accounts by having a quantitative tally'; if, after taking into account all the materials including the want of a stock register, it is found that from the method of accounting the correct profits of the business are not deductible, the operation of section 145(3) of the Act would be attracted. It has been held in CIT v. McMillan & Co. [1958] 33 ITR 182 (SC) that a non-exercise of the power by the ITO under section 145(2) is also a decision inasmuch as it amounts to an acceptance of the method of accounting on the ground that the income, profits and gains can be properly deduced therefrom. It is therefore open to the AAC to reject the assessee's books of account which have been accepted by the ITO. Hence, the books of account of the appellant are hereby rejected as there was abnormal low profit and stock register had not been maintained besides other discrepancies. In the course of the appeal and after carrying out the exercise of contract wise labour and material expenses, the appellant conceded that net profit at @6% before interest and remuneration to partners may be applied. Since the appellant did not have record of site wise expenses and complete vouchers for the expenses were also not available, therefore, as against the net profit shown at Rs. 12,85,948/- - Rs. 329869/- i.e. Rs. 956079/- before allowing salary and interest to partners, which gives net profit rate of 4.09% on gross turnover of Rs. 2,34,02,853/-, the net profit rate of 6% on the gross contract receipts of Rs. 2,34,02,853/- is applied which gives the net profit of Rs. 14,04,171/- as against Rs. 956079/- worked out by the appellant with the net addition of Rs. 448092/- the income of the assessee. The interest on FDRS shall be separately added as there is no question of any net profit rate being applied on the interest accrued on FDRs. The appellant has computed net profit on gross contract receipts of Rs. 23402853/-. However, the appellant has also credited scored interest of Rs. 1,51,619+Rs. 1,78,250/- i.e. Rs. 3,29,869/-. The gross receipts including interest (which has been considered as business income) work out to Rs. 2,37,32,722/-. In view of the decisions of Hon'ble Calcutta High Court, as the FDRs were kept as securities, the interest on FDRs shown at Rs. 329869/- shall also be assessed as income from business which shall be added to the net profit worked out Rs. 1404171/- by applying net profit rate of 6% on the gross contract receipts shown at Rs. 23402853/- with the income under the head business being computed at Rs. 1734040/-. Hence, these two ground of appeal are rejected and the overall addition of Rs. 448092/- is made in place of Rs. 50,000/- and Rs. 20,000/- made by the Assessing Officer. The assessee shall also be entitled to the deduction of interest on capital and remuneration to partners, which shall be estimated basis calculated in the book profit.

3.4 Ground no. 4(a) is regarding not considering the interest income as business income. The Assessing Officer has worked out the book profit by excluding interest of Rs. 3,29,869/- on FDR which has been assessed under the head income from other sources, and the book profit of Rs. 5,79,766/-

has been considered for allowing salary to the partners. In the statement of facts, the appellant has submitted as under:

8.1 As regards deducting the interest of Rs. 3,29,869/- from the book calculation of remuneration allowable to partners w/s 40(b) of Income Tax At, it is submitted that was already explained before the Assessing Officer as under:-

"Sir, interest income received by the Firm from FDRs from Security deducted and FDR made by the Firm by its own for the purpose of Bank Guarantee and used as security against O.D. from Bank.

Sir, as all the above mentioned FDRs are made for business purpose only and incidental to the business. Therefore Interest received or accrued to be received be considered attributable and incidental to the business carried on.

Sir, without the said FDRS, It is hardly possible to run a business of contract works. hereby clarified that the above mentioned FDRs are not for investment purpose and the monetary returns received from the same could not be charged under any other head.

So, Interest on FDRS must be included under the head "profits & gains from business or profession"

8.2 Considering the above situation of the case it is urged that the interest on FDRs m be treated as part of business income and the disallowance made by the Learned Assessing Officer on this account may kindly be deleted.

3.4.1 Further, vide reply filed on 21.7.2011, the appellant has submitted in this regard as under:

1. With regard to our ground No. 4a of the Ground of Appeal and paragraph 8.1 of Statement of Facts relating to A.O.'s action to tax the interest on FDRS under the head Income from Other Sources, it is submitted that the interest on FDRS should be taxed finder the held Income from Business and Profession as the FDRS made by the department from securities deducted and the amount of the business receipts were invested in FDRs and the "DRs were pledged as securities as per the business requirements. In this connection reliance is placed on the following case laws:-

(i) CIT vsCocanadaRadhaswami Bank Ltd. (1965) 57 ITR 306 (SC) wherein the Hon'ble Supreme Court has held,

"Business income - Interest on securities-Does not cease to be income from business if securities are part of trading assets - Tribunal held on evidence, that securities in question were part of trading assets of assessee's banking business - Income from securities was income from business,"

- (ii) *Hon'ble Calcutta High Court in the case of CT vs Triupati Woollan Mills Ltd. (1992) 193 ITR 252 (CAL) wherein the Hon'ble High Court has held, "Business income- Interest income-Interest on deposits with bank-Assessee carrying on business, investing his surplus cash temporarily with bank - Finding by the Tribunal that such investments are made by utilization of commercial assets of assessee - Interest received on said deposits is taxable as business income under s. 28-Such interest not taxable under the head 'other sources.'"*

Copy of both the Judgments are enclosed.

Hence, considering the judicial pronouncements relied upon by the appellant, the interest on FDRs pledged with the department is held to be income from business and shall be included in the profit of Rs. 909635.21 worked out by the appellant and remuneration to partners shall be worked accordingly. Hence, Ground no. 49 of the appeal is allowed."

9. Thus, the CIT(A) for the assessment year 2007-08 has held that the interest on FDR pledged with department is income from business and shall be included in the book profit for the purpose of working out remuneration to partners. For the year under consideration, there is no such issue of remuneration to partners to be worked out on the total business income including the interest on FDRs pledged as security with Government departments. As it is evident from the order of the CIT(A) for the assessment year 2007-08 that it is a requirement under the contract between the assessee and the Government departments that the assessee shall furnish the security. However, for the year under consideration, since the assessee has not produced the relevant details and evidence therefore, the claim of the assessee was rejected by the CIT(A).

10. Though, the interest on the fixed deposit which were pledged as security for the purpose of business of assessee being civil contractor would be regarded as income incidental to the business activity as well as having a direct and inextricably link with business of the assessee however, the estimation of net profit would be made only by applying the net profit rate on the gross contract

receipts. Therefore, even if the interest on such FDRs is considered as business income, the same would be added to the net profit estimation on the contract receipts and there will be no tax effect on this account.

11. Accordingly, in the facts and circumstances of the case as discussed above, we do not find any error or illegality in the impugned order of CIT(A). The same is upheld.

12. In the result, the appeal of the assessee is dismissed.

Order pronounced in open court on 07.02.2023 at Varanasi.

Sd/-

[RAMIT KOCHAR]
ACCOUNTANT MEMBER

DATED:07/02/2023
Varanasi/Allahabad

Sh

Vide Separate Concurring Order

Sd/-
Ramit Kochar
06/02/23

[VIJAY PAL RAO]
JUDICIAL MEMBER

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1. Appellant- M/s Rajendra Prasad Srivastava
2. Respondent-ACIT, Range-Azamgarh
3. CIT(A),Varanasi
4. CIT
5. DR

I.T.A. NO.164/VNS/2019 (Assessment Yea: 2013-14) in the case of Mr. Rajendra Prasad Srivastava, Sarfuddinpur, Near Railway Station, Azamgarh-276001, U.P.(PAN:AAKFR2986A) v. Assistant Commissioner of Income-tax, Range , Azamgarh,U.P..

Concurring Order

PER RAMIT KOCHAR, ACCOUNTANT MEMBER:

I concur with the conclusion reached by my learned Brother(J.M.) vide order for assessment year 2013-14 in the case of the assessee namely Mr. Rajendra Prasad Srivastava, however, I am writing this concurring order to express my view, reasoning and finding on the issues which are discussed by me in later part of this order.

2. The brief facts of the case are enumerated by my ld. Brother(JM) in his order. The grounds of appeal are also reproduced by my ld. Brother(JM) in his order. The solitary issue in this appeal is as to whether the interest on FDR earned from Banks shall be charged to income-tax under the head 'Profits and Gains of Business or Profession' or under the head 'Income from Other Sources'. The AO has assessed income of the assessee after rejecting books of accounts u/s 145(3) by estimating net profit @8% of the Gross Contract Receipts. Thus, the AO computed net profit before interest and remuneration paid to partners by estimating @8% of gross contractual receipt as shown in Profit and Loss account at Rs. 5,73,77,885/- , which comes to Rs. 45,90,231/-. The AO separately assessed income from interest earned on FDR's from Banks ,to the tune of Rs. 24,03,763/- , as income from other sources u/s 56 of the 1961 Act. Apart from above, there was income earned from interest on refund of income-tax to the tune of Rs. 7,410/- for ay:2011-12, which was also brought to tax by AO under the head 'income from other sources', with which there is no dispute between rival parties

and matter rested there. On first appeal filed by the assessee, the Id. CIT(A) reduced income by computing net profit before interest and remuneration paid to partners by estimating @6% of gross contractual receipt as shown in Profit and Loss account at Rs. 5,73,77,885/-, which stood accepted by the assessee and there is no grievance of the assessee as well Revenue in adoption of rate of net profit@6% as above which was applied by Id. CIT(A) .But, so far as interest earned on FDR from Banks, to the tune of Rs. 24,03,763/- , the addition was maintained by Id. CIT(A), which as per Id. CIT(A) is to be separately brought to tax as was done by the AO. Even for assessment year 2007-08 relied upon by the assessee, the Id. CIT(A) held that the interest earned on FDR from Banks is to be separately brought to tax , in addition to the income estimated by applying rate of 6% of gross contractual receipts.My Id. Brother(JM) has come to conclusion that even if addition of Rs. 24,03,763/- is treated as business income under the head 'Profits and Gains of Business or Profession' , there will be no effect on income-tax payable as the additions by estimation of net profit as upheld by Id. CIT(A) was 6% of gross contract receipts and this income earned from interest on FDR of Rs. 24,03,763/- is an income which is to be brought to tax over and above the aforesaid estimation of Business income by way of net profit @6% of gross contract receipts, and hence the total income computed shall remain same whether interest earned on FDR with Banks be brought to tax as Income from business under the head 'Profits and Gains of Business or Profession' or to be brought to tax under the head 'Income from other sources', and hence the issue in this appeal is tax-neutral. Since the impact of this issue is tax-neutral and this issue is purely academic, I refrain from deciding the same as to whether the same shall be brought to tax as income from business under the head 'Profit or Gains from Business or Profession' or to be brought to tax under the head 'income from other sources', which I shall adjudicate in some other appeal.In any case, the

issue of taxability of interest on FDR of Rs. 24,03,763/- is tax neutral and the said interest is to be brought to tax additionally over and above the income brought to tax under the head 'Income from Profit or Gains from Business or Profession' by way of net profit computed @6% of 'Gross Contract Receipts' as upheld by Id. CIT(A). However, I concur with the ultimate conclusion of my Id. Brother(JM) with reasoning as above in this concurring order written separately by me. I order accordingly

Proceeding further, in the instant case before us, the AO observed that the assessee has shown very low profits, and assessee was given adequate opportunities by the AO to furnish reasons for low profits and was asked to submit books of accounts with original bills and vouchers , to substantiate the claim of various expenses debited under Profit and Loss Account. Despite being given various opportunities by the AO, the assessee did not produce books of accounts and bills and vouchers for verification. The AO rejected books of accounts u/s 145(3) and applied Net profit rate of 8% on Gross Contract Receipts (which was reduced by Id. CIT(A) to 6% and accepted by the assessee and also Revenue has not filed appeal against the relief granted by Id. CIT(A). Although issue of applying estimated net profit rate of 8% on Gross Contract Receipt by the AO , by rejecting books of accounts and by invoking provisions of Section 145(3)(which estimation was reduced to 6% by Id. CIT(A)) , is not before us for adjudication in this appeal, but in my considered view , by framing assessment in this manner by applying GP/NP ratio by the AO (the assessee turnover being Rs. 5,73,77,885/- and the assessee is not under the purview of presumptive tax regime as specified in the 1961 Act) , the tax-payers whose cases are put under scrutiny, gains undue advantage and premium on non compliances, as in the process they do not produce any details ,vouchers, bills ,books of accounts,stock registers etc. called for by authorities for verification for framing scrutiny

assessments , and authorities simply apply Gross Profit/Net Profit ratio to assess/compute income, and in the process the whole purpose of scrutiny assessment is defeated, as none of the authorities did ever see compliances of Section 37(1) as to whether expenses were incurred wholly and exclusively for the business of the assessee which otherwise were claimed as deduction from income while computing tax liabilities, whether the income is correctly computed as per provisions of the 1961 Act, whether compliances of Section 68, 69, 69A , 69B etc. have been made by assessee . Similarly, the authorities also could not see whether provisions of Section 40(a)(ia), 40A(2), 40A(3) etc. etc. were infact complied with by the tax-payer, and in the process the whole purpose of framing scrutiny assessment got defeated, and assessment are framed by merely applying GP/NP ratio, wherein income is assessed and brought to tax. Reference is drawn to the decision of Hon'ble Supreme Court in the case of CIT v. Devi Prasad Vishwanath reported in (1969) 72 ITR 194(SC), wherein Hon'ble Supreme Court observed as under:

“There is nothing in law which prevents the Income-tax Officer in an appropriate case in taxing both the cash credit, the source and nature of which is not satisfactorily explained, and the business income estimated by him under section 13 of the Income-tax Act, after rejecting the books of account of the assessee as unreliable. This was so decided in Kale Khan Mohammad Hanif v. Commissioner of Income-tax [1963] 50 ITR 1 (SC). Whether in a given case the Income-tax Officer may tax the cash credit entered in the books of account of the business, and at the same time estimate the profit must, however, depend upon the facts of each case.”

In the instant case also, the assessee did not produce any books of accounts, stock register etc. before the authorities , and his books of accounts were rejected by the AO u/s 145(3) and net profit was computed @8% of gross contract receipts, which was reduced to 6% by Id. CIT(A) .I have observed from the paper book filed by the assessee(placed on record in file) that there was a reply given by assessee to a query raised by the AO during assessment proceedings, that there is a difference in income-tax deducted at source(TDS) by the assessee' Government

CustomerThe Executive Engineer PIU PMGSY ,Swawasi,wherein TDS of Rs. 6,01,965/- is shown to be deducted from the income of the assessee as is reflected as per form no. 26AS , while the assessee has shown TDS of Rs. 3,00,814/-to be deducted by the said customer in the return filed with department w.r.t. his transactions with The Executive Engineer PIU PMGSY ,Swawasi, and thus, there was a difference of Rs. 3,01,151/- in TDS with respect to his contract transactions with The Executive Engineer PIU PMGSY ,Swawasi, , which translated into under reporting of contract income to the tune of Rs. 60,44,848/- and Rs. 90,12,710/- , aggregating to Rs. 1,50,57,558/- earned from The Executive Engineer PIU PMGSY ,Swawasi, which income has prima-facie escaped assessment , and to the query raised by the AO , the assessee simply replied that no such payment was made by The Executive Engineer PIU PMGSY ,Swawasito the assessee firm.Even assuming the contentions of the assessee are correct that no such payments aggregating to the tune of Rs. 1,50,57,558/- was made by The Executive Engineer PIU PMGSY ,Swawasi to the assessee during the year under consideration , it could be closing work-in-progress done by the assessee till year under and hence ought to have been brought to tax, or could be the amount receivable from The Executive Engineer PIU PMGSY ,Swawasi, , which ought to have been offered for tax by the assessee , but at least it ought to have triggered further enquiry by the AO to unravel truth . However, since this matter is not before us for adjudication ,I rest the matter here , but is referred by me in this concurring order to highlight the potential fallouts of framing assessments by simply applying GP/NP ratio and ignoring all other aspects of assessments which ought to have been verified by the AO to ensure compliances with the mandate and provisions of the Income-tax Act, 1961 as the 1961 Act is a code in itself. Further, I have observed that in the instant case, the assessee has raised loans as well granted loans during the year, which it appears from the record that the

authorities below did not verify that mandate of the 1961 Act was fulfilled such as Section 68 for raising loans,as well whether loans which were granted by assessee were granted keeping in view commercial expediency, so on and so forth. Since, the issue is not before us for adjudication as Revenue is not aggrieved by the adoption of GP/NP rate nor the assessee is agitating this issue before us , I rest the matter here.. I am also fully aware that the Revenue is not remedy less as there are several other provisions existing in the 1961 Act, such as Section 148/148A , 263 etc.etc. which Revenue can always invoke in an appropriate case. With these observations and remarks, I rest the matter here.

2. In the result, appeal filed by assessee stand dismissed .I order accordingly.

Order pronounced in the open Court on 07.02.2023 at Varanasi, U.P.

Sd/.
[RAMIT KOCHAR]
ACCOUNTANT MEMBER

DATED: 07/02/2023

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1. Appellant –Mr. Rajendra Prasad Srivastava, Sarfuddinpur, Near Railway Station, Azamgarh-276001, U.P..
2. Respondent – The ACIT, Range, Azamgarh, U.P.
3. The CIT, Azamgarh, U.P.
4. The CIT(A), Gorakhpur,U.P.
5. The Sr.DR–ITAT, Circuit Bench, Varanasi, U.P.
6. The Guard File

By order
Assistant Registrar