

IN THE INCOME TAX APPELLATE TRIBUNAL
“DB” BENCH, AGRA

**BEFORE HON’BLE SHRI SATBEER SINGH GODARA, JM AND
HON’BLE SHRI MANOJ KUMAR AGGARWAL, AM**

**1. आयकरअपीलसं./ ITA No. 362/Agr/2018
(निर्धारणवर्ष / Assessment Year:2012-13)**

And

**2. आयकरअपीलसं./ ITA No. 363/Agr/2018
(निर्धारणवर्ष / Assessment Year:2012-13)**

Shri Hari Mohan 82, Chitrakut Apartments, Near Babu Dargah, Gorwa, Vadodara, Gujrat.	बनाम/ Vs.	DCIT-3, Mathura.
स्थायीलेखासं./जीआइआरसं./PAN/GIR No. AHPPM-5638-N		
(अपीलार्थी/ Appellant)	:	(प्रत्यर्थी / Respondent)

अपीलार्थीकीओरसे/ Appellant by	:	Sh. Anurag Sinha, Adv. – Ld. AR
प्रत्यर्थीकीओरसे/ Respondent by	:	Sh. Shailender Shrivastava – Ld. DR

सुनवाईकीतारीख/ Date of Hearing	:	20-02-2025
घोषणाकीतारीख / Date of Pronouncement	:	22.04.2025

आदेश / O R D E R

Manoj Kumar Aggarwal (Accountant Member)

1. Aforesaid appeals by assessee for Assessment Year (AY) 2012-13 arises out of separate orders of first appellate authority. First, we take up appeal ITA No.363/Agr/2018 which arises out of an order passed by learned Commissioner of Income Tax (Appeals), Agra [CIT(A)] on 28-02-2018 in the matter of an assessment framed by Ld. AO u/s 144 on 04-03-2015. Having heard rival submissions, our adjudication would be as under.

2. From case records, it emerges that the assessee is a civil contractor and it filed returned income of Rs.16.52 Lacs. The assessee

reflected profit of Rs.15.06 Lacs against gross receipts of Rs.301.05 Lacs. In the absence of any satisfactory response from the assessee, Ld.AO estimated income of 12% and made addition of Rs.21.06 Lacs on *best judgement* basis. During first appeal, the assessee tabulated that its Net profit for AYs 2010-11, 2011-12 and 2012-13 was 1.03%, 4.74% and 5% and accordingly, assailed impugned estimation. However, Ld. CIT(A) confirmed the assessment against which the assessee is in further appeal before us.

3. Subsequently, the case of the assessee was reopened by Ld. AO on the ground that actual contractual receipts were Rs.540.32 Lacs. The assessee stated that receipts include closing work-in-progress whereas contractor had shown this amount as work done and deducted TDS on the same. The Ld. AO, in para-6, concurred with the said submissions but again ended up making estimation of 12% on gross receipts of Rs.540.32 Lacs. The Ld. CIT confirmed the same against which the assessee is in further appeal before us vide ITA No.362/Agr/2018.

4. Upon perusal of factual matrix, it could be seen that though the assessee is having high turnover, it has failed to furnish books of accounts before lower authorities in any of the proceedings. It is another fact that the assessee's net profit rate in this year is much better than the profit rate reflected in earlier years. Considering this fact, higher estimation of 12% is not justified since 44AD itself provide for presumptive income of 8%. Considering the facts of the case, we direct Ld. AO to estimate the income @6.5% of turnover as declared by the assessee. The Ld. AO has concurred that assessee's receipts include WIP though TDS on contractual payments had been deducted by

contractor. Therefore, we direct Ld. AO to accept the turnover as declared by the assessee and recompute the income of the assessee.

5. Both the appeals stand partly allowed.

Order pronounced u/r 34(4) of Income Tax (Appellate Tribunal) Rules, 1963.

Sd/-

(SATBEER SINGH GODARA)

न्यायिक सदस्य / JUDICIAL MEMBER

Sd/-

(MANOJ KUMAR AGGARWAL)

लेखा सदस्य / ACCOUNTANT MEMBER

Dated: 22.04.2025

आदेश की प्रतिलिपि अग्रेषित/Copy of the Order forwarded to :

1. अपीलार्थी/Appellant
2. प्रत्यर्थी/Respondent
3. आयकर आयुक्त/CIT
4. विभागीय प्रतिनिधि/DR
5. गार्डफाईल/GF

ASSISTANT REGISTRAR

ITAT AGRA