

**IN THE INCOME TAX APPELLATE TRIBUNAL  
“B” BENCH: BANGALORE**

BEFORE SHRI PRASHANT MAHARISHI, VICE PRESIDENT  
AND  
SHRI KESHAV DUBEY, JUDICIAL MEMBER

ITA No.934/Bang/2025
Assessment year: 2018-19

Mycon Construction Ltd., Industry House, No.45, Fair Field Layout, Racecourse Road, Bengaluru – 560 001. <b>PAN: AAACM 7140E</b>	Vs.	The Deputy Commissioner of Income Tax Circle 4(1)(1), Bengaluru.
APPELLANT		RESPONDENT

Appellant by	:	S/Shri Manohar Gupta & Karthik K., CAs
Respondent by	:	Shri Murali Mohan, CIT(DR)(ITAT), Bengaluru.

Date of hearing	:	02.07.2025
Date of Pronouncement	:	25.08.2025

**ORDER**

*Per Prashant Maharishi, Vice President*

1. This appeal is filed by Mycon Construction Ltd. (the assessee/appellant) for the assessment year 2018-19 against the appellate order passed by the National Faceless Appeal Centre, Delhi (NFAC) [Id. CIT(A)] dated 14.11.2024 wherein the appeal filed by the assessee against the assessment order u/s. 143(3) r.w.s. 144B of the Income-tax Act, 1961 [the Act] passed by the National e-Assessment Centre, Delhi [Id. AO]

dated 15.5.2021 determining total income of the assessee at Rs.9,71,85,060, was dismissed.

2. The assessee is in appeal raising the following grounds:-

- “1. The order of the Learned Commissioner of Income Tax (Appeals) [CIT(A)] dated 14.11.2024 is opposed to law, facts, and principles of natural justice as it was passed without considering the written submissions filed by the Appellant on 28.02.2024, thereby rendering the order defective and liable to be set aside.
2. The Learned CIT(A) erred in dismissing the appeal as not maintainable under section 250 of the Income Tax Act, 1961, on the erroneous ground of non-submission of written submissions, despite the Appellant having submitted a detailed written submission on 28.02.2024 vide acknowledgement number 127290451280224, along with supporting documents, which was not considered.
3. The Learned CIT(A) violated the principles of natural justice by failing to take into account the Appellant's written submission dated 28.02.2024, which addressed all grounds of appeal, as mandated by the Faceless Appeal Scheme, 2020, notified vide Gazette Notification F.No. S.O. 3296 (E) dated 25.09.2020, requiring the appeal unit to consider all relevant material on record.
4. The Learned CIT(A) erred in not addressing the rectification petitions filed by the Appellant, which provided clear evidence of the submission of written submissions on 28.02.2024, supported by acknowledgements from the Income Tax portal, thereby ignoring a mistake apparent on the record under section 154 of the Act.
5. The Learned CIT(A) erred in upholding the Assessing Officer's rejection of the Appellant's books of accounts under section 145(3) of the Act without identifying specific defects in the audited accounts, which were maintained consistently and in compliance with the Companies Act, 2013, and Income

Computation and Disclosure Standards (ICDS), as evidenced by the tax audit report under section 44AB.

6. The Learned CIT(A) failed to consider that the Assessing Officer did not seek details of expenses (Repairs: Rs. 26,55,306; Legal & Professional Charges: Rs. 56,82,596; Miscellaneous Expenses: Rs. 42,11,375) during assessment proceedings, and thus, the rejection of books on this ground was arbitrary and unjustified, contrary to the principles laid down in CIT v. Woodward Governor India Pvt. Ltd. [2009] 312 ITR 254 (SC).
7. The Learned CIT(A) erred in not addressing the Appellant's submission that the Assessing Officer's estimation of net profit at 1% of turnover (Rs. 32,32,42,674) was arbitrary, as the Appellant had explained the reasons for lower net profit (0.80%) due to reduced turnover, high finance costs, and employee benefit expenses, which were not disproved by the Assessing Officer.
8. The Learned CIT(A) failed to consider the Appellant's reconciliation of receipts as per Form 26AS (Rs. 44.62 crores) with revenue receipts in the profit and loss account (Rs. 38.50 crores), submitted on 28.01.2021, which demonstrated no discrepancy, thereby invalidating the Assessing Officer's basis for rejecting the books.
9. The Learned CIT(A) erred in upholding the disallowance of Rs. 27,36,573 (Provident Fund: Rs. 24,67,463; ESIC: Rs. 2,69,110) under section 36(1)(va) of the Act, ignoring judicial precedents in CIT v. Alom Extrusions Ltd. [2009] 319 ITR 306 (SC) and CIT v. Shabari Enterprises [2007] 298 ITR 148 (Karnataka HC), which allow deductions for employee contributions to PF and ESIC if deposited before the due date for filing the return.
10. The Learned CIT(A) failed to address the Appellant's contention that the Assessing Officer exceeded the scope of scrutiny under the e-Assessment Scheme, 2019, by making additions beyond the specified issues (Income from Real Estate Business, Refund Claim, Contract Receipts or Fees, Unsecured Loans).
11. The Appellant craves leave to add, alter, amend, or delete any of the above grounds or urge additional grounds at the time of hearing.

## PRAYER

The Appellant respectfully prays that the Hon'ble Tribunal may be pleased to:

- a) Set aside the order of the Learned CIT(A) dated 14.11.2024 and direct the CIT(A) to pass a fresh appeal order after considering the written submissions filed on 28.02.2024.
  - b) Delete the additions of Rs. 42,14,801 (estimated business income) and Rs. 27,36,573 (disallowance under section 36(1)(va) sustained in the assessment order.
  - c) Grant such other relief as the Hon'ble Tribunal may deem fit and proper in the facts and circumstances of the case.”
3. Briefly stated the facts show that assessee is a limited company engaged in the business of civil and structural contracts, filed its return of income declaring total income of Rs.33,37,160 on 31.10.2018. The case was selected for scrutiny for the reason of low net profit, claim of refund, high ratio of refund to TDS, large increase in unsecured loans and high closing stock.
4. Notice u/s. 143(2) was issued on 23.9.2019 and further notice u/s. 142(1) was issued on 9.12.2019. The assessee was asked the questionnaire for which the return was selected for scrutiny. The assessee submitted the bank statement, P&L account and other documents based on which the AO found that, for earlier year, assessee has shown gross receipt of Rs.38.50 crores and has income of Rs.6,17,00,000 included therein. It was observed that assessee has Gross Profit ratio of 4.28% for this year and 16.5% for earlier years, therefore there is a low Gross Profit. Further Net Profit for the year is 0.66% whereas for FY 2016-17 it was 0.88%. Therefore assessee was

asked to justify the low profitability. The assessee explained that main reason for low profitability is continuous fall in turnover and delay in receipt of payments from clients resulting into tight liquidity consequently resulted into high cost and therefore profit is low.

5. The Id. AO examined the case of the assessee and found that no details and documentary evidence has been furnished to substantiate the claim. Further the miscellaneous income of Rs.42,11,375 are also not substantiated by furnishing the details. Therefore he held that correctness of books of account cannot be relied upon. He invoked the provisions of section 145(3) of the Act and determined the net profit @ 1% on the total gross receipt of Rs.32,32,42,674 and thereafter computed the total income of the assessee at Rs.9,44,48,487 against returned income of Rs.33,37,156 thereby making a total addition of Rs.9,11,11,331. Further disallowance u/s. 36(1)(va) of Rs.27,36,573 was made as assessee has collected PF contribution of employees of Rs.24,67,463 and ESI contribution of Rs.2,69,110 which was not deposited within the due date. Assessment order was passed on 15.5.2021 u/s. 143(3) r.w.s. 144B of the Act.
6. Assessee aggrieved with the same, preferred appeal before the Id. CIT(A). The Id. CIT(A) noted in para 2.2.4 that during the appellate proceedings, the assessee was given sufficient opportunities of being heard to furnish explanation in respect of grounds of appeal, however, there was no response. Thereafter the Id. CIT(A) in para 3.10 has

noted that in absence of any submission, the appeal is dismissed as not maintainable by order dated 14.11.2024.

7. The Id. AR submitted a paperbook along with written submission containing 113 pages. A statement of Gross Profit ratio of the assessee was also submitted. The main contention of the assessee is that the Id. AO has erroneously taken the Net Profit ratio at 10% of the gross receipt instead of 1% for which rectification application was made on 24.1.2022 which is rectified by the AO by reduction of total business income at Rs.42,14,801 and disallowance of Rs.27,36,573 is maintained, resulting into total rectified income assessed at Rs.69,51,374. It was further stated that proceedings before the CIT(A) were wrongly stated by the Id. CIT(A) that assessee has not submitted any submission. On 28.2.2024 assessee has made detailed written submission along with Annexures. In assessment proceedings, The Id. AO did not seek details of expenses. Despite written submission made on 28.2.2024 the appeal of the assessee was dismissed on 14.11.2024 stating that no submissions have been filed. The assessee also made a rectification application to the CIT(A) on 12.12.2024 stating that written submissions already made were not considered, but the CIT(A) rejected the application on 9.1.2025 and therefore there is appeal before us.
8. The assessee submits that there is a violation of principles of natural justice and only prayer is to set aside the order of the CIT(A) and direct him to pass a fresh appellate order.

9. Over and above the assessee submitted detailed reason for fall in the GP stating that the books of accounts of the assessee are audited, supported by necessary vouchers and there is no defect pointed out by the Id. AO. With calling for the details, the AO has rejected the books of account and estimated the profit merely because of the low GP. The Id. AO did not ask for any details of expenses.
10. The Id. DR vehemently supported the order of the Id. lower authorities.
11. We have carefully considered the rival contentions and perused the orders of the Id. lower authorities. We find that after the rectification proceedings before the Id. AO, the total income of the assessee is assessed at Rs.69,51,374 wherein the addition u/s. 36(1)(va) of the Act is Rs.27,36,573 and therefore the difference in income estimated by the AO and offered by the assessee is Rs.42,14,801. Out of above income of Rs.42,14,801 of book results, the assessee has already offered a sum of Rs.33,37,156 in its return of income. Therefore, now before us, two additions survive, one of Rs.8,77,645 on account of book results and Rs.27,36,573 on account of 36(1)(va) disallowance. It is apparent that the Id. CIT(A) has dismissed the appeal of the assessee without considering the written submission made by the assessee which was uploaded on 28.2.2024. Therefore, apparently the Id. CIT(A) is incorrect in stating that assessee has not furnished any evidence and therefore the appeal was dismissed in limine. We find that when the assessee has already furnished the information, the Id. CIT(A) should have decided the appeal on the merits of the case. The CIT(A) is duty

bound to even otherwise decide the appeal of the assessee on its merits. Here the Id. CIT(A) ignored the explanation uploaded by the assessee on 28.2.2024. He went a step ahead and stated that assessee has not filed any information and when he was shown the information by rectification application, he found another excuse not to decide the appeal on the merits. In the present case, books of accounts have been rejected without even calling for them and estimating the NP of the assessee adopting 1% of NP. For 1% of NP determined by the AO, no justification is provided for why the NP is taken at 1% when for the earlier years it was 0.88%. If 0.88% profit is considered as a benchmark by the assessee, it would have been only Rs.28.44 lakhs compared to Rs.32,32,000, this addition would have been merely Rs.3,88,000. But even that cannot be approved in the present case. This is for the reason that if NP is estimated, all other disallowance offered by the assessee u/s. 40A(3) of Rs.2,55,816, prior period expenses of Rs.11,01,073 could not have been made separately. It is a fact that assessee itself offered these disallowances. In view of the above facts, we find that the Id. AO has made the addition without application of mind and the Id. CIT(A) has decided the appeal without looking at even the basic facts and written submissions.

12. With respect to the other addition u/s. 36(1)(va) of the Act, it is payment that assessee has made after collection from employees, but has deposited late which is beyond due date. The assessee has collected PF of Rs.24,67,463 & ESIC of Rs.2,69,110 which is disallowable in view of the provisions of section 36(1)(va) of the Act.

No infirmity is pointed out before us with respect to the above disallowance. This is challenged by the assessee as per grounds of appeal. In view of the decision of the Hon'ble Supreme Court in the case of Checkmate Services Pvt. Ltd., such disallowance is in accordance with law. Hence ground No.9 of the appeal is dismissed.

13. No fruitful purposes would serve if the matter is restored before the Id. CIT (A) as he did not consider the submission filed as well as the assessment order. Such an action of the Id. CIT (A) is unwarranted and not in accordance with law. Therefore we restore the matter back to the file of the Id. AO.
14. With respect to other grounds of appeal Nos.1 to 8 & 10, these are restored back to the file of the Id. AO with a direction to decide the issue in accordance with law after giving opportunity of hearing to the assessee and by giving liberty to make further submissions or production of evidences. The assessee is also directed to substantiate its books of accounts before him.
15. In the result, the appeal of the assessee is partly allowed.

Pronounced in the open court on this 25<sup>th</sup> day of August, 2025.

Sd/-

(KESHAV DUBEY)  
JUDICIAL MEMBER

Bangalore,  
Dated, the 25<sup>th</sup> August 2025.

*Desai S Murthy /*

Sd/-

(PRASHANT MAHARISHI)  
VICE PRESIDENT

Copy to:

1. Appellant 2. Respondent  
5. DR, ITAT, Bangalore.

3. Pr. CIT

4. CIT(A)

By order

Assistant Registrar  
ITAT, Bangalore.