

IN THE INCOME TAX APPELLATE TRIBUNAL,  
JAIPUR BENCHES, "A" JAIPUR

BEFORE: DR. MITHA LAL MEENA, ACCOONTANAT M EMEBER  
AND DR. S. SEETHALAKSHMI, JUDICIAL MEMEBER

ITA Nos. 560/JP/2025  
Assessment Years: 2018-19

FAUJDAR CONSTRUCTION COMPANY A-60, KRISHNA NAGAR, NAGLA LODHA, BHARATPUR- 321001	Vs.	ITO, Ward-1, Bharatpur
PAN/GIR No.: AABFF4024A		
Appellant		Respondent

Assessee by: SHRI DHEERAJ BORAD, C.A.  
Revenue by: MRS. ANITA RINESH, JCIT-DR

Date of Hearing : 17/07/2025  
Date of Pronouncement: 11/09/2025

**ORDER**

**Per: Dr. M. L. Meena, AM:**

This appeal by assessee is directed against the order of the National Faceless Appeal Centre, Delhi [hereinafter referred to as the NFAC/CIT(A)] dated 27.03.2025 for the assessment year 2018-19 challenging therein partly confirmation of the Estimated Addition made by the AO by applying GP rate at the rate of 8.5% in the case of a civil contractor.

2. The facts in brief are that the assessee is engaged in the business of civil construction. During the course of assessment, the Assessing Officer rejected the books of accounts under section 145(3) of the Act and proceeded

to estimate the net profit at 8.5% of gross receipts, resulting in an addition of ₹ 51,23,353/-. The AO justified the rejection of books by observation alleged deficiencies in vouchers and non-production of stock registers site-wise for verifiability of certain expenses. However, the AO did not refer to any specific defects that rendered the books unreliable. Furthermore, the AO failed to consider that in the year under appeal about 63% of gross road construction contract business receipts have arisen to the assessee from sub-contract/joint venture road construction contract business receipts and the balance turnover of about Rs. 13 Crores only was by way of direct contract business receipts and contract turn over is increased by 3.8 % over the immediately preceding year.

3. Being aggrieved, assessee went in appeal before the Ld. CIT (A) who has granted relief of 0.5% in the net profit rate and confirmed the NP rate applicability at 8% by under the provisions of 44AD of the Act. The NFAC concluded that considering the facts to render justice to the assessee a relief of 0.5% is given amounting to Rs.17,47,762/-

4. The Ld. AR for the assessee submitted that the Ld. NFAC was not justified in confirming the finding of the AO where he invoked provisions of section 145(3), rejected books of account, applied higher net profit rate of 8.5 percent, although the Ld. CIT(A) reduced it to 8 percent) and confirmed heavy additions to the total income of the assessee. In support of the net profit rate

declared by the assessee in its return of income and the Ld. AR made effective arguments with the support of brief synopsis which reads as under:

1. The assessee has regularly kept and maintained books of accounts consisting of Cash Book, ledger, bills and vouchers and other relevant records.
2. That the assessee has kept and maintained full receipts and vouchers for payments made towards salary, labour, wages and other direct and indirect expenses and there is no leakage of any kind at any stage so much so there is a full proof record maintained at the end of the assessee.
3. All the books of accounts are duly audited by a Chartered Accountant and there is no adverse observation of the auditor at any stage.
4. There is no change in the method of accounting nor in method of valuation of closing stock.
5. That each and every entry in the books of accounts is supported by bills & vouchers.
6. It filed bank statement, details of work done during the previous year relevant to A. Y. 2018-19, details of interest paid to Tata motors toward finance expenses and other requisite information vide letters of replies filed from time to time before the AO.
7. The assessee also filed with the AO details of bank accounts. It also filed head wise chart of gross turnover, depreciation, interest to partners, remuneration to partners, net profit, total profit and NP ratio for the year under appeal and immediately preceding five financial years. The assessee also filed bank statements.
8. In regard to non-maintenance of item wise and site wise stock register on day to day basis it is submitted as under:
  - i) The assessee is engaged in the contract business of road construction work and this road construction activity is simultaneously carried on at different sites and different places and it becomes impracticable to daily take stock of goods at every site where work is daily and regularly carried on because material is often shifted from one site to other as per need arises at a point of time and in such a state of affairs it becomes impracticable and rather impossible to maintain site wise and item wise stock register.
  - ii) The judicial consensus in this regard is that the absence of a variety wise or regular stock register is not material on the strength of which a finding under the first proviso could be based and assessment there under could be made.
  - iii) As regards absence of stock register the assessee refers to and relies upon the leading judgment of Pandit Bros. v/s CIT reported in 26 IT R 159 and Chhabildas v/s CIT 59 IT R 733 (Supreme Court) wherein it is held that in the case of an assessee who maintains regular account books which are not found to be incorrect, the mere fact that a stock register is not maintained and book profit is considered by the AO as low may provoke an enquiry but they may not be sufficient to justify action u/s 145.
  - iv) That payment vouchers are duly prepared by the appellant and the same were duly produced before the learned AO during the course of assessment proceedings.

v) In support of payment of salary, labour charges, wages the assessee has duly maintained relevant record together with supporting bills and vouchers and whatever record was requisitioned by the Ld. AO the same were filed including copies of purchase bills and expenses vouchers.

vi) Both the lower authorities failed to appreciate that road construction is got done by Govt./SemiGovt/autonomous bodies after inviting tenders etc. All the contract payments are made by these institutions through banking channels and full records in this regards have been kept and maintained by the assessee and whatever record was requisitioned by the Ld. AO the same were filed including copies of purchase bills and expenses vouchers,

### SUBMISSIONS IN REGARD TO GROUND OF APPEAL NO. 2

In this ground of appeal the appellant has challenged sustenance by the Id. CIT(A) of application of provisions of section 145(3), applying higher net profit rate of 8% (as against 8.5% applied by the A()). estimating net income at Rs. 1,88,95,243/- as against income returned at Rs. 1,37,71,890/- and consequently sustaining addition of Rs. 51,23,353/-. In support of this ground of appeal it is submitted as under:-

1. The lower authorities ignored a positive factor in favor of genuineness of assessee's books of accounts which is that as against contract receipts of Rs.8,89,67,505/- in immediately preceding previous year relevant to A. Y. 2017-18, the assessee's contract receipts in the previous year relevant to year under appeal i.e. A. Y. 2018-19 jumped to a very high figure of contract receipts of 34,47,70,162/- which is more than 3.8 times higher as compared to the contract receipts in the immediately preceding previous year.

2. That the Ld. CIT (A) failed to appreciate that in the year under appeal about 63% of gross road construction contract business receipts have arisen to the assessee from sub-contract/joint venture road construction contract business receipts and the balance turnover of about Rs. 13 Crores only was by way of direct contract business receipts.

3. That it is respectfully submitted that the assessee is a road construction contractor and its gross receipts are through banking channel and accordingly unquestionable and as such there is no leakage at any stage in gross business receipts.

4. That the burden of proof of not accepting the apparent as real lies on the Id. A.O. but he has failed to discharge this burden of proof. So much so the Id. A.O. has not given a single instance of unaccounted purchases nor of unaccounted receipts nor of excess payment of labour and other incidental expenses nor inflation of purchases.

5. That there is not an iota of evidence with the Id. A.O. which goes to prove that the receipts are unverifiable.

6. The lower authorities did not find any defects in the books of accounts and trading account, P&L account and the financial statements and failed to disprove the purchases and/or incidental expenses and the receipts. Moreover the addition made by the AO and sustained by the CIT(A) is based on surmises, conjectures and on estimate basis. Moreover additions made by the AO and sustained by the Id. CIT(A) are not based on any positive material/evidence. Higher courts have more than once held that suspicion howsoever strong it may be, it should not be decided against the assessee without disproving the purchases, the incidental expenses and the receipts with tangible evidence. In above regard assessee craves leave to refer to and rely upon various judicial pronouncements given in the annexed list.

7. That there is a consensus of almost all the high courts including the jurisdictional High court, namely, the Honorable Rajasthan High Court which have more than once held that when books of accounts are rejected on account of incomplete payment vouchers etc then addition should be restricted to average GP/NP rate on the basis of past history of minimum three years. In regard to case under appeal, the appellant assessee is enclosing herewith N.P. chart of immediately preceding live financial years. From the perusal of this NP chart, the hon'ble Bench will kindly find that in this case of appellant assessee who is a Road construction contractor, average NP Ratio of immediately preceding five previous years i.e. in relation to financial years relevant to assessment years 2013-14, 2014-15, 2015-16, 2016-17 and 2017-18 comes to 4.96%. As against this 4.96% average NP Rate of immediately preceding five assessment years, the NP Ratio in the year under appeal i.e. P. Y. ended on 31/03/2018 (relevant to subject assessment year i.e. AY 2018-19) comes to 6.82%, which is higher by 1.86% as compared to average NP Rate of last five years.

8. That the learned CIT[A] failed to appreciate that the Hon'ble Rajasthan High Court in last 7-8 years have more than once held that while applying GP/NP rate for estimating the gross profits/net profits the average gross profit/net profit rate of the assessee in past years should be taken into account.

9. That against some adverse observations made by the Id. AO in the assessment order inter-alia concluding that excess booking of expenses can't be denied and ruled out and consequentially rejecting books of accounts and applying a net profit rate of 8.50% on total business receipts of the assessee on presumptive basis, subject to allowability of depreciation and partner's interest, the appellant assessee craves leave to refer and rely upon following judgments wherein it is held by the Hon'ble Supreme Court and Privy Council that while making an assessment the A.O. is not entitled to make a pure guess without any evidence or without any material. It further held that there must be something more than bare suspicion to support an assessment:

- a) Dhakeswari vs. CIT 26 (TR 775, 782(SC))
- b) Dhirajlal Girdhari Lal Vs CIT 26 ITR 736 (SC)

- c) CIT Vs Daulatram Rawat mull 87 ITR 349 (SC)
- d) Omar salay Mohammed vs CIT 37 ITR 1 5 1 (SC)
- e) CIT vs. Kameshwar I ITR 94, 106(PC)

10. Besides the appellant craves leave to refer to and rely upon various judicial pronouncements in addition to what is mentioned above in these written submission and the list of such judicial pronouncements inter-alia containing brief narration and citations is annexed with these written submissions, which kindly find in order.

### SUBMISSIONS IN REGARD TO GROUND OF APPEAL NO. 3

This ground of appeal is against not taking into consideration by the lower authorities a peculiar fact of the assessee's business which is that a substantial road construction contract business receipts included receipts of sub-contract/joint venture road construction contract receipts. In support of this, it is submitted as under:

- 1 . That the Id. CIT(A) failed to appreciate that a substantial road construction contract business receipts included receipts of sub-contract/joint venture road construction contract receipts,
  2. The lower authorities failed to appreciate that a slight fall in net profit rate is attributed mainly to the fact that out of total turnover of Rs. 34,95,53,037/-, about 63 percent turnover amounting to over Rs. 22 Crores was from sub-contract/joint venture road construction contract business receipts and the balance turnover of about Rs. 13 Crores only was by way of direct contract business receipts.
4. The Ld. Addl. CIT (DR) on the other hand vehemently supported the impugned order by referring the provisions of section 145 (3), 44AD and best judgement assessment. However, She failed to rebut the contentions of the AR or distinguish the cases relied by the appellant.
5. Having heard both the sides and perusal of material, we find that admittedly, assessee is a civil contractor engaged in the business of road

construction where the contracts receipts received from the government are directly credited to the bank account of the assessee. It is seen that the assessee had furnished on the e-filing portal of the I.T. Department, the requisite information from time to time along with supporting documents including copy of ledger of accounts of receipts and expenditure, copy of purchase bills/vouchers, Tax audit report and financial statements with all annexure and schedules, comparative chart of N.P. ratio, details of awarder wise turnover, list of sub-contractors. The appellant had also filed its bank statement, stock register, details of work done during the previous year relevant to Assessment Year 2018-19, details of interest paid to Tata motors towards finance expenses and other requisite information as required by the authorities below except the site-wise stock register.

6. From the record, it is evident that the Id. CIT[A] has granted part relief by way of reducing profit rate of 8.5 percent to 8.0 percent though upheld rejection of books of account and consequential addition of Rs.51,23,353/- against the upholding of rejection of books of accounts without appreciating the facts of the case and considering the past history of the assessee as per the NP Chart for the year under consideration which reads as under:

S. No	Particulars	F. Y. 201718 i.e. A.Y. 2018-19  year under a eal	F.Y. 201617 i.e.A.Y. 2017-18	F.Y. 2015- 2016-17 (FRS.)	F. Y. 2014- 15i.e. A.Y. 2015-16	F Y. 2013- 14i.e. A.Y. 2014-15	F. Y. 20121 3,A.Y. i.e. 2013-14
	Gross Business Receipts	349553037	90762791	135420628	68176732	84910429	27612366
	Gross Contract receipts	344770162	88967505	135013876	67787776	84506033	27523830
	Interest on FDRs	1976993	1158108	406752	388956	404396	88536
	Rebate and Discount	932677	173235				
	VAT Refund	873966	441137				
	Income from JV	999329	22806				
2	Net Profit as per P&L account after deducting interest to partners and depreciation	14771129	1597158	2322560	371662	744970	102550
3	Interest to Partners	5609754	2438713	1879946	1921427	1317242	701386
4	Depreciation	3459248	2981621	1803657	1112667	832902	365678
5	Total profit from business (Net profit as per P&L account + Deprecation +Interest to partners)	23840131	7017492	6006163	3405756	2895114	1169614
6	N.P. Ratio	6.82%	7.73%	4.44%	5.00%	3.41%	4.24%

7. We find that the average N.P. ratio of immediately preceding five assessment years comes to 4.96% as against the N.P. Ratio in the year under appeal shown by the appellant as high as 6.82%. However, considering the discrepancy as pointed out by the AO that the assessee failed to produce the site-wise stock register, in our view, the past history of the assessee is best

guide to arrive at the correct net profit rate applicable in the case of a civil contractor. Therefore, we are of the considered view that in the given set of the of the present case, it would be just fair and reasonable to apply a N.P. Rate of 7.0% in the interest of justice.

8. Accordingly, we reduce the Net Profit rate of 8.0 percent as confirmed by the Ld. NFAC to 7.0% and thus, AO is directed to apply NP rate of 7% in consequential relief.

9. In the result, the appeal of the assessee is partly allowed.

Order pronounced as on 11/09/2025 in accordance with rule 34(4) of Income Tax (Appellate Tribunal) Rules, 1963.

Sd/-

Sd/-

(Dr. S. Seethalakshmi)  
Judicial Member

(Dr. Mitha Lal. Meena)  
Accountant Member

DOC\*Jaipur

Dated:- 11/09/2025

Copy of the order forwarded to:

- (1) The Appellant:
- (2) The Respondent:
- (3) The Id. CIT
- (4) The Id. CIT(A)
- (5) The DR, I.T.A.T., Jaipur
- (6) Guard File

By Order  
Asstt. Registrar  
ITAT, Jaipur Bench, Jaipur