

आयकर अपीलीय अधिकरण न्यायपीठ "एक-सदस्य" मामला रायपुर में

**IN THE INCOME TAX APPELLATE TRIBUNAL
RAIPUR BENCH "SMC", RAIPUR**

**श्री पार्थ सारथी चौधरी, न्यायिक सदस्य के समक्ष
BEFORE SHRI PARTHA SARATHI CHAUDHURY, JUDICIAL MEMBER**

आयकर अपील सं./ITA No.662/RPR/2025

निर्धारण वर्ष / Assessment Year : 2017-18

Shri Vardhman Sthanakwasi Shraman
Sanghiya Sharavk Sangh Trust
Pravin Kumar Jain,
Bandha Talab Ganjpara,
Durg-491 001 (C.G.)
PAN: AALTS4890F

.....अपीलार्थी / Appellant

बनाम / V/s.

The Income Tax Officer-1(1),
Bhilai (C.G.)

.....प्रत्यर्थी / Respondent

Assessee by : Shri Sangeet Bakliwal, CA
Revenue by : Dr. Priyanka Patel, Sr. DR

सुनवाई की तारीख / Date of Hearing : 24.11.2025

घोषणा की तारीख / Date of Pronouncement : 25.11.2025

आदेश / ORDER

PER PARTHA SARATHI CHAUDHURY, JM

The present appeal preferred by the assessee emanates from the order of the Ld.CIT(Appeals)/NFAC, Delhi dated 28.08.2025 for the assessment year 2017-18 as per the following grounds of appeal:

“(1) That on the facts and circumstances of the case, the Learned C.I.T. (Appeal) has dismissed the appeal without considering the submissions made by Appellant. The same order is quite unjustified and bad, both in law and facts. That on the facts and circumstances of the case, the proceeding started and order passed under section 250 dt.28-08-2025 may kindly be declared illegal and bad, both in law and facts.

(2) That on the facts and circumstances of the case, the Income declared of Rs.72,160/- in the I.T.R. should be accepted in toto.

(3) That on the facts and circumstances of the case an addition as business Income of Rs.25,97,230/- is quite illegal and bad, both in law and facts. The same should be deleted from the Order u/s.250.

(4) That on the facts and circumstances of the case, the provision of Section 44AD of the Income Tax Act 1961 is not at all applicable to the Appellant.

(5) That on the facts and circumstances of the case, the business income determined on presumptive basis @ 8% of gross receipts is quite illegal and bad, both in law and facts. The provision of presumptive income is not at all applicable to the Appellant.

(6) That on the facts and circumstances of the case, the Audit Report u/s.44AB of the Income Tax Act, 1961 and computation of Income should be accepted in toto.

(7) That the Order passed u/s.143(3) r.w.s 263 is prepared in a hurry without considering all the facts and submissions made by the Assessee.

(8) That the reasons provided for dismissing the Appeal are grossly incorrect and deserves to be set aside.

(9) The sales consideration shown as constant at Rs.12.87 crore across two years is incorrect and contrary to law and fact. This context is unjustified, as the books of account are duly audited and no figure therein can be treated as theoretical.

(10) That no working for the closing stock has been provided. The observation is misplaced and bad, as the relevant closing stock has been duly accounted for in the audited financial statements and reflected in the audit report.

(11) That the estimated cost has remained static at Rs.14.40 crore, as the Appellant has already disclosed that the Trust has been created for non-profit and religious purposes. Any additional expenses, if incurred, are to be borne by the members and not by the Trust.

(12) That the observation regarding the absence of an independent audit confirmation of PCM is incorrect and untenable in law and on facts. A detailed working cannot be provided in the audit report, as the same primarily comprises the Balance Sheet, Profit and Loss Account, and Notes to Accounts. The relevant point has already been duly incorporated therein.

(13) That the observation stating that the estimated cost allocation is flawed is incorrect and untenable in law and on facts. The cost allocation in this case cannot be treated as purely proportional, as the Appellant is not engaged in the real estate business. Trust was formed solely for religious and non-profit purposes and not for any commercial or business activity.

(14) That on the facts and circumstances of the case, C.I.T. (Appeal) has confirmed the income of Rs.25,97,230/- is quite illegal and bad both in law and facts.

(15) That on the facts and circumstances of the case the penalty proceeding initiated u/s 270A is quite illegal and bad, both in Law and Facts.

(16) Any other grounds of appeal may be raised at the time of hearing of the appeal with the permission of Hon'ble Bench."

2. At the time of hearing, the Ld. Counsel for the assessee submitted that this society has been assessed all through out as 'AOP' and that they have never applied for any exemption before the Department. The said society has been formed to provide housing facility for the Jain community. It was further submitted that they are in appeal before the Bench against the consequential order passed by the A.O as affirmed by the Ld. CIT(Appeals)/NFAC u/s.250 of the Income Tax Act, 1961 (for short 'the Act') which emanated from passing of order u/s.263 of the Act originally against the original assessment in the case of the assessee. The Ld. Counsel for the assessee even without going into the merits of the matter submitted that when order u/s.263 of the Act was passed, they were aggrieved, however, due to COVID Pandemic period, they could not file appeal before the Tribunal against the said order. It was submitted that during the consequential assessment proceedings, they had prayed before the A.O to consider the documents and evidence already furnished before the department at the time of original assessment and further, if any other documents are required that may also be sought for from the assessee. In this regard, following submissions had been made by the Ld. Counsel for the assessee:

“G. Ground of Appeal: 7:-

That the order passed u/s.143(3) r.w.s. 263 is prepared in a hurry without considering all the facts and submissions made by the assessee.

24. In reference to the same, it is very much important to highlight that the assessment proceedings were carried out within a short span of 1 month.

25. It is important to note that the order of PCIT to reopen the case was passed on 24.03.2022. After the receipt of this order, we filed a detailed submission to the local ITO on 20.06.2022 to initiate the proceedings. But the local ITO has not taken any action and asked us to wait for online notice. To our respite, the first notice for assessment was issued on 20.02.2023. Thus, the first notice for assessment was issued after a span of one year from the date of order of Ld.PCIT. Further, without granting any reasonable time, back to back notices were issued to comply with the reassessment proceedings. This is grossly incorrect on the part of Department. As the time was running out for the A.O to complete the assessment the duration of notice and time to comply was very short. This fact has been brought on record in Page 2 of the impugned order.”

3. That even before the A.O at the time of consequential assessment proceedings and the order passed by the A.O u/s.143(3) r.w.s. 263/144B of the Act, dated 29.03.2023, the assessee has already brought to the notice of the department vide following submission which is part of the assessment order itself:

“(iii). The Noticee would further like to state that under this new scheme scanning of such large number of documents is time consuming as well as impractical. We are stating so because all the records are already forming part of previous assessment papers. In furtherance to above, we would like to state that the notices have been issued in such span of time without giving proper time to file the reply. Whereas the Noticee has filed its original reply on 20.06.2022 before the Ld. ITO. At that point of time, we were asked to wait for online notices. Thus your good office took almost 8 months to initiate the proceedings and we are being given only three or four days to file the reply. That too the list of documents asked for are huge in numbers and cannot be scanned immediately. We would further like to bring to your kind attention that uploading of documents on the portal has a

limit. The system do not accept heavy files. Whereas the scanned documents are very heavy in capacity. Further if we try to reduce the size of file than the documents become blurred and all our efforts go in vain. We sincerely request all this issues are hampering the smooth transition from face to faceless assessment. So we had requested your good office to kindly go through the physical submission made by us at time of original assessment and thereby ask for only such documents which are not forming part of original submission. This could have saved time and efforts at both the ends.

(iv) That the Noticee would like to bring kind attention of your good office towards Order u/s 263 dated 24.03.2022 wherein the last line of Para 3(1) states that the ITR-7 filed by us should have been treated as "Invalid Return". In this regard, NAIJ would like to state that on the basis of our return, the Ld. ITO has done the assessment under section 143(3). Further ITO exemption has taken this into cognizance and transferred the case from Raipur to Bhilai based on the nature of transaction. At that point of time none of the Authority has initiated the action to treat the return as invalid. We would further like to state that once we have received PAN in the status of Trust, you! IT Portal automatically takes our return in Form -ITR 7. So we had not made any mistake at our end. We would further like to state that we had not claimed any benefit under Section 12A, rather we have declared our income as business and also filed Audit Report u/s. 44AB. We request your good office to kindly consider all the facts and decide the matter.”

However, the A.O observed and held as follows:

“As per Section 43CB of the Act, the profits and gains arising from construction contract or a contract for providing services shall be determined on the basis of percentage completion method and the same is mandatory for revenue recognition w.e.f. 1.4.2017 i.e. assessment year 2017-18.

Since the assessee has not submitted the computation of profit as per percentage computation method with supporting documents in spite of repeated opportunities provided to him through notices u/s 142(1) and show cause notices, I have no other way but to compute the profit as under:

The section 44AD of the Income Tax Act, 1961 stipulates 8%

of gross receipt received by the assessee as the Profits and gains of business on presumptive basis. Considering this rate I assume the NP rate in the case of the assessee at 8% is quite reasonable keeping in mind the nature of his business.

The assessee has shown total sales of Rs.2,20,70,806/- and closing stock of Rs.1,12,96,563/- during the FY 2016-17. Hence 8 percent of total sales and closing stock i.e. Rs. 26,69,390/- [8% of (22070806+11296563)] is treated as business income of assessee. The assessee has shown total income of Rs.72160/-. Hence balance amount of Rs.2597230/- is added back to the total income of the assessee as business income.”

4. That in consequence thereof, the First Appellate Authority had held and observed as follows:

“On verification of the appellants working the following is seen

1. Estimated cost remains static at Rs14.40 crore (2015-16 & 2016-17). Normally in any real estate/construction project, estimated cost undergoes revisions as project progresses (due to escalation in material, labour, statutory levies, etc.) ICDS-III requires revised estimates of total contract cost to be used for determining stage of completion. Here, the assessee has kept the "Estimated Cost of Project" constant at Rs14.40 crore for both years, which is unrealistic and contrary to ICDS requirements.

2. For F.Y.2015-16, they show cost incurred of Rs.8.20 crore (56.96%). Applying this percentage to consideration of Rs12.87 crore gives Rs.7.33 crore as revenue. For F.Y. 2016-17, they show cost incurred of Rs10.67 crore (74.10%), which gives Rs9.54 crore cumulative revenue. Deducting earlier year's revenue gives Rs2.20 crore. However, there is no reconciliation with the actual revenue credited in P&L for 2015-16 & 2016-17. They have only given "theoretical" figures.

3. Sale consideration shown is constant at Rs12.87 crore across two years. e., no new agreements in the entire year. They are recognizing additional revenue without fresh agreements. This undermines reliability of figures.

4. No working for Closing Stock (unsold area). Under PCM, unsold inventory must be carried at cost (work-in-progress). In their working, there is no mention of closing WIP/ inventory. They only

compute recognized revenue but not corresponding stock. This leads to understatement of taxable income.

5. **Estimated cost allocation flawed** "Estimated Cost of Area sold" is computed by proportion (C/B x D). But cost allocation in real estate projects is not purely proportional-land cost, development charges, common amenities, etc. must be allocated separately. Without detailed working, this proportionate method is not acceptable.

6. **No independent audit confirmation of PCM.** Merely enclosing audited balance sheet does not prove that revenue recognition under POCM has been followed. ICDS-III requires disclosure of: Method used to determine stage of completion, Amount of contract revenue recognized & Contract costs incurred and recognized profit. None of these disclosures are found in their report.

The workings furnished are self-serving, static, and contrary to ICDS-III requirements, as the estimated project cost and sales consideration have been kept constant year after year, and no reconciliation with books of account or closing WIP has been provided. Hence, the same cannot be accepted as reliable evidence of compliance with Section 43CB.

The settled position of law is that when books/audit notes do not demonstrate actual computation under PCM, the AO can estimate income on reasonable basis. Thus, the AO's estimation cannot be faulted. Though Sec. 44AD is not directly applicable, AO has merely taken the 8% rate as a benchmark, which is not unreasonable in a construction line of activity.

Accordingly, the addition of Rs.25,97,230/- is sustained. These grounds are dismissed.

8. In the result, the appeal is hereby DISMISSED."

5. Be that as it may, it was contended by the Ld. Counsel for the assessee by demonstrating that they have always requested the department to consider the documents and evidences filed before coming to a particular conclusion. Even the Ld. Sr. DR was not able to point out whether the submissions as regards the consequential assessment order,

whether all the documents filed were considered by the Ld. CIT(Appeals)/NFAC or not before arriving at its findings. The fact of the matter remains that there is no reference in the impugned order by the Ld. CIT(Appeals)/NFAC regarding evidences which were furnished and whether they were considered. The evidences were regarded as self-serving documents without actually bringing on record any specific enquiry and reasoning in this regard. The principles of natural justice demands that the quasi-judicial authority has to consider the evidences furnished by the assessee and come out with a speaking order. In view thereof, without even going into the merits of the matter, as per aforesaid examination, the order of the Ld.CIT(Appeals)/NFAC is set-aside and the matter is remanded back to its file for denovo adjudication as per law. This being final opportunity, the assessee should contest and comply with all the hearing notices before the Ld. CIT(Appeals)/NFAC.

6. As per the above terms, grounds of appeal raised by the assessee stands allowed for statistical purposes.

7. In the result, appeal of the assessee is allowed for statistical purposes.

Order pronounced in open court on 25th day of November, 2025.

Sd/-
(PARTHA SARATHI CHAUDHURY)
न्यायिक सदस्य/JUDICIAL MEMBER

रायपुर / Raipur; दिनांक / Dated : 25th November, 2025.

SB, Sr. PS

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

1. अपीलार्थी / The Appellant.
2. प्रत्यर्थी / The Respondent.
3. The Pr. CIT-1, Raipur (C.G.)
4. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, "एक-सदस्य" बेंच,
रायपुर / DR, ITAT, "SMC" Bench, Raipur.
5. गार्ड फ़ाइल / Guard File.

आदेशानुसार / BY ORDER,

// True Copy //

Senior Private Secretary
आयकर अपीलीय अधिकरण, रायपुर / ITAT, Raipur