

**IN THE INCOME TAX APPELLATE TRIBUNAL
'A' BENCH : BANGALORE**

**BEFORE SHRI WASEEM AHMED, ACCOUNTANT MEMBER
AND
SHRI SOUNDARARAJAN K., JUDICIAL MEMBER**

ITA Nos. 863 & 864/Bang/2025
Assessment Years : 2019-20 & 2020-21

Shri Gopal Anil Kumar, No. 366, 9 th Cross, BDA LYT, Girinagar 2 nd Phase, BSK 3 rd Stage, Girinagar S.O., Bangalore South, Bangalore – 560 085. PAN: ASNPA4817C	Vs.	The Deputy Commissioner of Income Tax, Central Circle – 1(3), Bangalore.
APPELLANT		RESPONDENT

Assessee by	:	Ms. Pooja Maru, CA
Revenue by	:	Shri Balusamy N, JCIT-DR

Date of Hearing	:	15-10-2025
Date of Pronouncement	:	09-01-2026

ORDER

PER SOUNDARARAJAN K., JUDICIAL MEMBER

These are the appeals filed by the assessee challenging the common order of the Ld.CIT(A)-11, Bangalore dated 10/02/2025 in respect of the A.Ys. 2019-20 and 2020-21. The issues involved in these appeals are not common and therefore each appeal is decided separately.

2. First we will take up the appeal relating to A.Y. 2019-20 and the grounds raised by the assessee are as follows:

“1. The learned CIT(A) erred in upholding the impugned assessment order, which is bad in law and liable to be quashed on the following grounds:

- a) Lack of jurisdiction.*
- b) Erroneous assumption of jurisdiction.*
- c) Failure to comply with the principles of natural justice.*

2. The learned CIT(A) failed to appreciate that the assessment order is opposed to the law, equity, weight of evidence, and the facts and circumstances of the case.

3. The learned CIT(A) erred in confirming the addition of INR 5,27,000/- under section 69A without considering that all withdrawals were duly recorded in the books of account maintained by the Appellant. The prerequisites for invoking section 69A were not met, and hence, the provision was erroneously applied by the AO.

4. The learned CIT(A) failed to consider that the payments were made from cash savings and not through a banking channel, as the cheque was not encashed by the seller for reasons beyond the Appellant's control.

5. The learned CIT(A) erred in upholding the addition under section 69A despite the Appellant providing clear and unambiguous explanations regarding the source of funds, which were from accumulated savings over the years.

6. The learned CIT(A) ignored the explanation, documentary proof, and confirmations submitted by the Appellant during the assessment proceedings.

7. The learned CIT(A) erred in disregarding the valid evidence submitted by the Appellant, which clearly established the legitimacy of the funds.

8. The learned CIT(A) failed to recognize that the assessment was concluded in a mechanical manner, without affording the Appellant proper opportunity to explain discrepancies. The proceedings were completed merely as a formality without adequate time being provided for a fair hearing.

9. The additions made by the AO and confirmed by the CIT(A) are unjustified and against the principles of natural justice.

It is respectfully submitted that we may be permitted to add, delete, and/or put forward any other grounds and facts of appeal and other related points at the time of the hearing.”

3. The brief facts of the case are that the assessee is a civil contractor and he filed his return of income on 28/01/2020. The return was processed and an intimation u/s. 143(1) was issued on 21/02/2020. There was a search and survey action conducted at the residence and office premises of the assessee on 02/12/2021. The AO issued a notice u/s. 148 for which the assessee filed his reply and requested the AO to treat the return filed u/s. 139 as the return filed for the notice u/s. 148 of the Act. Thereafter notice u/s. 143(2) was issued and notice u/s. 142(1) was also issued. The AO after considering the various details furnished by the assessee had finally issued a show cause notice on 16/02/2024 in which the AO had sought for the source for the cash payments made to the seller of the property. The assessee submitted his reply and stated that the property has been purchased on payment of Rs. 4,26,000/- by cash. The AO considering the said reply, had alleged that the total cash paid by the assessee was Rs. 5,26,000/- and sought for the details. The assessee again filed his reply and stated that the sale consideration was Rs. 4,26,000/- which was paid out of his savings and drawings on various dates. The assessee also furnished the ledger account in respect of the said plot purchased by him. The AO again sought for the details of the drawings made during the year otherwise the AO proposed to treat the said payments as unexplained investment u/s. 69A of the Act. Again the assessee submitted his reply and explained that the sale consideration was Rs. 4,26,000/- and stamp duty charges was of Rs. 28,885,- and other incidental expenses were Rs. 72,115/- totally the cash payments made in respect of the said property was Rs. 5,26,000/-. The AO had not accepted the said explanation on the ground that the cash book does not reflect the cash payments and also copy of the drawings account ledger was not produced and confirmed the addition made u/s. 69A of the Act. As against the said order, the assessee filed an appeal before the Ld.CIT(A) and contended that the assessee had explained the source for the cash and therefore the addition made u/s. 69A

is not correct since the cash payments were made out of the drawings. The assessee also submitted the details of the drawings during the year. The Ld.CIT(A) had confirmed the additions since the cash book does not contain the cash transactions.

4. As against the said order, the present appeal has been filed before this Tribunal.

5. At the time of hearing, the Ld.AR submitted that the AO as well as the Ld.CIT(A) had not properly appreciated the ledger extract of the property purchased by him and also failed to consider the details of the drawings made during the year and therefore the addition confirmed by the Ld.CIT(A) is not correct. The Ld.AR further submitted that the drawings account as well as the ledger of the drawings account, now filed would indicate that there are cash withdrawals on various dates which were used for purchasing the said property and therefore the assessee had properly explained the source for the said purchases. The assessee also filed a paper book enclosing the written submissions as well as the audited financial statements in support of his contention. The Ld.AR also filed the monthly summary statement of the drawings account as well as the ledger account of the drawings account and prayed to allow the appeal.

6. The Ld.DR submitted that the assessee had not produced the cash book evidencing the withdrawals in cash and therefore the authorities below had rightly confirmed the addition.

7. We have heard the arguments of both sides and perused the materials available on record.

8. We have perused the assessment order in which the assessee had explained that the source for the said purchase of plot is out of the drawings made from the proprietary concern owned by the assessee. Before the AO, the assessee had also filed the copy of the ledger extract of the plot which

shows that on various dates, the cash was withdrawn for the purpose of purchasing the said property. We have also perused the monthly summary of drawings account as well as the ledger account of the drawings account in which the cash withdrawals were duly reflected and in the narration it was also mentioned that the withdrawal was used to purchase the site. Even though the ledger of the drawings account were available with the assessee, the same was not produced before the AO. We have considered the said documents and also the financial statements submitted by the assessee and found that the assessee had source for effecting the said purchases which is from the drawings account of the assessee's proprietary concern. Therefore, we are satisfied that there are evidences for the withdrawal of the cash and therefore there are enough source available with the assessee for making the cash payments for purchasing the property. Anyhow this drawings ledger account was not produced before the AO and therefore we remit this issue to the file of the AO for considering the documents filed before us and to take a decision in accordance with law, after hearing the assessee. We also permit the assessee to produce any other evidences, if available to be produced before the AO in support of their contention.

9. In the result, the appeal filed by the assessee is partly allowed for statistical purposes.

ITA No. 864/Bang/2025:

The grounds raised by the assessee are as under:

"1. The learned CIT(A) erred in confirming the assessment order which is bad in law and liable to be quashed on the following grounds:

- a) Lack of jurisdiction.*
- b) Erroneous assumption of jurisdiction.*
- c) Violation of principles of natural justice.*

2. The learned CIT(A) erred in upholding the addition of 224,02,370/- by estimating profit at 8% of turnover, despite the Appellant having already declared 7%, which aligns with industry standards.

3. *The CIT(A) failed to appreciate that the AO made an arbitrary and ad hoc addition without rejecting the Appellant's duly audited books of account.*

4. *The learned CIT(A) erred in not considering the peculiarities of the construction industry, where maintaining real-time documentation for each cash transaction across multiple sites is not practically feasible.*

5. *The CIT(A) failed to take into account the complete disclosures and reconciliations submitted by the Appellant, including the explanation of cash dealings and related documentary evidence.*

6. *The learned CIT(A) erred in relying on statements recorded during the survey without any supporting incriminating evidence. The statement was made under pressure and cannot be treated as conclusive evidence in the absence of corroboration.*

7. *The CIT(A) failed to appreciate that the assessment was concluded in a mechanical manner, without adequate opportunity provided to the Appellant to address discrepancies raised by the AO, demonstrating a pre-decided bias.*

8. *The assessment and its confirmation by the CIT(A) were made without due application of mind and in contradiction to the settled legal principles.*

It is respectfully submitted that the Appellant may be permitted to add, delete, or modify any grounds of appeal and present additional facts and arguments at the time of the hearing in the interest of justice.”

10. The brief facts of the case are that the assessee is a civil contractor and he filed his return of income on 13/02/2021. The return was processed and an intimation u/s. 143(1) was issued on 25/06/2021. There was a search and survey action conducted at the residence and office premises of the assessee on 02/12/2021. The AO issued notice u/s. 148 and the assessee also filed his return of income on 16/12/2023. Thereafter notice u/s. 143(2) was issued and notice u/s. 142(1) were issued on several dates. The assessee also responded to the said notices and filed the relevant documents. The AO alleged that at the time of search and survey, incriminating materials were found which shows that the assessee had

engaged in transaction with the Arjun Souharda Pattina Sahakari Niyamitha. The AO also alleged that the assessee was incurring expenses in cash and also not maintained proper bills and vouchers for the said expenses incurred. The AO relied on the statements given by the assessee. The AO also based on the register found and impounded during the course of search action, which contain details of various expenses incurred by the assessee, had disallowed the expenses since no documents or evidences to substantiate the said expenses were filed by the assessee. The AO further alleged that the assessee had claimed expenses other than the one for the purpose of business and therefore the said expenses were not allowable as per the Explanation (1) to section 37 of the Act. The AO had also not accepted the net profit shown by the assessee at 8% in view of the various defects pointed out by him. The assessee submitted that they are maintaining the books of accounts and also books are audited at the end of the year and based on the said books, the return of income was filed and therefore the net profit declared at 7% has to be accepted. The AO had not accepted the profit at 7% and estimated the profit at 8% and taken the difference between the 7 and 8% as the additional income. As against the said order, the assessee filed an appeal before the Ld.CIT(A)-11, Bengaluru and contended that the profit declared at 7% is based on the audited books of accounts and also contended that the assessee had maintained the books of accounts but during the search and survey, the books were not updated and therefore it could not be a reason to estimate the profit at 8% instead of 7%. The Ld.CIT(A) after extracting the finding given by the AO had confirmed the net profit at 8%.

11. As against the said order, present appeal has been filed before this Tribunal.

12. At the time of hearing, the Ld.AR submitted that the net profit declared at 7% is based on the audited books of accounts maintained by the assessee and unless and until the books of accounts are not relied upon, the AO could not make an addition based on the net profit at 8%. The Ld.AR

further submitted that considering the peculiar nature of the business carried on by the assessee, the most of the expenses would be in cash which includes the labour payments. The Ld.AR further submitted that even at the time of search and survey operations, the assessee had submitted that they are maintaining the books of accounts but not updated because of the various works undertaken by the assessee in different places. The Ld.AR therefore submitted that when the books has been audited and based on that the profit margin has been arrived, the estimation of the profit margin at 8% by the AO without any material evidence is liable to be set aside.

13. The assessee also filed a paper book enclosing the written submissions as well as the financial statements duly signed by the Chartered Accountants. The assessee also filed another paper book enclosing the statement showing comparable entities earning net profits along with their financial statements and prayed to consider the net profit declared by the comparable institutions and decided the appeal based on the said data filed by the assessee.

14. The Ld.DR submitted that the assessee had admitted the various lapses which includes the non-availability of supporting documents in respect of expenses incurred and the expenses claimed in respect of the non-business activities and also relied on the statement given by the assessee at the time of survey and therefore the Ld.DR submitted that the addition made by the AO based on the net profit at 8% is in order and requires no interference.

15. We have heard the arguments of both sides and perused the materials available on record.

16. The assessee is a civil contractor and maintained his books of accounts and also the books were audited and the report of the auditor was also available and on that basis only, the assessee had arrived the profit at 7%. The allegation made by the AO is that the assessee had incurred

various expenses in cash but not produced any vouchers or documents in support of the said expenses and also found that some of the expenses were not related to the business activities and therefore estimated the profit at 8% and subjected the difference amount to the returned income as the income and made the addition to the returned income.

17. It is the case of the assessee that they had maintained the books of accounts but not updated the same in view of the nature of the business activities carried out by him. The assessee is doing various construction activities in different places and therefore he submitted that the books were not updated periodically but anyhow the said books were properly written and the said books were duly audited and on that basis, the net profit has been arrived at 7% of the total turnover. We have also considered the fact that the assessee would incur most of the expenses by cash since the major portion of the expenses were for labour and it could not be practicably possible to disburse the wages to the labourers by other modes. Normally the wages would be paid by the assessee by cash and the other expenses would be incurred by way of cash since the business of the assessee is of such a nature. Without pointing out any major defects, the AO could not have estimated the net profit at 8% even though as per audited books of accounts, the profit is at 7%. The assessee had declared this Net profit on the basis of the audited books of accounts but the AO without having any evidence had estimated the net profit at 8% which in our view is not correct.

18. To arrive such a conclusion, the AO had mainly relied on the statement given by the assessee and the non-retraction of the said statement. We do not think that the AO can estimate the net profit based on the statement when the assessee is having the audited books of accounts. Further, we have also considered the comparable statement given by the assessee in the industries similarly situated and their profit margins ranges from 4.07 to 6.57%. In fact, in the present case, the assessee had declared a higher margin of 7% which in our view is a reasonable margin arrived by the assessee. We do not find that the inclusion of the other

expenses would be a reason for estimating the net profit at 8% instead of 7%. We have also found that based on the search and survey operations, no incriminating materials were seized or impounded except the regular books of accounts maintained by the assessee. In such circumstances, the adoption of net profit at 8% instead of 7% by the AO which was confirmed by the Ld.CIT(A) is not in order and also without any basis. We, therefore set aside the order of the lower authorities and allow the appeal filed by the assessee.

19. In the result, the appeal filed by the assessee is allowed.

20. In the combined result, the appeal filed by the assessee for A.Y. 2019-20 is partly allowed for statistical purposes and the appeal for A.Y. 2020-21 is allowed.

Order pronounced in the open court on 09th January, 2026.

Sd/-
(WASEEM AHMED)
Accountant Member

Sd/-
(SOUNDARARAJAN K.)
Judicial Member

Bangalore,
Dated, the 09th January, 2026.
/MS /

Copy to:

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|---------------|------------------------|
| 1. Appellant | 2. Respondent |
| 3. CIT | 4. DR, ITAT, Bangalore |
| 5. Guard file | 6. CIT(A) |

By order

Assistant Registrar,
ITAT, Bangalore