

आयकर अपीलीय अधिकरण, रायपुर न्यायपीठ, रायपुर
IN THE INCOME TAX APPELLATE TRIBUNAL RAIPUR BENCH, RAIPUR
श्री पार्थ सारथी चौधरी, न्यायिक सदस्य एवं श्री अवधेश कुमार मिश्र, लेखा सदस्य के समक्ष ।
BEFORE SHRI PARTHA SARATHI CHAUDHURY, JM &
SHRI AVDHESH KUMAR MISHRA, AM
आयकर अपील सं. /ITA No: 536/RPR/2025
(निर्धारण वर्ष Assessment Year: 2014-15)

Aaditya Construction, 56, Indira Complex, Transport Nagar, Korba-495001, C.G.	vs	Income Tax Officer- 1, Korba Mahanadi Extension Complex, Ghantaghar, Niharika Road, Kashi Nagar, Korba-495677, C.G.
PAN: AAPFA5390N		
(अपीलार्थी/Appellant)	:	(प्रत्यर्थी / Respondent)
निर्धारिती की ओर से / Assessee by	:	None
राजस्व की ओर से / Revenue by	:	Dr. Priyanka Patel, Sr. DR
सुनवाई की तारीख / Date of Hearing	:	08/01/2026
घोषणा की तारीख / Date of Pronouncement	:	16/02/2026

आदेश / ORDER

Per Avdhash Kumar Mishra, AM:

The appeal for Assessment Year ('AY') 2014-15 filed by the assessee is directed against the order dated 16.07.2025 of the Commissioner of Income Tax (Appeals), Raipur-3 [CIT(A)] passed under section 250 of the Income Tax Act, 1961 ('Act').

2. The assessee has raised following grounds of appeal: -

- “1. Ld. CIT(A) erred in deciding appeal without considering record and evidence available. Resultantly, appellate order is illegal & unsustainable.
2. Order passed by Ld. CIT(A) is illegal in as much as the same has been passed without adjudicating merits of case.

3. *Ld. CIT(A) erred in estimating net profit @0.70 which was highest rate in last 3 years despite the fact that assessee had maintained regular books of accounts and got it Audited As per Section 44AB. The part addition made by AO and confirmed by Ld. CIT(A) is arbitrary, illegal and not justified.*
4. *Ld. CIT(A) erred in estimating income on adhoc basis despite disagreeing to AO's rejection of books of account.*
5. *The appellant reserve the right to amend, modify or add any of the ground/s of appeal."*

3. The relevant facts giving rise to this appeal are that the assessee, a civil contractor, filed its Income Tax Return ('ITR') of the relevant year on 28.09.2014 declaring income of Rs.11,89,140/-. The case was picked up for scrutiny. The assessee does contract works of mainly PWD Korba, PWD Champa, Chhattisgarh Rural Development Agency Bilaspur & Raipur, etc. The Ld. Assessing Officer ('AO'), observing that the assessee had not produced all bills & vouchers of certain expenditures; therefore, such expenses were unverifiable. Further, the Ld. AO had also opined that owning of the Plant & Machinery worth of Rs.2.69 crores by the assessee would lower its expenditure with consequential enhancement in the profit. The relevant finding of the Ld. AO reads as under:

"The assessee has paid cash labour payments in a gap of every sweets in lakhs of rupees and such payments have been made in less than 20,000/- deliberately in the books to workers, labourers, karigars, trucks owners, tractor owners, masons suppliers of materials, waters and other sorts of material inputs of the contract works. None of them was produced nor their identity was disclosed nor any evidence of pucca rukka (receipts) with revenue stamps with their complete postal addresses were supplied to but it was only reiterated that these are some of their due salary and other labour related payments only and thus with all these facts none of the expenditure claimed by the assessee was

amenable was verification. Just some of vouchers were maintained which were nothing but self serving a chronological vouchers which were devoid of details of work for which such payment were made. Ultimately something has to be some link with the work and how the assessee's such modus operandi can be allowed to go with the sense that each is well with the work related outgoings

Thus an important question of law has arisen that assessee is bound to cause verification of any item which is subject matter of investigation but if he does not cooperate to the revenue then what option left before the AO to do justice regarding the claim of the assessee. Once the ease in the scrutiny the assessee is at the liberty to place its cards, no govt department can deny his any pleading or submission made voluntarily but when at this grass root nothing is supplied how it can be permitted to admit at a later stage. It goes to prove that it is sweet will of the assessee to produce anything which is convenient to it before the AO and which is suitable to him at the latter stage. So the assessee has not caused verification wholeheartedly of all the expenditure booked.

The assessee has not maintained any details regarding WIP (work to progress) site wise which is another major defect. It is hard fact that each and every contract has its own peculiarity, quantum and volume of work, and it is not practical that all the contracts taken in a particular period would be necessarily to be completed before the close of the relevant FY and there would not be any material at site. Thus the assessee completely disowner having any works in progress at the end of the relevant FY which is not only factually in correct but also misleading.

On the careful examination of the cash book of the whole of the FY, it is found that the assessee has huge payments to labourers and transporters, motor parts suppliers, repairing expenditure, cement, Wages, truck freight and various other types of work payments.

The assessee has prepared mostly self prepared vouchers which are nothing but a self serving piece of evidence and far away from the truth and reality and not amenable to verification along with preparation of consolidated books prepared for whole of the contract which are not at all open to verification at all.”

3.1 Based on the above observation and some more similar observations as mentioned in the assessment order, the Ld. AO rejected the books of accounts of the assessee under section 145(3) of the Act and applied Net Profit ('NP') rate of 12.50% before the claim of deduction of interest, depreciation and remuneration to partners. Accordingly, the Ld. AO worked out the income at Rs.2,02,93,357/- against returned income of Rs.11,89,140/-. Aggrieved, the assessee filed appeal before the Ld. CIT(A), who reduced the Net Profit rate from 12.5% to 0.70/- after the claim of deduction of interest, depreciation and remuneration to partners. The Ld. CIT(A), further held that the Ld. AO was not justified in rejecting the books of account without bringing any cogent material on the record. Further, the CIT(A) had also held that the Ld. AO had not brought any materials on the record including any comparable case and ignoring the preceding years' financial details of the assessee, which might show that the NP rate of 12.5% was justified. The relevant part of the order of Ld. CIT(A) reads as under:

“During the course of appeal proceedings, I have carefully gone through the fact and findings of the assessment order and also perused the reply submitted by the assessee. The Id AO erred in rejecting the books of accounts without proper basis and without providing any opportunity to the assessee to explain the discrepancies. The Id. AO also erred in estimating the net profit rate without considering the past records and comparable cases. The Id. AO's estimation of net profit rate at 12.50% is arbitrary and excessive

The assessee has provided a detailed reply to the Id. AO's order, which highlights the defects in the Id. AO's estimation. The assessee has submitted that the Id. AO's estimation lacks a clear basis and fails to consider the past records and comparable cases.

I noted that the assessee's business theory of lowering prices to surge turnover and the abnormal rise in prices of essential commodities like diesel, petrol, oil, lubricants, and construction material justified the decline in profit margin. I further observed that the Id AO's expectation of a higher net profit rate based on the government's typical 10% net profit rate in its BSR and the assessee's established reputation, plant, and machinery was not supported by concrete evidence.

The Id. AO's observations regarding the benefits of owning plant and machinery, established relationships with laborers, and deep knowledge of suppliers, held that these factors do not necessarily translate to super profits or profit margins exceeding 12.50% to 15%. I noted that while the assessee's experience, economies of scale, and efficient management are advantages, they do not guarantee higher profit margins in the face of changing market conditions. increased costs, and other factors.

I noted that the assessee's books and records may have had defects, but the Id. AO's estimation should be based on reasonable and credible evidence. I held that the Id. AO's estimation of net profit rate should be based on a thorough analysis of the assessee's financials and industry norms and not on assumptions only.

The assessee's cash expenditure is minimal, amounting to only 40.44 lakhs out of a total expenditure of 2186.56 lakhs, which is just 1.89%. Given this low level of cash expenditure, it is implausible that the assessee could significantly impact its profitability by splitting transactions to avoid Section 40A(3). The Id. AO's suggestion that the assessee's profitability was affected by such splitting is not supported by the facts, and it is unreasonable to assume that the assessee's profit would be substantially impacted by such a small proportion of cash expenditure.

The assessee had produced copies of bills raised by subcontractors and made payments via banking channels with due tax deduction demonstrating compliance with relevant laws. The absence of a written agreement with subcontractors is a common trade practice, especially with petty contractors and does not necessarily imply any discrepancy or suspicious

transaction. The Id AO's emphasis on the lack of a written agreement appears to be an overly technical approach, rather than a genuine discrepancy, and it is reasonable to conclude that the transactions with subcontractors are genuine and in line with industry norms.

The Id AO's observations regarding the contractor's business appear to be based on assumptions and imagination rather than reality. The mere fact that the assessee is an old and reputed firm does not automatically imply super profitability or immunity from fluctuations. The Id. AO's order is self-contradictory, as it acknowledges the changed times, increased responsibilities of contractors, and reduction in foul play, yet still assumes an increase in profit margin without concrete evidence.

The Id. AO rejected the books of accounts due to defects, including self-prepared vouchers, lack of verification, and incomplete records. However, the assessee has submitted that the Id AO's rejection of books is not justified and the defects pointed out by the Id. AO are not significant enough to warrant rejection. I agree with the assessee's submission that the Id AO's rejection of books is not justified.

The Id AO's order is based on assumptions and lacks a clear basis. The Id AO failed to provide any evidence or basis for estimating the net profit rate at 12.50%. I agree with the assessee's submission that the Id. AO's estimation is based on assumptions and not supported by any material evidence.

[2022] 140 (Kolkata Trib.) [23-12-2021] has held that where revenue authorities in assessee's own case in earlier year had estimated net profit below rate of 1 per cent, there being no change of business during relevant assessment years, estimating net profit at rate of 8 per cent could not be justified.

From the above discussion, I am of the view that the Id. AO's estimation of net profit rate is not justified. The Id. AO's estimation of net profit rate at 12.50% is not supported by any cogent evidence or material on record. Upon reviewing the past records of the assessee, I find that the net profit rate declared by the assessee in the past three years is lower than the estimated rate of 12.50%. The net profit after interest, depreciation and remuneration earned by the appellant firm in the past years under consideration and subsequent years is a crucial factor in determining the reasonable net profit rate. Specifically, the firm's net profit rate after interest, depreciation and remuneration has been 0.61% in FY 2011-12, 0.70% in FY 2012-13, and 0.54% in F.Y. 2013-14. The highest net profit rate among the

aforementioned three years is 0.70%, which can be considered a reasonable benchmark for estimating the firm's net profit rate after interest depreciation and taking into industry's performance and the firm's own historical data. Thus, the highest of net profit after interest depreciation and remuneration of above three years is 0.70%. In the absence of any evidence to the contrary, I deem it fit to estimate the net profit rate after interest, depreciation and remuneration at 0.70%, which is the higher net profit rate of the past three years. I have considered the submissions made by the assessee and the Id AO's order, and I am of the view that the estimated net profit rate after interest. depreciation and remuneration of 0.70% is reasonable and justified in the facts and circumstances of the case”

[Emphasis supplied.]

4. Before us, the assessee was not represented by anyone. Therefore, we heard Dr. Priyanka Patel, Ld. Sr. DR at length, who defended the impugned order. The Ld. Sr. DR argued the case vehemently and prayed for dismissal of the appeal.

5. We have heard the Ld. Sr. DR at length and have perused the materials available on the record. The issue which requires adjudication at our level is that whether the estimation of NP rate of 0.70% by the Ld. CIT(A) is justified particularly when he has taken highest NP rate out of three preceding years and has considered the average profitability in the said business. The impugned order, as reproduced above, clearly demonstrates that the Ld. CIT(A) has appreciated the facts of the case in entirety and has considered not only the submissions of the appellant assessee but also the average profitability of the assessee and similar contractors as a whole. Thereafter, the Ld. CIT(A) applied the NP rate of 0.70% in the present case. The impugned order is found well-reasoned. Thus, we do not see any merit in Ground Nos. 1 and 2 that the Ld. CIT(A) has not considered the material available on the record and has passed the order without adjudicating the case on merit.

6. The business income is computed in accordance with the provisions of section 28 to 44DB of the Act as these are enabling provisions to allow certain type of allowances/claims/expenditures etc. None of the finding of the Ld. CIT(A) has been challenged by the Revenue in appeal. The finding of the Ld. CIT(A) on rejection of books of account under section 145(3) of the Act does not absolve the assessee with the defects in maintenance of books of account though those are not found sufficient for rejection of books of account. The relevant finding of the Ld. CIT(A) is worth reiterating here:

“I noted that the assessee's books and records may have had defects, but the Id. AO's estimation should be based on reasonable and credible evidence. I held that the Id. AO's estimation of net profit rate should be based on a thorough analysis of the assessee's financials and industry norms and not on assumptions only.

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The Id. AO rejected the books of accounts due to defects, including self-prepared vouchers, lack of verification, and incomplete records. However, the assessee has submitted that the Id AO's rejection of books is not justified and the defects pointed out by the Id. AO are not significant enough to warrant rejection. I agree with the assessee's submission that the Id AO's rejection of books is not justified.”

7. In section 145(1) of the Act, while making it mandatory to compute the income under head 'business & profession' or 'Income from other sources' based on cash or mercantile system of accounting being regularly followed by the assessee, the word 'shall' have been specifically used to make it mandatory leaving no discretion to use any another method of accounting which is not being regularly followed. Whereas in section 145(3) of the Act, the word 'may' have been deliberately used in a discretionary/directory context because the word 'may' as

used in 145(3) of the Act is intricately linked to the AOs satisfaction also about the correctness of accounts in the very same section. A critical examination of language of this section along with principles of harmonious construction would make it clear that powers of the AO to invoke 145(3) of the Act is merely declaratory/discretionary and not mandatory, where the legislature had no intention to prescribe the mandatory rejection of books of accounts in each & every case where some specific entry in accounts have been found to be bogus/inflated or unverifiable but largely the accounts maintained as per mandate of section 145(1) r/w 145(2) of the Act. That is why the word '*may*' have been used at one place and '*shall*' at another place in the same section of the Act. Thus, it is obvious that the word; '*shall*' and '*may*' have been chosen in the Act distinctively with their natural meaning. The provision using the word '*shall*' would be mandatory whereas the one using the word '*may*' would only be directory/discretionary. If it were not to be read so, it may lead to other consequences. Thus, the finding of the Ld. CIT(A) on rejection of books of account under section 145(3) of the Act has nothing to do the applicability of the NP rate by not accepting the books result as those have been found to have some defects and some expenses unverifiable. Accordingly, Ground Nos. 3 and 4 are dismissed.

8. The assessee has failed to bring any tangible material on the record to contradict the finding of the Ld. CIT(A), which in our considered opinion has fairly applied the NP rate at 0.70% after the claim of deduction of interest, depreciation and remuneration to partners. We, therefore, keeping in view the facts of the case and material available on the record, do not find any infirmity in the order of the Ld.

CIT(A), hence, we declined to interfere with. Consequentially, all four effective grounds of appeal stand dismissed.

9. In the result, the appeal of the assessee is **dismissed as above**.

Order pronounced in the open court on 16/02/2026.

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

Sd/-
(AVDHESH KUMAR MISHRA)
लेखा सदस्य / ACCOUNTANT MEMBER

रायपुर / Raipur; दिनांक Dated 16/02/2026
HKS, PS

आदेशकी प्रतिलिपि अग्रेषित / Copy of the Order forwarded to :

1. अपीलार्थी/ The Appellant- Aaditya Construction,
Korba
प्रत्यर्थी/ The Respondent- ITO-1, Korba
3. The Pr. CIT, Raipur (C.G.)
4. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण,
रायपुर/ DR, ITAT, Raipur
5. गार्ड फाईल / Guard file.

आदेशानुसार/ BY ORDER,

//True copy//

(Private Secretary)
आयकर अपीलीय अधिकरण, रायपुर / ITAT, Raipur