

IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH 'G', NEW DELHI

BEFORE SHRI MAHAVIR SINGH, VICE PRESIDENT
&
SHRI MANISH AGARWAL, ACCOUNTANT MEMBER

ITA No. 34/DEL/2023
Asstt. Year: 2021-22

Shiv Shakti Constructions A-142, Omaxe, NRI City, Pari Chowk, Greater Noida, Gautam Budh Nagar-201306, Uttar Pradesh	Vs	Deputy Commissioner of Incom- Tax Central Circle-II, 2 nd Floor, ARTO Complex, Sector-33 Noida-201301
(APPELLANT)		(RESPONDENT)
PAN No. AAZFS6406R		

AND

ITA No. 578/DEL/2023
Asstt. Year: 2021-22

Deputy Commissioner of Incom- Tax Central Circle-II, 2 nd Floor, ARTO Complex, Sector-33 Noida-201301	Vs	Shiv Shakti Constructions A-142, Omaxe, NRI City, Pari Chowk, Greater Noida, Gautam Budh Nagar-201306, Uttar Pradesh
(APPELLANT)		(RESPONDENT)
PAN No. AAZFS6406R		

Assessee by : None

Revenue by : Ms. Rajinder Kaur, CIT (DR)

Date of Hearing: 19.11.2025	Date of Pronouncement: 19.11.2025
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ORDER

Per Mahavir Singh, Vice President:

These cross appeals filed by the Assessee as well as Revenue, are arising out of the order of Commissioner of Income Tax (Appeals), Kanpur, in Appeal No. CIT(A)-IV/KNP/10069, vide order dated 21.12.2022. Assessment was framed by Deputy Commissioner Income Tax (DCIT), Central Circle-II, Noida, for the AY 2021-22 u/s 143(3) of the Income Tax Act, 1961 (hereinafter referred to as, “the Act”), vide his letter dated 30.09.2022.

First, we take up Assessee’s Appeal in ITA No. 34/DEL/2023

The only issue in this Appeal of Assessee is as regards to the order of CIT(A), confirming the action of the Assessing Officer (AO) in rejecting the books of accounts and, consequently estimating the profit @10%. For this, the Assessee has raised three grounds which are argumentative and exhaustive, and hence, need no reproduction.

2. Brief facts of the case are that the Assessee is a partnership firm, engaged in the execution of Government contracts being a Government approved contractor. The Assessee is engaged in execution of irrigation development activities relating to earth works, canal lining works, canal protection works, with self-owned machinery or rented machinery under their own direct supervision and personal control. A search and seizure operation u/s132 of the Act was conducted on the business and residential premises of the Assessee on 27.11.2020. During the course of search, various incriminating documents/ information belonging to the Assessee was found and seized. The AO, during scrutiny of Assessment, noted that the Assessee has inflated purchases and, consequently, bogus Sundry

Creditors . The AO also noted that the Assessee's firm owes an unusually large quantum of amounts to its Sundry Creditors, as per the awaited balance-sheet/ accounts of the Assessee for AY 2015-16 to AY 2021-22. The AO in the Assessment Order have detailed out the chart wherein the amount of total Sundry Creditors, , incremental increase and Sundry Creditors *viz-a-viz* gross contract receipts were analysed in term of percentage. The AO noted that the Investigation Wing of the Income Tax Department has examined various individuals post search proceedings and the accountant of the Assessee's firm. Shri Kuldeep Joshi, accountant of the firm accepted that the assessee was making adjustment in the purchases under the sub head 'Entry Other Creditors'. The relevant statement recorded and relevant questions 28 and 29 are reproduced in the Assessment Order. Accordingly, the AO was of the view that the Assessee's firm is inflating purchases in order to reduce profit and consequent entry of Sundry Creditors was made. Similarly, the AO noted that the statement of Shri Mukesh Kumar, the main working partner was also recorded wherein the partner was asked by the AO to give the basic details like name and address of the Sundry Creditors but, despite numerous opportunities, the Assessee could not provide the details. This fact is recorded by AO in Para 4.6 and 4.7 of his order. The Assessee submitted his reply before the AO on 31.08.2022 wherein complete list of Sundry Creditors was provided on 31.03.2021 wherein many of the Sundry Creditors were not having address or incomplete address. The AO also noted various discrepancies or inconsistencies in the addresses mentioned in the list of Sundry Creditors as provided by the Assessee and corresponding addresses in the PAN of data base of the Department. The AO has list out the Sundry Creditors in his assessment order at No. 20. The AO has also analysed the bills and noted that almost 80% of the bills of purchases submitted by Assessee were either

handmade or generated bills. The AO in his Assessment Order has reproduced the photo copies of the sample bills. Even, the Assessee failed to submit any evidence of transportation of the material or goods, which were shown to have been purchased, to its sites. The AO noted that the material used by Assessee like sand, grit, cement etc is required to be transported through means of transporters but no vehicle no. is mentioned in the Bills. Whereas, e-WayBills were annexed in the annexure as claimed by Assessee but no such annexure was found with the reply of the AO. The AO also carried out inquiry by issuing summons u/s 131 of the Act to the above stated 20 Sundry Creditors, requiring them to appear in the office of AO but, out of the 20 Creditors, only 14 Sundry Creditors responded to the summons and the AO found the following discrepancies.

“ (i) 3 of the creditors have not filed their ITR for AY 2021-22 and the remaining have filed TTRs showing very nominal income. not corresponding to the amount of transaction made with the assessee firm.

(ii) Turnover of 7 of the parties is almost as much or less than the transaction made with assessee firm which means that during the year 90-959% of their transaction was only with the assessee firm. Some of them had transaction only with the assessee firm.

(iii) 8 parties have produced copies of bills/vouchers. Out of this 7 parties have produced bills which are handmade and lack authenticity. The remaining have not produced bills vouchers.

(iv) As per ledger A/Cs furnished by them all the transactions are made with them either in the month of April/May/June 2020 or March 2021. Also the hand-written bills with similar handwriting as discussed in para 4.10.1 pertain to this period only. ”

3. The AO also noted the discrepancies found in each of the parties who had supplied the material to the Assessee which are detailed out in the chart at Para 4.11.1 of his order. Accordingly, the AO consider the replies filed by the Assessee and for the following reasons, rejected the books of accounts and disallowed the bogus purchases to the extent of Rs. 22,37,74,998/- by observing as under:

“ (i) *The assessee has expressed his inability and failed to furnish the ITRs of any of the creditors. The plea of the assessee that most of these expense parties are below taxable limit and in the unorganised sector, is not found satisfactory as not a single ITR could be produced for any of the individuals for the year in which the assessee firm purchased materials and booked these expenses in the name of sundry creditors.*

(ii) The assessee has stated that the confirmations of all the sundry creditors were attached. However, the confirmations of many creditors were not furnished.

(iii) As regards the 6 creditors who did not respond to the summon, the assessee was provided an opportunity to produce those creditors. However, the assessee did not produce them.

(iv) The assessee has stated that some of the creditors have not filed their ITR as their profit was below taxable limit.

(v) The assessee was asked on the issue of turnover of the creditors having turnover equal to or less than the amount of transactions made with the assessee. In reply the assessee has stated that they may have exhausted their capacity while doing business with assessee only.

However, this reply is unacceptable as most of the transaction took place in first quarter of the year. It is quite strange that any supplier would supply goods for only 2-3 months and then stop the business.

(vi) As regards the issue of handwritten bill, the assessee has stated that suppliers are from unorganised sector. But it is not understandable how would people from completely different cities writing bills have same handwriting and the format of bill book would also be exactly same.

(vii) Regarding the issue of most of the transactions being made in the month of April/May 2020 and March 2021, the assessee has stated that on certain sites the working was done in 2 phases one phase in March/April 2020 and second phase in April 2021.

However, the assessee has not furnished any reason for working in phases and has not furnished any evidence to corroborate its statement. It is not understandable why would earthwork, the line of business of assessee, be carried on for 2 months and then left as it is for an entire year.

4.17 Against some of the individuals, large expense amounts have been booked years before and the same are still outstanding. For instance one of these sundry creditors is Sh. Vivek Kumar (PAN: EWGPK6461P). He has sold goods on credit with total amount of Rs. 1.64.95.720/- outstanding as on 31.03.2020 and on 31.03.2021 (Rs. 26.89,578 in AY 2015-16. Rs. 31.58,698 in AY 2016-17. Rs. 32,98.567 in AY 2017-18. Rs. 33,98,567 in AY 2019-20 and Rs. 39,50, 125 in AY 2020-21). Thus no payment has been made to the creditor for 7 years and it is still standing in the books of the assessee. Thus, clearly there are inconsistencies in the contention of the assessee that all these sellers are below taxable limit and yet they continue to sell goods on credit without getting any payment in return, for periods as long as 6-7 years.

Further during the assessment proceedings the assessee failed to produce confirmations of all the creditors, the ITRs of creditors, evidence of transportation of goods material in the form of e-way bill, billty etc for almost all the creditors. Only e-

way bill for some of them were produced vide reply furnished on 27.09.2022.

In addition to the above arguments, the massive delay caused by the assessee in submitting the single most important detail of this case, the details of sundry creditors against which large amount of expenses were booked, is unjustified. The assessee remained evasive throughout the search and post search investigation proceedings carried out by the investigation Unit, Noida since the date of search 27.11.2020.

4.18 Despite being fully aware that this is the most crucial point of the investigation, the assessee chose to remain non responsive for majority of the assessment proceedings to0, as evident from dates of various notices, reminders, show-cause notice issued. That the assessee chose to wait till the end to provide this crucial detail. Indicates the deliberate attempt on part of the assessee to mislead the proceedings and not give the assessing officer sufficient time for verification. The complete lists of sundry creditors with supporting documents, was provided for the first time on 31.08.2022. when the time barring date of the case was 30.09.2022.

4.19 In the present case the assessee has miserably failed to establish the genuineness of sundry creditors outstanding in its books and the corresponding purchases. Further, in one of the latest case of "Commissioner of Income Tax. Bangalore vs Anantha Refiner (P) Lid, " 125 taxmann.com 163 (Karnataka) (202 1], dated 04,01.202 1), the Hon'ble High Court of Karnataka. upheld disallowance u/s 37(1) of the IT Act, when it was found that documents relied upon by assessee viz., receipt for goods, weighment slips, inward slips were all self made and the assessee could not establish the genuineness of the transactions undertaken.

4.20 Thus, in view of the above elaborate discussion regarding self generated. non verifiable bills and non verified expense parties against which large amount of expense is booked in the

name of sundry creditors, it is concluded that the corresponding purchases are bogus and not genuine. These expenses have been booked in the shape of sundry creditor liabilities and remain unverifiable, unproved and unconfirmed. They have been booked with the sole purpose of inflating the expenses of the firm. During the course of investigation and assessment proceedings, these expenses could not be proved to be carried out for the purpose of business. Mere submission of confirmations and repayments made to the creditors post search, on part of the assessee is not enough to discharge its onus of proving the genuineness of these purchases against which such abnormally large amount of sundry creditors have accumulated over the years. Hence, the bogus purchases corresponding to the increase in sundry creditors during the FY 2020-21, amounting to a total of Rs.22.37.74.998/- is hereby disallowed w/s 37(1) of the IT Act, Penalty is being separately initiated u/s 271 AAB of the IT Act. Penalty is also being initiated u/s 271AAD of the IT Act for submission of false invoices. ”

4. Similarly, AO also disallowed the expenses claimed on the basis of various incriminating documents and also in violation of the provisions of section 40A(3) of the Act. The AO noted that the Assessee has made cash withdrawals from respective bank accounts as the assessee's firm and detailed the same in Para 5 of his order, amounting to total cash withdrawal of Rs. 9,45,94,000/- and, thereby he noted that no proof of individual cited expenses and nature of expenses were provided and even these payments are in cash, existing the limit as prescribed u/s 40A(3) of the Act. Thereby, he disallowed this amount after verifying all the cash payments. The AO has enclosed the seized documents where cash payment is depicted in each of the heads which he has discussed in pages from 35 to 48. Thereby, the AO made addition of Rs. 9,45,94,000/- . Aggrieved, the Assessee came before the CIT(A).

5. The CIT(A), after considering the submissions of the Assessee and also going through the Assessment Order, finally rejected the books of accounts and applied net profit rate @ 10% by observing Paragraphs from 7.10 to 7.14, which are reproduced as under:

“ 7.10 I have carefully perused the findings of the AO in the assessment order. There are huge sundry creditors and the same are outstanding for payments for long time, from the audited balance sheets and its schedules. It can be seen that their proportion is very high. The onus of proving genuineness of purchases is upon the appellant and if the appellant fails, to prove the genuineness of the same, such purchases cannot be allowed. During the search proceedings, the statement of Sh. Kuldeep Joshi, accountant of the firm has been recorded and he has also stated that the other sundry creditors are just book entries. Sh. Mukesh Kumar the main partner of the firm was also not able to furnish all the evidences and give the complete details of such sundry creditors. But there is also force in the submission of the AR that the appellant is a govt. contractor and all the works have been completed, hence the use of material as well as services of the laborers cannot be denied. Further in the matter of hand written bills in which various discrepancies have been found, the observation of the AO cannot be ignored that the same does not appear to be reliable bills specially when the appellant could not furnish all the requisite details as called for by the AO and the appellant failed to prove genuineness of all purchases and when summons and notices could not be properly responded. Further it has been found that in the search proceedings ample amount of evidences have been gathered and produced in the body of assessment order which clearly indicates that provisions of section 40A(3) of IT Act have been violated. But at the same time it cannot be ignored that the nature of the business of the appellant is such that the appellant has to perform work in the remote areas, where there are no facilities of banks, ATMs and the site in-charges have to keep cash ready for payment to the laborers as well as suppliers of sand, grit, bricks and all related material which is supplied and provided by local unregistered and petty suppliers. In the light of the peculiar circumstances of the case, the AR was asked to explain as to why books of accounts should not be rejected and the NP

should be estimated in the light of provisions of section 145(3) of IT Act. The AR relied on the written submission furnished before the AO as well as in the appellate proceeding and submitted that books of accounts have been audited and the same should not be rejected. But the submission of the AR has not been found correct, the AO has brought on record sufficient material which leads to the conclusion that books of accounts cannot be relied.

7.11 In the assessment orders of AY 2014-15 to AY 2020-21, the AO has made disallowances on account of Bogus purchases, for violating provisions of u/s 40A(3) of IT Act and due to unverifiable labour expenses, but in the appellate orders of these years passed on 27.09.2022, it has been directed that estimation of NP @10% of the turnover would meet the end of justice. In this regard if the disallowances made by AO are analyzed in various years, the same result into very high NP, which is not possible in the nature of such business, in which the appellant works. The NP of the business after disallowances made by the AO in these assessment orders is computed as under:

AY	Total Sundry Creditors	Other Sundry Creditors (Rs.)	Incremental increase (as per assessment order) (Rs.)	Turn-over/gross contract receipts	Sundry Creditors/gross contract receipts in %	Net Profit as shown by appellant	Disallowances made by AO	NP and NP Percentage of turn-over after disallowances
2014-15	10,02,14,793							
2015-16	19,33,91,731	18,13,54,404	8,11,39,611	34,48,88,689	56.07%	1,55,25,932	8,11,39,611+ 7,09,18,475+ 1,89,451	16,77,73,46 9 (48.65%)
2016-17	33,01,01,606	44,00,30,622	25,86,76,218	98,50,42,772	33.50%	4,34,42,060	25,86,76,218 +12,78,64,97 5+3,26,169+ 8,52,408	43,11,61,83 0 (43.77%)
2017-18	68,07,47,426	67,31,21,420	23,30,90,798	65,30,19,346	104.24%	3,59,03,453	23,30,90,798 +8,03,46,431 +2,82,783+8 ,54,313	35,04,77,77 8 (53.67%)
2018-19	66,98,81,532	66,05,24,850		33,39,63,019	200.59%	2,07,76,388	15,31,71,237 +5,07,100	17,44,54,72 5 (52.24%)
2019-20	92,70,58,874	91,93,14,743	25,87,89,893	60,38,38,198	153.53%	2,81,96,508	25,87,89,893 +5,14,53,169 +1,48,002	33,85,87,57 2 (56.07%)
2020-21	98,39,24,325	97,05,64,743	5,12,50,000	69,76,06,268	141.04%	4,21,53,618	5,12,50,000+ 9,15,19,864+ 3,85,454+1,4 7,75,588	20,00,84,52 4 (28.68%)
2021-22	1,20,76,99,323		22,37,75,000	1,26,97,26,27 6	95.11%	14,08,03,724	22,37,74,998 +9,45,94,000	31,83,68,99 8 (25.07%)

From the above table it can be seen that in a case of the appellant, It the disallowances are made on account of alleged Bogus expenses and expenses incurred in cash above prescribed limit as per provisions of section 40A(3) of IT Act the NP becomes very high. Therefore looking to the facts and circumstances of the case, though the decision of the AO of making disallowance on account of expenses is sustained but its quantum is restricted. In this regard it would not be out of place to mention that NP has been estimated @10% of the turnover in AY 2014-15 to AY 2020- 21 in the appellate orders passed on 27.09.2022 and in the same lines, in AY 2021-22 also the same decision of estimation of NP @10% of the turnover of the business is upheld. The AO could not do the proper analysis of exact purchases made from such 'sundry creditors', which are actually Bogus and a general estimate is done which is very high. Further it has been found that the summons and notices have been issued selectively and no criteria has been adopted for the same. Further the statement of an accountant i.e. Sh. Kuldeep Joshi has been applied sweepingly on all other sundry creditors, though the appellant has questioned his competency and domain since he is simply maintaining accounts and is not aware of the real nature of suppliers. In the matter of disallowances made u/s 40A(3) of T Act, there is force in the submission of the AR that the payments made to a single party in a single day above Rs. 10,000/- for AY 2021-22 have not been singled out and cash withdrawal amount from the bank has been disallowed. While making such estimates, the AO needs to be reasonable and make the disallowance which may result into right taxable income. Therefore the decision of disallowance of the AO is upheld but quantum of disallowance is restricted.

7.12 In the light of findings of the search which lead to clear evidence that the provisions of section 40A(3) of IT Act have been violated, huge cash payments have been made for labor payments as well as purchases, the appellant has failed to discharge the onus to prove the purchases from sundry creditors, which are long outstanding and statements re corded on oath from the accountant as well as main partner of the firm, the infirmities found in the bills produced before the AO in the matter of purchases, payments outstanding to be made

to the huge amount of 'Sundry Creditors' and number of evidences of huge cash payments made to various persons, relating to which seized material has been produced in the body of assessment order, I hereby hold that books of accounts of appellant are not reliable. Therefore provisions of section 145(3) of IT Act are hereby invoked since the undersigned is not satisfied about the correctness of the accounts of the assessee. In the light of this decision, the disallowance made by AO on various heads is restricted in such a way that NP of contractor-ship business should be @10% of gross receipts of contractor-ship business.

7.13 Based on the above observations, the following table is made for restricting disallowance by considering NP @10% of turn-over. In this regard it has been found that the appellant has earned huge other income i.e. interest income on FDR, is just on IT refunds, NSC Interest, share of profit from JV and other such receipts, which are not related to contractor-ship business and hence the same are kept separate while computing the NP of the contractor-ship business as under:

AY	Turn-over/gross contract receipts(a)	Net Profit as shown by appellant(b)	Other income (Interest from FDR, interest on IT refund, NSC Interest, other income, share of profit from JV) shown in P & L account©	Net profit attributable to contractor-ship business(d= b-c)	Disallowances made by AO(e)	Total NP @10% of turn-over(f= 10% of a)	Net Disallowance (NP@10% of turn-over- NP as already shown)(g= f- d)	Relief allowed to the appellant(h= e- g)
2014-15								
2015-16	34,48,88,689	1,55,25,932	1,24,42,716	30,83,216	8,11,39,611+ 7,09,18,475+ 1,89,451= 15,22,47,537	3,44,88,869	3,14,05,653	12,08,41,884
2016-17	98,50,42,772	4,34,42,060	2,48,61,156	1,85,80,904	25,86,76,218 +12,78,64,97 5+3,26,169+8 ,52,408= 38,77,19,770	9,85,04,277	7,99,23,373	30,77,96,397

2017-18	65,30,19,346	3,59,03,453	4,82,43,929	- 1,23,40,476	23,30,90,798 +8,03,46,431 +2,82,783+8,54,313= 31,45,74,325	6,53,01,935	7,76,42,411	23,69,31,914
2018-19	33,39,63,019	2,07,76,388	4,61,73,480	- 2,53,97,092	15,31,71,237 +5,07,100= 15,36,78,337	3,33,96,302	5,87,93,394	9,48,84,943
2019-20	60,38,38,198	2,81,96,508	5,59,26,950	- 2,77,30,442	25,87,89,893 +5,14,53,169 +1,48,002= 31,03,91,064	6,03,83,820	8,81,14,262	22,22,76,802
2020-21	69,76,06,268	4,21,53,618	5,35,96,996	- 1,14,43,378	5,12,50,000+ 9,15,19,864+ 3,85,454+1,47,75,588= 15,79,30,906	6,97,60,627	8,12,04,005	7,67,26,901
2021-22	1,26,97,26,276	14,08,03,724	5,56,01,979(interest)+ 53,81,321(refund+discount+misc income)	7,98,20,424	22,37,74,998 +9,45,94,000= 31,83,68,998	12,69,72,628	4,71,52,204	27,12,16,794

While restricting disallowance made by the AO, it was necessary to have a cap on the NP of the business and the same has been considered @10% of turn-over/receipts from govt. contracts, however it has been found that the appellant has included other receipts i.e. interest income and sales tax refund, discount received and other Misc. Incomes but the same have been excluded in the NP working. Therefore looking to the findings of the search proceedings and various evidences produced in the assessment order, the decision of the AO is upheld to make disallowance of purchases made from various sundry creditors and disallowances for violation of provisions of section 40A(3) of IT Act since the estimation of such disallowances was leading to very high and absurd NP, the same is restricted to 10% of total turn-over of contractor-ship business of the appellant. In this regard the AR has drawn attention to the provisions of section 44AD of IT Act in which presumptive NP is taken @8% as also reliance is placed on the decisions of higher judicial authorities, in which NP rate has been taken @8%, but in this particular case the AO has not only questioned 'Sundry Creditors' i.e. the suppliers which are Bogus, violations of provisions of section 40A(3) have been found in a very big scale. Further the volume of business is very high than the limit prescribed for presumptive tax rate of 8% in section 44AD of IT Act, therefore while restricting disallowances made by the AO the NP cap is taken @10% of gross receipts.

7.14 In the light of above observations total disallowances of Rs. 31,83,68,998/- made by the AO in this AY 2021-22 is restricted to Rs. 4,71,52,204/- and relief of Rs. 27,12,16,794/- is allowed to the appellant. ”

6. Aggrieved against the action of CIT(A), in restricting the addition of Rs. 4,71,52,204/- as against the total addition of Rs. 31,83,68,998/-, both i.e., the Assessee as well as the Revenue came in appeal before the Tribunal.

7. Similarly, the Revenue also came in appeal on estimation of profit rate and for this, it raised Ground No.1 for estimation and Ground No. 2 for deletion of addition on account of violation of provision of section 40A(3) of the Act. Since the issue raised by the Revenue is also interconnected with that of the issue raised in Assessee's Appeal, we will deal with this issue by this common adjudication. At the outset, Ld. CIT(DR) stated that this issue stands covered by the ITAT, Delhi order in Assessee's own case for earlier assessment years wherein, Tribunal vide its common order dated 27.07.2023 passed in Assessee's ITA No. 2554 to 2559/Del/2022, AY- 2015-16 to AY 2020-21 and, Revenue's ITA No. 2836, 2835, 2834, 2837, 2838, 2839/Del/2022 for AY 2015-16 to AY2020-21, respectively, wherein, the Tribunal has considered this issue and directed the Revenue to adopt profit rate @ 8% instead @ 10% by observing in Para 21 to 28 which are reproduced as under:

“ 21. On appraisal of the facts and evidences placed in totality, we find that the CIT(A) has given a rather objective consideration to the factual matrix and has analyzed the fact situation, usage of trade and the common practices adopted in the contract business and has approached the issue in a quite reasonable and fair manner. The CIT(A) has given due weight to the nature of business carried out by the assessee. We concur with the findings of the CIT(A) that while the assessee has

attempted to correlate and collate the factual matrix to justify the books results, there are visible fill-in gaps which has not been filled, warranting estimates of profits in a fair and nonpartisan manner. Except for making reference to some hand bills remaining unpaid and lack of evidences towards transportation, unsupported statement of low rung employee etc, the AO has also not brought out specific defects in the books despite drastic action of search. The AO has resorted to complete disallowance of increase in 'other sundry creditors' disregarding the nature of expenses, its necessity and also the peculiarity of business of execution of Govt. Contracts. The AO has also disregarded the fact that a part of such creditors may also relate to other assessment years. The AO has assumed that all increase in sundry creditors represents bogus purchase. Such approach is apparently superficial. Likewise, estimated disallowance towards cash expenses are also in the realm of conjectures and surmises without any concrete evidence. The books seized has not been taken into account to gauge the correctness of cash payments in tune with S. 40A(3) of the Act. The Hon'ble Kerala High Court in the case of CIT (central), Kochi vs. Damac Holdings (P) Ltd. (2018) 89 Taxmann. com 70 (kerala) observed that in the case seizure of documents in the course of search, the presumption under 132(4A) would be equally available to the assessee as well. The contents of books and documents found in possession and control of searched person thus shall be deemed to be true and the presumption would apply to both sides and such presumption thus, in effect, a double edged sword. The presumption of correctness of entries found in the books at the time of search has not been rebutted by the revenue. While the cash payments toward labour expenses have been accepted by the AO, other expenses have been whimsically estimated and rejected showing uneven and inconsistent approach in the matter of assessment.

22. When seen holistically and in totality, the CIT(A) to our mind, in the balance of things, has rightly rejected the books of account and set aside book results for fair and benign estimations of profits and to shun absurdity in the income

assessed. While, the assessee has provided justifications towards large creditors arising year after year, such justifications are largely circumstantial and abstract. The outstanding creditors of such significant amounts in the context do invoke disquiet. It is indeed difficult to appreciate the correctness of book results in an objective manner. The AO has made wide ranging observations against the assessee. The CIT(A) while examining the issue could not be said to be in the zone of comfort to give objective considerations to the complex factual matrix presented to him. Under the circumstances, in our considered opinion, the estimation of income carried out by the CIT(A) was best course available and cannot be displaced on first principles. We thus see no justifiable reason to interfere with the approach adopted by the CIT(A) in this regard.

23. We now advert to the contention of the Assessee towards excessive estimation of net profit ratio. The assessee has challenged the net profit ratio estimated by the CIT(A) @ 10% instead of 8% adopted under presumptive scheme of taxation / provided under Section 44AD of the Act. The Assessee contends that such percentage adopted under statute is after carrying mammoth background exercise and is based on strenuous empirical studies. The larger volume or turnover rather has the effect of bringing down such ratio even further. The decision of the Hon'ble Delhi High Court in the case of CIT VS. Subodh Gupta, (2015) 54 taxmann.com 343 (Del) has been relied upon by the assessee for substitution of the estimation at fair percentage of 8% at best.

24. We however do not see merit in the plea of the assessee for such indulgence. The issue is highly factual and varies from case to case. The income estimated at 8% in the case of Subodh Gupta (supra) is based on its own set of facts. The judgment in Subodh Gupta cannot be read to mean that net in sacrosanct percentage all profit ratio of 8% is circumstances. The CIT(A), in his wisdom, has estimated profit at 10% after considering

host of circumstances such a quality of evidence made available to support 'other sundry creditors', large cash expenses incurred, the net profit ratio declared and net profit ratio determined by the Assessing Officer etc. The law has not invented any straight jacket formula to judge such estimations precisely. Such estimations are in the realm of probabilities. There is nothing conclusive about it. The estimations carried out by the CIT(A) cannot be said to be marred by any kind of perversity. The estimates of profits by the CIT(A) are not fanciful or whimsical but appears be guided by the principles of objectivity, fairness and considerations of justice and maintains some Sort of equilibrium. We thus are not inclined to interfere and re- estimate the estimations made by the CIT(A) in the absence of any palpable overreach on this score.

25. We however find merit in the plea of the assessee towards treatment of interest on fixed deposits as integral part of business activity. It is common knowledge that the large scale guarantees and securities are required in contract businesses. The factual matrix also underscores the proposition that the fixed deposits have not been placed to enjoy interest income simplicitor out of any surplus money. Circumstantially, large scale outstanding liabilities suggests otherwise. Coupled with this, the assessee has also incurred interest and finance costs. Having regard to the peculiarity of contract business, the claim of the assessee that the interest on FDRs cannot be seen differently from receipt derived directly from contract work carries weight. Having regard to the nature of business, we thus find force in the plea of the assessee that such FDRs are nothing but integral part of working capital of the assessee kept and expanded for commercial reasons. Hence, the interest income deserves to be treated alike with business contract receipts for the purposes of estimations. The interest income cannot be treated differently from contract receipts merely because such income flows from a different source. As already noted, the fixed deposits are a necessity to provide security and meet the contingency of such peculiar business. The accounts

and other attendant circumstances vindicate the position. We thus have no hesitation to modify the order of the CIT(A) to this extent. The interest income and similarly discount credits shall thus form integral part of the business receipts and shall be subjected to estimation at same rate of 10% as made applicable to contract receipts. However, the interest income on IT refund and NSC deposits will not get the benefit of estimations but will be chargeable as other income in accordance with law.

26. At this juncture, the assessee has claimed that share of profit arising from joint venture in some assessment years are fully exempted from taxation under Section 10(2A) of the Act. Needless to say, where the income is exempt from the ambit of taxation under the provisions of the Income Tax Act, same has to be excluded from the taxability at the threshold. Thus, the AO is directed to do so by determining the taxable income.

27. In the light of the delineation made in the preceding paragraphs, the appeal of the assessee is partly allowed while the appeal of the Revenue is dismissed on all counts.

28. In the result, the appeal of the assessee in ITA No.2554/Del/2022 is partly allowed whereas the appeal of the Revenue in ITA No.2836/Del/2022 is dismissed. ”

8. None is present from Assessee's side, despite giving opportunity on number of time. This appeal came up for hearing at least thirteen times earlier even otherwise, the issue stands covered partly in favour of Assessee and partly in favour of the Revenue and without deviating anything, the facts being exactly identical from the earlier years, we direct the AO to recompute the net profit @ 8% and no other addition is to be made.

9. Consequently, the appeal of the Assessee is partly allowed and Appeal of the Revenue is dismissed, in the above terms.

Order pronounced in the Open Court on 19-11-2025.

Sd/-
(Manish Agarwal)
Accountant Member

Sd/-
(Mahavir Singh)
Vice President

Dated: 16.02.2026

Pooja Mittal

Copy forwarded to:

1. Appellant
2. Respondent
3. CIT
4. CIT(A)
5. DR

Asstt. Registrar, ITAT, New Delhi