

IN THE INCOME TAX APPELLATE TRIBUNAL  
PUNE BENCH “B”, PUNE

BEFORE SHRI R. K. PANDA, VICE PRESIDENT  
AND  
SHRI VINAY BHAMORE, JUDICIAL MEMBER

ITA No.996/PUN/2023  
Assessment Year : 2018-19

ITO, Dhule	<b>Vs.</b>	Sharad Anandrao Deore, Near Bus Stand Sakri, Tal Sakri, Dhule – 424304
		<b>PAN: AAJPD2988D</b>
<b>(Appellant)</b>		<b>(Respondent)</b>

Assessee by : Shri Sanket Joshi  
Department by : Shri Arvind Desai, Addl. CIT-DR  
Date of hearing : 15-01-2025  
Date of pronouncement : 21-01-2025

**ORDER**

**PER R. K. PANDA, VP :**

This appeal filed by the Revenue is directed against the order dated 21.07.2023 of the Ld. CIT(A) / NFAC, Delhi relating to assessment year 2018-19.

2. Facts of the case, in brief, are that the assessee is an individual and engaged in the business as government contractor. He filed his return of income on 31.10.2018 declaring total income of Rs.49,61,890/-. The case was selected for limited scrutiny assessment under the E-assessment Scheme, 2019 on the following issues:

<i>S. No.</i>	<i>Issues</i>
<i>i.</i>	<i>Verification of Genuineness of Expenses</i>

3. Accordingly, statutory notices u/s 143(2) and 142(1) of the Income Tax Act, 1961 (hereinafter referred to as ‘the Act’) were issued and served on the assessee, in response to which the AR of the assessee appeared before the Assessing Officer from time to time and filed the requisite details.

4. During the course of assessment proceedings the Assessing Officer noted that the books of account of the assessee were audited as per the provisions of the Act. On further perusal of Form 3CD report for assessment year 2018-19 he noted that at serial no.34, the auditors have mentioned that the assessee is required to deduct or collect tax as per the provisions of Chapter XVII-B or Chapter XVII-BB. They have also mentioned that the assessee has not furnished the statement of tax deducted or tax collected within the prescribed time, etc. However, from the verification of the TDS details as submitted by the assessee, he noted that the assessee has shown large payments as contract payments to persons who have not filed the return of income for the relevant assessment year. From the various details furnished by the assessee, the Assessing Officer noted that the assessee has paid huge amount of sub-contract work to nine persons, the details of which are as under:

<i>S No</i>	<i>Name, PAN and Current Address of the person</i>	<i>Nature of work/services carried out by the contractor (copy of agreement) also</i>	<i>Total payment made during relevant year</i>	<i>Total payment made during one year prior to relevant financial year</i>	<i>Total payment made during one year next to relevant financial year</i>
<i>1</i>	<i>Poonam Construction AGGPB5905K Sambaji Chauk</i>	<i>RCC Building Construction State Govt.</i>	<i>26,50,000</i>	<i>--</i>	<i>--</i>

	<i>Untevadi Nashik</i>				
2	<i>Ekdant Buildcon ATDPS9291F Pandit Colony, Nashik</i>	<i>RCC Building Construction State Govt.</i>	<i>88,50,000</i>	--	--
3	<i>Shivam Construction AXFPP1767R Sakri, Dist Dhule</i>	<i>Road Work of Nagarpanchayat</i>	<i>41,24,298</i>	--	--
4	<i>Sairaj REaltech Pvt Ltd AAOCS9722J Untewadi Nashik</i>	<i>RCC Building Construction State Govt.</i>	<i>43,47,550</i>	--	--
5	<i>Nisha Dilip Deore ALHPD9919M Badlapur</i>	<i>RCC Building Construction State Govt.</i>	<i>20,00,000</i>	--	--
6	<i>Kunal Prakash Patil AMWPB6883E Arunkumar, Vaidy Nagar, Dhule</i>	<i>RCC Building Construction State Govt.</i>	<i>68,95,355</i>	--	--
7	<i>Kandu Namdeo Bagul BGPPB3483A Sakri, Dist. Dhule</i>	<i>RCC Building Construction State Govt.</i>	<i>6,00,000</i>	--	--
8	<i>Chatu Babulal Pawar AZLPP9742N Sakri, Dist. Dhule</i>	<i>RCC Building Construction State Govt.</i>	<i>5,00,000</i>	--	--
9	<i>Chandrashekhar Yashwant Sonawane FIFPS7666C Dhamnar, Tal. Sakri, Dist. Dhule</i>	<i>RCC Building Construction State Govt.</i>	<i>4,00,000</i>	--	--

5. To verify the genuineness of the aforesaid sub-contract payments, the Assessing Officer asked the assessee to furnish the copies of contract agreements, copies of R.A. bills / vouchers submitted by the sub-contractor and copy of TDS for financial year 2017-18. From the various details furnished by the assessee, the Assessing Officer noted that the assessee has not submitted the sub-contract agreements with the sub-contractors except in the case of Kunal Prakash Bhadane. Similarly, he noted that none of the sub-contractors except only one sub-contractor is registered under the GST Act and do not have GST number. He also noted that although the assessee has claimed that the payment to the sub-contractors was

finalized after submitting the RA bills to government department and after verification of the work done by the government authorities, however, the RA bills and verification report of work completed was not submitted. Similarly, the assessee has filed the TDS details and deposited the TDS on 07.01.2019 for assessment year 2018-19. Therefore, it is clear that neither the nature of contract payments of Rs.3,16,96,450/- nor outstanding TDS liability was available in the books of account. He also noted certain discrepancies such as (a) in the case of sub-contractor M/s. Shivam construction, the contract was awarded by the government department to the assessee on 03.05.2017 whereas the sub-contractor has raised the bill for work done on 01.05.2017 i.e. before allotment of work to the assessee; (b) in respect of sub-contractor D. Sairaj Realtech Pvt. Ltd., the payments made were prior to submission of bill on 04.08.2017; and (c) in respect of two bills of Ekdant Buildcon, there is discrepancy of date. In view of the above and in absence of non-furnishing of supporting documents to prove the genuineness of contractual payments, the Assessing Officer held that such sub-contract payments to the extent of Rs.3,16,96,450/- is non-genuine and bogus. He, therefore, confronted the same to the assessee. Rejecting the various explanations given by the assessee, the Assessing Officer made addition of Rs.3,16,96,450/- to the total income of the assessee and determined the taxable income at Rs.3,66,58,340/-.

6. Before the Ld. CIT(A) / NFAC, the assessee made elaborate arguments and filed para-wise reply to the various allegations made by the Assessing Officer. It was further submitted that the assessee has shown net profit of Rs.51,11,891/- on

the total gross contract receipts of Rs.9,22,49,433/-. If the addition of Rs.3,16,96,450/- is considered when the assessed business income works out to Rs.3,68,08,341/- on a turnover of Rs.9,22,49,433/- which gives an absurd result of about 40% profit which is not possible in this line of business. The assessee also gave comparable profit shown by the contractors in similar line of business in the same vicinity, the details of which are as under:

<i>Name of the Contractor</i>	<i>Turnover</i>	<i>Profit</i>	<i>% of Net Profit</i>
1) <i>Ramesh Bansi Kute</i>	<i>1,69,19,656</i>	<i>6,86,110</i>	<i>4.06%</i>
2) <i>M.T. Patil Builders and Contractors Pvt. Ltd.</i>	<i>77,34,14,649</i>	<i>3,58,56,116</i>	<i>4.64%</i>
3) <i>Gajanan Construction</i>	<i>13,65,14,956</i>	<i>71,84,956</i>	<i>5.26%</i>
4) <i>Shivaji Ghuge</i>	<i>11,66,08,889</i>	<i>47,49,484</i>	<i>4.07%</i>

7. The gross contract receipts and profit percentages of Shri Shiwaji Ghuge of Nashik for the last four years was also brought to the notice of the Ld. CIT(A)/NFAC which are as under:

<i>A.Y.</i>	<i>Turnover</i>	<i>Taxable Net business Profit</i>	<i>% of Net Profit</i>
<i>2016-17</i>	<i>5,02,23,914</i>	<i>23,50,020</i>	<i>4.59%</i>
<i>2015-16</i>	<i>11,66,08,889</i>	<i>47,49,484</i>	<i>4.07%</i>
<i>2014-15</i>	<i>5,37,30,011</i>	<i>22,06,154</i>	<i>4.11%</i>
<i>2013-14</i>	<i>1,59,49,778</i>	<i>6,68,457</i>	<i>5.44%</i>

8. It was accordingly requested to estimate the profit reasonably at 6% of the turnover. It was submitted that in the following cases the profit rate has been estimated at 5%.

<i>Name of decision</i>	<i>Ratio laid down</i>
<i>(1) CIT vs. Target Construction Co. Ltd. 231 Taxmann 55 (All. H.C.)</i>	<i>Profit of road constructions should be estimated @ 5%</i>
<i>(2) Kalyani Majoor Sah. Sanstha</i>	<i>The profit from contract business has</i>

<i>Maryadit No.290/PN/2015 30/06/2016</i>	<i>Vs.</i>	<i>ITO order</i>	<i>ITA dated</i>	<i>estimated by ITAT @ 5%</i>
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9. Based on the arguments advanced by the assessee, the Ld. CIT(A) / NFAC directed the Assessing Officer to estimate the profit at 8% of the gross contract receipts.

10. Aggrieved with such order of the Ld. CIT(A) / NFAC, the Revenue is in appeal before the Tribunal by raising the following grounds:

1. *Whether on the facts and in the circumstances of the case and in law the Ld. CIT (A) (NFAC) has erred in estimating the income at 8% of the recorded receipts.*
2. *Whether on the facts and in the circumstances of the case and in law the Ld. CIT (A) (NFAC) has not justified by directing the A.O. to substitute the addition by way of disallowance by determining the assessed income on an estimate basis of 8% of the gross receipts recognized in the profit and loss account.*
3. *Whether on the facts and in the circumstances of the case and in law the Ld. CIT (A) (NFAC) has erred in estimating the income at 8% of the receipts despite the facts that:*
  - 3.1 *the assessee had shown large payment as contract payments to persons who have not filed returns of income for the relevant Assessment Year.*
  - 3.2 *The assessee has submitted copy of contract agreement only with Kunal Prakash Bhadane. On perusal of agreement, it is noticed that the agreement was executed on 20.11.2017 but registered on 30.12.2017. However, the assessee did not submit agreement with other sub-contractor.*
  - 3.3 *The TDS was deposited on 07.01.2019 which was only after the filing of ITR for A.Y. 2018-19. Therefore, it is clear that at the time of audit, neither contract payment of Rs. 3,16,96,450/- nor any outstanding TDS liability was available in the books of accounts. On perusal of ITR and 3CD report, it was observed by the A.O. that the auditor has not disallowed any amount u/s 40(a)(ia) of the Act for*

*not deducting the TDS on payment or has not paid before due date of filing ITR.*

- 3.4 *In most of the bills submitted by the assessee, neither service tax/VAT/GST no. Is available nor any details of annexure on which basis the bill was raised, are mentioned. The invoice no., bill amount are also different from each other.*
- 3.5 *Since, the books of account of the assessee is audited by certified auditor and no letter from auditor, is submitted by the assessee wherein the auditor has accepted that such type of error has been done by him at the time of auditing the books of account, it is presumed that the 3CD report prepared on the basis of books of accounts submitted at the time of audit, is correct.*
- 3.6 *The assessee has not furnished all the supporting documents to prove the genuineness of contractual payment. The assessee has also not furnished any reply on the issue of filing TDS return after due date and depositing TDS after filing ITR in violation of sec.40(a)(ia) of the Income Tax Act 1961.*
4. *The appellant craves leave to add, alter, amend and delete any ground (s) of appeal.*

11. The Ld. DR strongly objected to the order of the Ld. CIT(A) / NFAC directing the Assessing Officer to estimate the profit at 8% instead of sustaining the addition of Rs.3,16,96,450/- made by the Assessing Officer on account of bogus sub-contract expenses. He submitted that when the assessee failed miserably to substantiate with documentary evidence to support the claim of such huge sub-contract expenses, the Ld. CIT(A) / NFAC should not have deleted the addition.

12. The Ld. Counsel for the assessee on the other hand strongly supported the order of the Ld. CIT(A) / NFAC. He submitted that the assessee is a government contractor mainly constructing school buildings and roads for government

departments. The payments from the government departments are released after due verification of the work, therefore, it cannot be said that the sub-contractors have not done the work or the assessee has made payments to bogus sub-contractors. The Assessing Officer in the assessment order passed u/s 143(3) of the Act for assessment year 2015-16 has accepted the income / profit at 5.22%. Referring to page 82 of the paper book, the Ld. Counsel for the assessee drew the attention of the Bench to percentages of profit for various years which are as under:

<i>Asst. Year</i>	<i>Turnover</i>	<i>NP</i>	<i>NP %</i>
<i>2015-16</i>	<i>54096196</i>	<i>2826028</i>	<i>5.22%</i>
<i>2016-17</i>	<i>73888103</i>	<i>3975343</i>	<i>5.38%</i>
<i>2017-18</i>	<i>79468758</i>	<i>4419952</i>	<i>5.56%</i>
<i>2019-20</i>	<i>184481022</i>	<i>8927090</i>	<i>4.84%</i>
<i>2020-21</i>	<i>105708520</i>	<i>6784193</i>	<i>6.42%</i>
<i>2021-22</i>	<i>187403346</i>	<i>9820491</i>	<i>5.24%</i>
<i>Total / Avg. NP</i>	<i>685045945</i>	<i>36753097</i>	<i>5.37%</i>

13. He further submitted that the allegation of the Assessing Officer that the payments have been made to the sub-contractors before the contract work awarded by the government is incorrect. He submitted that as per the submission filed the work was completed on 03.05.2017 and the contractor has raised the bill on 01.05.2017, however, the Assessing Officer mis-construed the submissions for which he has given such remarks. He submitted that since the Ld. CIT(A) / NFAC has directed the Assessing Officer to estimate the profit at 8% as against the profit rate shown by the assessee for different years ranging from 4.84% to 6.42% and the assessee has not filed any appeal, the Revenue should not have any grievance



since the order of the Ld. CIT(A) / NFAC is justified under the facts and circumstances of the case. He also relied on the following decisions:

1. *CIT vs. Subodh Gupta (2015) 229 Taxman 367 (Del)*
2. *DCIT vs. Poonam Dnyaneshwar Mahajan vide ITA No.956/PUN/2018, order dated 22.08.2022*
3. *ACIT vs. Shiv Shakti Construction [(2023) 225 TTJ 676 (Del)]*
4. *ITO vs. Madhav Propcon Pvt. Ltd. vide ITA No.6011/Del/2012, order dated 12.03.2015*

14. He accordingly submitted that the grounds raised by the Revenue should be dismissed.

15. We have heard the rival arguments made by both the sides, perused the orders of the Assessing Officer and Ld. CIT(A) / NFAC and the paper book filed on behalf of the assessee. We have also considered the various decisions cited before us. We find the Assessing Officer in the instant case made addition of Rs.3,16,96,450/- being the payments to sub-contractors made by the assessee on the ground that the assessee could not substantiate with documentary evidence to his satisfaction regarding the genuineness of such huge payments to the sub-contractors. We find before the Ld. CIT(A) / NFAC, apart from making elaborate submissions the assessee took an alternate ground that making addition of Rs.3,16,96,450/- to the total income of the assessee declared at Rs.51,11,891/- on a turnover of Rs.9,22,49,433/- will give net profit ratio of about 40% which is not possible in such line of business especially when the assessee is doing contract work for government departments. We find based on the arguments advanced by

the assessee, the Ld. CIT(A) / NFAC directed the Assessing Officer to estimate the profit at 8% of the gross contract receipts.

16. We do not find any infirmity in the order of the Ld. CIT(A) / NFAC on this issue. A perusal of the net profit ratio declared by the assessee from assessment year 2015-16 to 2021-22, the details of which are given at para 12 above, gives average net profit rate at 5.37%. Similarly, various contractors operating near the place of the assessee i.e. near Nashik and engaged in similar line of business are also showing the profit rates ranging from 4% to 8% and in one case such profit rate has been shown at 10.24%. Further, the provisions of section 44AD of the Act prescribe profit rate of 8% for civil contractors in unaudited cases where the turnover is less than the prescribed limit. Although in the case of the assessee, the turnover is above the prescribed limit as per the provisions of section 44AD and the accounts are audited, still the provisions of section 44AD can be taken as a parameter for estimating the income. Further, addition of the total amount of Rs.3,16,96,450/- to the returned income of Rs.51,11,891/- on a turnover of Rs.9,22,49,433/- will give a profit percentage of about 40% which is not possible in such type of activities especially when the assessee is doing contract work for government department. Under these circumstances and considering the totality of the facts of the case and considering the fact that the average net profit ratio for the last four years i.e. from assessment year 2015-16 to 2021-22 is 5.37%, we are of the considered opinion that the order of Ld. CIT(A) / NFAC directing the Assessing Officer to estimate the profit at 8% is justified under the facts and

circumstances of the case. We, therefore, uphold the order of the Ld. CIT(A) / NFAC on this issue and the grounds raised by the Revenue are dismissed.

17. In the result, the appeal filed by the Revenue is dismissed.

Order pronounced in the open Court on 21<sup>st</sup> January, 2025.

**Sd/-**  
(VINAY BHAMORE)  
JUDICIAL MEMBER  
पुणे Pune; दिनांक Dated : 21<sup>st</sup> January, 2025  
GCVSR

**Sd/-**  
(R. K. PANDA)  
VICE PRESIDENT

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

1. अपीलार्थी / The Appellant;
2. प्रत्यर्थी / The Respondent
3. The concerned Pr.CIT, Pune
4. DR, ITAT, 'B' Bench, Pune
5. गार्ड फाईल / Guard file.

**आदेशानुसार/ BY ORDER,**

**// True Copy //**

Senior Private Secretary  
आयकर अपीलीय अधिकरण ,पुणे  
/ ITAT, Pune

S.No.	Details	Date	Initials	Designation
1	Draft dictated on	15.01.2025		Sr. PS/PS
2	Draft placed before author	16.01.2025		Sr. PS/PS
3	Draft proposed & placed before the Second Member			JM/AM
4	Draft discussed/approved by Second Member			AM/AM
5	Approved Draft comes to the Sr. PS/PS			Sr. PS/PS
6	Kept for pronouncement on			Sr. PS/PS
7	Date of uploading of Order			Sr. PS/PS
8	File sent to Bench Clerk			Sr. PS/PS
9	Date on which the file goes to the Head Clerk			
10	Date on which file goes to the A.R.			
11	Date of Dispatch of order			