

**IN THE INCOME TAX APPELLATE TRIBUNAL,
KOLKATA-PATNA 'e-COURT', KOLKATA
[Hybrid Court Hearing]**

**Before Shri Rajpal Yadav, Vice-President (KZ)
&
Dr. Manish Borad, Accountant Member**

**I.T.A. Nos. 315, 316 & 317/PAT/2023
Assessment Years: 2015-16, 2016-17 & 2017-18**

***Upendra Shukla,..... Appellant
South SK Puri, Boring Road,
Patna-80001, Bihar
[PAN: BDDPS3264F]***

-Vs.-

***Income Tax Officer,.....Respondent
Ward-6(1), Patna,
3rd Floor, Lok Nayak Jai Prakash Bhawan,
Dakbanglow Road,
Patna-800001, Bihar***

Appearances by:

Shri Manish Rastogi, Advocate, appeared on behalf of the assessee

Shri Ashwni Kr. Singal, JCIT, appeared on behalf of the Revenue

Date of concluding the hearing : September 05, 2024

Date of pronouncing the order : October 14, 2024

O R D E R

Per Rajpal Yadav, Vice-President (KZ):-

The present three appeals are directed at the instance of assessee against the separate orders of ld. Commissioner of Income Tax (Appeals), National Faceless

Appeal Centre (NFAC), Delhi dated 25th August, 2023 passed in A.Y. 2015-16 to 2017-18.

2. The assessee has taken six grounds of appeal in each year. However, his grievances revolve around a single issue, namely whether income of the assessee deserves to be determined under section 44AD of the Income Tax Act or not?

3. Before adverting to the brief facts, we would like to observe that the ld. 1st Appellate Authority has dismissed all the appeals for want of prosecution. Therefore, we cannot make reference of any material mainly from the order of ld. CIT(Appeals). The ld. Counsel for the assessee has filed a detailed written submission, which is common to all the three assessments. In this written submission, he has compiled the details in tabulation proforma, which depicts the nature of dispute. We would like to take note of those details, which read as under:-

SI. No.	Particulars	Assessment years		
		2015-16	2016-17	2017-18
i.	Gross professional fees received from Mentors Eduserve.	2475000	2700000	2700000
ii.	Net professional income returned invoking section 44AD of the Act.	1295455	1372312	1351240
iii.	Percentage of income over receipts.	52.34%	50.82%	50.04%
iv.	Expenses claimed by the assessee	1179545	1327688	1348760
v.	Net returned income.	1149576	1302780	1277697
vi.	15% of the Gross receipts.	371250	405000	405000
vii.	Addition after restricted expenses to 15% of the gross receipts.	808295	922688	943760
viii.	Net assessed income.	1957875	2225468	2221460

4. With the assistance of Id. Representatives, we have gone through the record carefully. It emerges out from the record that the assessee is a qualified Engineer and was providing professional services to a Coaching Institute M/s. Mentors Eduserv Group. In this Institution, he was engaged in developing the study material with whom teaching could be enhanced, etc. A search was carried out under section 132 of the Income Tax Act at the business premises of the said Coaching Institute. According to the revenue, during the course of search, it was revealed that professional fee was received by the Faculty Members from the Coaching Institute and those professionals are claiming expenditure, which are not admissible to them. Accordingly, Id. Assessing Officer has determined the taxable income. The details noticed by us above would depict the true picture about the gross receipts received by the assessee in these three years. The assessee has declared income under section 44AD of the Income Tax Act. The Id. Assessing Officer was of the view that the assessee should not declare the income under section 44AD of the Income Tax Act, rather entitled for expenditure at 15%. The net income computed by the Id. Assessing Officer, vis-à-vis declared by the assessee is discernible in Column No. 2 & 8 of the above details.

5. The ld. Counsel for the assessee, at the very outset, took us through the finding of the ld. Assessing Officer, which is verbatim same. Our attention was drawn to paragraph 8, wherein ld. Assessing Officer himself categorized that these incomes are not salary receipts, rather professional receipts, but thereafter he made a clarification for justifying the allowance of expenditure at 15%. To our mind, this stand of the ld. Assessing Officer is not justifiable. The moment he arrived at a conclusion that the assessee was a professional. He has availed professional receipts for the consultancy provided by him to the Coaching Institute, then his income ought to have been determined under section 44AD. Our attention was drawn to section 44AA of the Income Tax Act, which contemplates for maintenance of accounts by certain persons carrying on profession or business. Sub-clause (1) of this section further provides that *“every person carrying on legal, medical, engineering or architectural profession or the profession of accountancy or technical consultancy or interior decoration.....shall keep and maintain such books of account and other documents as may enable the ld. Assessing Officer to compute his total income in accordance with the provisions of this Act”*. Thus, Section 44AA does provide that if a person is engaged in technical consultancy, then he would also maintain the books of account. Section 44ADA further contemplates that if a person is engaged in a profession referred to sub -

section (1) of section 44AA and whose total gross receipts do not exceed 50 lakhs rupees in a previous year, then he would be entitled to offer income equal to 50% of the total gross receipts. Thus, conjoint reading of both these sections would indicate that a person, who was supposed to maintain accounts for his profession or business, then, he is exempted from maintaining such accounts if his gross receipt does not exceed 50 lakhs rupees and he offers income 50% of the gross receipts under a presumptive taxation scheme contemplated in section 44ADA.

6. The case of the assessee is that his job was of technical consultation. His gross receipts do not exceed Rs.50 lakhs in any of the year. He has offered the income at 50% of those gross receipts. The ld. Assessing Officer has erred in assuming the gross receipts as taxable and only expenditure could be allowed to 15%. To our mind, this approach of the ld. Assessing Officer is not supported by the law, rather it is an exercise of arbitrary powers by the revenue. The ld. CIT(Appeals) ought to have not dismissed the appeal for want of prosecution. He was not required to consider any material except the assessment order and he could have easily decided the appeals. The Quasi-Judicial Authorities are not being respected on account of their powers, to legalize injustice on account of technical reasons, but are being respected for removing

injustice. Therefore, we allow all these appeals and direct the ld. Assessing Officer to accept the return of income declared by the assessee. All the additions made by the ld. Assessing Officer are deleted.

7. In the result, all the appeals of the assessee are allowed.

Order pronounced in the open Court on 14.10.2024.

Sd/-

Sd/-

(Manish Borad)
Accountant Member

(Rajpal Yadav)
Vice-President

Kolkata, the 14th day of October, 2024

*Copies to :(1) Shri Upendra Shukla,
South SK Puri, Boring Road,
Patna-80001, Bihar*

*(2) Income Tax Officer,
Ward-6(1), Patna,
3rd Floor, Lok Nayak Jai Prakash Bhawan,
Dakbanglow Road, Patna-800001, Bihar*

*(3) Commissioner of Income Tax (Appeals),
National Faceless Appeal Centre (NFAC),
Delhi;*

(4) CIT-

(5) The Departmental Representative;

(6) Guard File

TRUE COPY

By order

*Assistant Registrar,
Income Tax Appellate Tribunal,
Kolkata Benches, Kolkata*

Laha/Sr. P.S.