

IN THE INCOME TAX APPELLATE TRIBUNAL
MUMBAI BENCH "G", MUMBAI

BEFORE SHRI NARENDRA KUMAR BILLAIYA, ACCOUNTANT MEMBER AND
SHRI ANIKESH BANERJEE, JUDICIAL MEMBER

ITA No.2005/Mum/2025
(Assessment year : 2020-21)

Ganesh Srinivasan 10, Fair Field, 112, Road No.4, Churchgate, Mumbai-400 020 PAN : AAGPS5047M	vs	Principal Commissioner of Income- tax-8, Mumbai Room No.611, 6 th Floor, Aayakar Bhavan, M.K. Road, Mumbai-400 020
APPELLANT		RESPONDENT

Assessee by : Shri S. Ganesh, Sr.Counsel (virtually)
Respondent by : Dr. Kishor Dhule -CIT DR

Date of hearing : 13/05/2025
Date of pronouncement : 20/05/2025

ORDER

Per Anikesh Banerjee (JM):

Instant appeal of the assessee is preferred against the order of the Learned Principal Commissioner of Income-tax, Mumbai-8 (for brevity, 'Ld.PCIT') passed under section 263 of the Income-tax Act, 1961 (for brevity the "Act") for A.Y. 2020-21, date of order 10/03/2025. The impugned order emanated from the order of the Assessment Unit, Income-tax Department (for brevity the "Ld.

AO”) passed under section 143(3) read with section 144B of the Act, date of order 23/09/2022.

2. The assessee has taken the following grounds of appeal:-

“1. The Ld PCIT-8 has erred in setting aside the assessment order passed by the AO u/s 143(3) r.w.s 144B dated 23/09/2022 treating the same as erroneous and being prejudicial to the interest of the revenue.

2. The Ld PCIT-8 erred in not considering the explanation and submission furnished by the assessee which clearly explain the issue along with necessary supporting and have further directed to make an addition of Rs.1,76,66,250/- treating the same as undisclosed professional income.

3. The Ld PCIT-8 erred in not following the judgement passed by both the ITAT as well as the Bombay High Court which has clearly held in Appellants own case that no addition could be made to the appellant assessable income on the grounds of non-reconciliation of TDS with the receipts in the appellant bank accounts.

4. The Ld PCIT-8 failed to appreciate and completely disregarded decisions of the Bombay high court and Bombay bench of the ITAT thereby rendering such order passed under sec 263 of the income tax act 1961 as bad in law and null and void.

5. The appellant craves leave to add further grounds or to amend or alter the existing grounds of appeal on or before the date of hearing.”

3. Brief facts of the case are that the assessee is a Senior Counsel practicing before the Hon’ble Supreme Court of India. For the relevant assessment year, the assessment was completed under section 143(3) of the Act, wherein the Ld. AO accepted the returned income. The Ld. AO also accepted the reconciliation of the difference between the income reported in Form 26AS and the income declared by the assessee in the return of income (ROI). Subsequently, the Ld. PCIT, by invoking the provisions of section 263 of the Act, issued a show cause notice

questioning the non-reconciliation of the assessee's professional receipts with the Annual Information Report (AIR)/Form 26AS, amounting to Rs. 1,76,66,250/-. The assessee had claimed credit for tax deducted at source (TDS) of Rs. 17,66,625/- in respect of the said professional fees.

The Ld. PCIT observed that the corresponding professional income in respect of which TDS was claimed had not been offered to tax in the relevant assessment year. Concluding that the assessment order passed by the Ld. AO was erroneous and prejudicial to the interest of the revenue. The Ld. PCIT passed a revisionary order under section 263, setting aside the original assessment on the specific issue of non-offering of professional receipts for which TDS had been claimed. Aggrieved by the revisionary order passed under section 263, the assessee has preferred the present appeal before this Tribunal.

4. The assessee argued and filed a compilation spanning pages 1 to 40 which is kept on record. He argued that the Ld. AO has observed and has taken note in the assessment order related to this TDS and income offered by the assessee.

The relevant paragraph is reproduced below:-

"iv.1. In order to examine the Issue (i), notice u/s 142(1) dated 22/03/2002 was served to the assessee requesting to furnish reasons for carry forward TDS credit of the financial year 2018-19, claimed in year 2019-20 in response the assessee submitted that he had earned Professional fees, interest income from saving bank account and also from the fixed deposit held with bank and institution. The assessee informed that he followed cash system of accounting in respect of his professional income. The assessee further stated that he sent his memos of fees only to the instructing advocates / CA, however, he received his fees sometime from instructing Advocate /CA, sometime from client directly and sometimes partly from both. The assessee stated that often payment for the other matter and sometime postponed to next accounting year. Further there were large number of clients who directly transferred the part payment into the assessee's bank account and deducted & deposited entire TDS on accrual basis to the government on assessee's PAN. Thus, the assessee claimed, TDS relating to the amount actually received and carries forward the excess TDS amount deposited by the parties and claims the said excess as

and when the corresponding amount received from the parties. To substantiate his claim, the assessee furnished details of party wise TDS deducted and offered in return of income.

iv.1.1. On the verification of the party wise TDS details mentioned in Para iv.1 (supra), it was seen that with regards to the TDS claims shown in TABLE below corresponding income was not offered for during relevant financial year.

Details of TDS credits carried forward to the A. Y. 2020-21 but corresponding income offered during A.Y. 2019-20 was NIL:

S.No.	S.No. as per the submission of the assessee	C/F to next year (in Rs.)
1.	7	1,40,000/-
2.	46	66,000/-
3.	76	82,500/-
4.	97	99,000/-
5	144	16,500/-
6	145	13,62,625/-
	TOTAL	17,66,625/-

With regards to the above, the assessee was requested to clarify whether corresponding income was offered during A. Y, 2020-21, In response, the assessee filed submission dated 14/09/2022. However, the assessee did not file relevant documentary evidence.

iv.1.2. Further, with regards to the above, the reliance may be placed on the judicial pronouncement in the case of Y. Rathiesh 51 Taxmann 59 (2014) (AP) wherein it was observed that if TDS Credit on a particular Income is claimed in a certain AY., Income on which such TDS is deducted should also be offered in that same A.Y. u/s 199 of the Act.

iv.1.3. In view of the above fact, circumstances and judicial pronouncements, since the claim of the TDS credit amounting to Rs. 17,66,625/- is made by the assessee and the income corresponding to the TDS credit claimed, but not offered to tax for the year under consideration amounting to Rs. 17,66,625/- is brought to tax within the meaning of section 199 r.w. Rule 37BA of the IT rules.”

5. The Ld. PCIT rejected the observation of the Ld. AO; the order under section 263 was passed and treated the impugned assessment order as erroneous and

prejudicial to the interest of the revenue. The relevant observation of the Ld.PCIT at paras 5.1 to 5.4 are as under:-

“5.1 I have gone through the assessment order and seen the submissions made on behalf of the assessee. From the material on record and facts recorded in the assessment order as well as the facts coming to light during the revision proceedings it is found that there is mismatch in the income in the returns vis-a-vis the 26AS. Also, the same is confirmed by the assessee. Though the assessee has explained the reasons of mismatch, however, the same are not acceptable as the corresponding income for which TDS has been claimed by the assessee has not been offered to tax. The Assessing Officer ought to have disallowed the same, however, despite explaining the issue categorically, the Assessing Officer did not disallow the same.

5.2 Without prejudice, the assessee has stated in its submission that the assessee follows cash system of accounting wherein income is returned on the receipt basis whereas TDS is deducted and shown in Form 26AS on record basis thereby resulting into mismatch and non-reconciliation. Therefore, the TDS should be claimed in the year in which the assessee has received the corresponding income, or the corresponding income should be offered to tax completely in the year in which the assessee has claimed the TDS corresponding to such income.

5.3 Since in this case the assessee has failed to do so and has claimed TDS despite the fact that such income has not been offered to tax completely in the relevant year in which TDS has been claimed, such income should be disallowed as per the provisions of the Act

5.4 Thus in the light of the above facts and circumstances of the case, Professional Income for which TDS has been claimed by the assessee had to be disallowed which the AO has erroneously allowed in the assessment order. This required verification of such claims as per the provisions of the I.T. Act, 1961. In view of the above reasons the assessment order passed by the AO u/s.

143(3) r.w.s. 144B of the I.T. Act, 1961 dated 23.09.2022 is erroneous in so far as being prejudicial to the interest of revenue.”

6. In the show cause notice U/s 263 of the Act we find that the assessee replied the said notice by a letter dated 16/12/2024 and assessee reconciled the alleged income amount to Rs.1,76,66,250/- corresponding to TDS claimed during the impugned assessment year, before the Ld.PCIT. The relevant explanation is extracted below:-

Sr.No	TAN	Name of the Party	Income	TDS	Remark
1.	BLG00978F	GOKALDAS IMAGES PVT LTD	14,00,000/-	1,40,000/-	Not received by the assessee as under dispute
2.	DELO06838G	DALMIA BHARAT LTD	6,60,000/-	66,000/-	TDS claimed and corresponding income offered in A.Y. 2020-21
3.	Mumg06269e	GODREJ CONSUMER PRODUCTS LTD	8,25,000/-	82,500/-	TDS claimed and corresponding income offered in A.Y. 2020-21
4.	PTLR14942E	RECIPHARM HOLDING INDIA PVT LTD	9,90,000/-	99,000/-	TDS claimed and corresponding income offered in A.Y. 2020-21
5.	DELQ00415C	QUIPPO TELECOM INFRASTRUCTURE PVT LTD	1,65,000/-	16,500/-	Not received by heassessee as under dispute
5.	PTLN11214A	NABHA POWER LIMITED	1,36,26,250/-	13,62,625/-	Out of the TDS of Rs.13,62,625/- TDS of Rs.9,55,625/- was claimed in A.Y. 2018-19 and balance of Rs.4,07,000/- has been carry forwarded in the

					<i>next year but the same has not been received by the assessee till date</i>
			1,76,66,250/-	17,66,625/-	

7. The Ld. DR vehemently supported and fully relied upon the findings and conclusions recorded in the revisionary order passed by the Ld. PCIT.

8. We have heard the rival submissions and perused the material available on record. The Ld. PCIT invoked the provisions of section 263 of the Act in respect of the assessee's claim of TDS amounting to Rs. 17,66,625/-, which corresponded to professional receipts of Rs. 1,76,66,250/-. It was alleged that the said receipts were not accounted for in the turnover during the relevant assessment year. Consequently, the Ld. PCIT rejected the assessee's contentions and the Assessing Officer's observation accepting the reconciliation of Rs. 1,76,66,250/-.

It is pertinent to note that this very issue had been examined by the ITAT, Mumbai in the assessee's own case in **ITA No. 527/Mum/2010**, order dated **08.12.2010**, wherein the coordinate bench ruled in favour of the assessee. The relevant portion of paragraph 8.2 of the said order is reproduced below:

"8.2 We find sufficient force in the above submissions of the assessee. Admittedly, the Revenue has not controverted the submissions made by the assessee before the Assessing Officer during the assessment proceedings as well as the remand proceedings, that all professional fees were received through cheques, which were duly deposited into his bank account with Oriental Bank of Commerce, South Extension Branch, New Delhi (as confirmed by the assessee's letter dated 08.10.2008 addressed to the AO). In the absence of any contrary material brought on record by the Revenue to establish that the assessee had received income in excess of what was declared,

no addition was warranted. It is also on record that the professional income declared by the assessee exceeded the amount reported in the AIR. Various legitimate reasons—such as lower or non-deduction of tax, reimbursement of expenses, etc.—may account for discrepancies between the AIR data and the income reported. Further, the assessee explained that a detailed party-wise break-up of fee receipts was impractical, as payments were received either directly from clients or through instructing advocates or chartered accountants. Such explanation had been accepted in prior scrutiny assessments, as duly recorded. In light of the above, we find merit in the assessee's contention, and accordingly, we set aside the order of the CIT(A) and direct the Assessing Officer to delete the addition.”

9. We further observe that the above decision has been followed by the coordinate bench of the ITAT, Mumbai Bench “G” in the assessee's own cases in **ITA No. 4608/Mum/2022** (A.Y. 2008-09) and **ITA No. 4607/Mum/2022** (A.Y. 2011-12), vide order dated **03.06.2024**. Additionally, the revenue had challenged the said issue before the Hon'ble Jurisdictional High Court in **ITA No. 1930 of 2011**. The Hon'ble High Court, vide order dated **18.03.2014**, dismissed the revenue's appeal and held as under:

“2. The assessee, under grounds 1 to 7, challenged the order of the Commissioner of Income Tax in confirming the addition of Rs. 47,37,000/- made by the Assessing Officer on account of non-reconciliation of professional receipts with TDS certificates. The Tribunal considered the submissions of both parties and observed that the assessee, an advocate, was engaged to argue matters through the Advocate-on-Record or instructing counsel mechanism. In such cases, fees are often received either directly from the client or through the instructing professional. The assessee submitted that it was not feasible to provide a detailed break-up of the fees received from each party. This explanation had been accepted in earlier assessments. In view of this, the Tribunal accepted the assessee's explanation and declined to uphold the addition. Given that

this explanation was accepted for A.Y. 2006-07, we find no reason to interfere. The appeal does not raise any substantial question of law.”

10. We also find that the assessee maintains its books of account on a cash basis, whereas the deductors maintain their accounts on a mercantile basis, resulting in timing mismatches between the receipts reflected in Form 26AS and those disclosed in the return of income. The assessee had duly explained this reconciliation both before the AO and the Ld. PCIT in response to the show cause notice. The income in question is already reflected in Form 26AS and deposited into the assessee's bank account. Notably, the Ld. PCIT has not brought on record any evidence indicating the presence of unaccounted income or any undisclosed bank account. The discrepancy highlighted by the Ld. PCIT is merely a matter of reconciliation between AIR data and the return of income, which had been adequately addressed by the assessee. The Ld. DR raised arguments regarding the matching principle between TDS and reported income. However, this issue stands settled by multiple coordinate benches of this Tribunal and by the Hon'ble Jurisdictional High Court in the assessee's own case. It is further observed that the Assessing Officer had considered this very issue during the assessment proceedings and made appropriate observations in the assessment order. Therefore, there is no justification for invoking section 263 in the guise of a difference of opinion. In view of the above, we hold that the revisionary order passed by the Ld. PCIT under section 263 is unsustainable in law and liable to be quashed.

Accordingly, we quash the order passed by the Ld. PCIT under section 263 of the Act.

11. In the result, assessee's appeal bearing **ITA No.2005/Mum/2025** is allowed.

Order pronounced in the open court on 20th day of May 2025.

Sd/-

(NARENDRA KUMAR BILLAIYA)
ACCOUNTANT MEMBER

Mumbai, दिनांक/Dated: 20/05/2025

Pavanan

Copy of the Order forwarded to:

1. अपीलार्थी/The Appellant ,
2. प्रतिवादी/ The Respondent.
3. आयकर आयुक्त CIT
4. विभागीय प्रतिनिधि, आय.अपी.अधि., मुंबई/DR, ITAT,
Mumbai
5. गार्डफाइल/Guard file.

sd/-

(ANIKESH BANERJEE)
JUDICIAL MEMBER

BY ORDER,

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(Asstt. Registrar), ITAT, Mumbai

