

आयकर अपीलीय अधिकरण, विशाखापटणम पीठ, विशाखापटणम

**IN THE INCOME TAX APPELLATE TRIBUNAL
VISA KHAPATNAM "DIVISION" BENCH, VISA KHAPATNAM**

**श्री वीरवल्ली दुर्गा राव, न्यायिक सदस्य एवं श्री एस बालाकृष्णन, लेखा सदस्य के समक्ष
BEFORE SHRI VEERAVALLI DURGA RAO, HON'BLE JUDICIAL MEMBER**

&

SHRI S BALAKRISHNAN, HON'BLE ACCOUNTANT MEMBER

**आयकर अपीलसं./I.T.A.Nos.145, 146, 147 & 148/VIZ/2025
(निर्धारणवर्ष/ Assessment Years: 2019-20, 2020-21, 2021-22 & 2022-23)**

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| M/s. NS Healthcare Services Private Limited C/o. CA, M.V. Prasad Door No. 60-7-13, Ground Floor Siddhartha Nagar, 4 th Lane Vijayawada – 521333 Andhra Pradesh [PAN: AAECN5265F] | v. | ACIT – Central Circle Stalin Corporate Building D.No. 55-17-2 to 4 A Block, 4 th Floor, Industrial Estate Jawahar Auto Nagar, Vijayawada – 520007 Andhra Pradesh |
| (अपीलार्थी/ Appellant) | | (प्रत्यर्थी/ Respondent) |

**आयकर अपीलसं./I.T.A.Nos.184, 185, 186 & 187/VIZ/2025
(निर्धारण वर्ष/ Assessment Year: 2019-20, 2020-21, 2021-22 & 2022-23)**

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| Dy. Commissioner of Income Tax Stalin Corporate Building 4 th Floor, Auto Nagar - 520007 Andhra Pradesh | v. | M/s. NS Healthcare Services Private Limited Door No. 33-25-35 Opp. Corporation Bank, Bellapu Sobhanadri Road, Suryaraopet Andhra Pradesh - 520002 [PAN: AAECN5265F] |
| (अपीलार्थी/ Appellant) | | (प्रत्यर्थी/ Respondent) |

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|---|---|---------------------------|
| करदाता का प्रतिनिधित्व/ Assessee Represented by | : | Shri M.V. Prasad, CA |
| राजस्व का प्रतिनिधित्व/ Department Represented by | : | Dr.Satyasai Rath, CIT(DR) |
| | | |
| सुनवाई समाप्त होने की तिथि/ Date of Conclusion of Hearing | : | 11.06.2025 |
| घोषणा की तारीख/Date of Pronouncement | : | 18.06.2025 |

आदेश /ORDER

PER SHRI S BALAKRISHNAN, ACCOUNTANT MEMBER:

1. Since assessee is same and issues are common, all these appeals are clubbed and heard together and a consolidated order being passed. First, we will take up the appeals filed by the assessee.

2. These appeals are filed by the assessee against different orders of Learned Commissioner of Income Tax (Appeals), Visakhapatnam – 3 [hereinafter in short “Ld.CIT(A)”] vide respective DIN & Order No. as stated below: -

| ITA No. & A.Y. | DIN & Order No. | Dated |
|--|---------------------------------------|--------------|
| ITA No. 145/VIZ/2025 (A.Y. 2019-20) | ITBA/APL/S/250/2024-25/1072644049(1) | 28.01.2025 |
| ITA No. 146/VIZ/2025 (A.Y. 2020-21) | ITBA/APL/S/250/2024-25/1072644910(1) | 28.01.2025 |
| ITA No. 147/VIZ/2025 (A.Y. 2021-22) | ITBA/APL/S/250/2024-25/10726645302(1) | 28.01.2025 |
| ITA No. 148/VIZ/2025 (A.Y. 2022-23) | ITBA/APL/S/250/2024-25/1072645352(1) | 28.01.2025 |

3. Since the grounds raised by the assessee are common and identical, we take up the appeal in ITA No. 145/V/2025 for the A.Y. 2019-20 as a lead appeal and the facts are extracted there from.

ITA No. 145/VIZ/2025 (A.Y. 2019-20)

4. Brief facts of the case are that, assessee is running a hospital at Vijayawada. The assessee filed its return of income admitting a total income of Rs.3,84,79,192/- on 16.10.2019 for the A.Y. 2019-20. A Survey under section 133(A) of the Income Tax Act, 1961 (in short 'Act') was conducted in the case of the assessee on 11.03.2022 by investigation wing. The case then centralized by taking approval from the appropriate authorities. During the course of survey, it was noticed that assessee maintains separate cash book only for the cash receipts. The survey team informed that the physical books and the backup of tally was available in hard disk. As per the survey report the actual turnover made by the assessee was Rs.42,73,56,900/- whereas admitted turnover was Rs.31,10,68,283/- and hence the difference arising out of the suppression of sales amounting to Rs.11,62,88,617/- was brought to the notice before the Directors, who confirmed that there is suppression of sales during the F.Y.2018-19. Subsequently, notice under section 148A(b) of the Act was issued and served on the assessee on 03.11.2022 to show-cause why notice under section 148 of the Act should not be issued on the basis of the survey information. The assessee, in response, replied that the impounded tally is only a rough version and the profit declared as per Profit & Loss Account filed along with the return of income is true and correct. Ld. AO did not accept the reply of the assessee and thereafter an order under section 148A(d) of the Act was issued

to the assessee on 25.11.2022 with the prior approval of PCIT (Central), Visakhapatnam. In response to the notice under section 148 of the Act, assessee filed return of income admitting the same income as originally filed by the assessee. Thereafter notice under section 142(1) of the Act dated 03.03.2023 was issued to the assessee to substantiate with documentary evidences with respect to the non-submission of suppressed receipts. In response, assessee submitted that unaccounted turnover is only Rs.9,68,57,096/- as against the turnover worked out by the department at Rs.11,62,88,617/-. Ld. AO further noticed that assessee has claimed unaccounted cash expenditure and admitted only Rs.9,56,484/- as additional income. After examining the submissions made by the assessee, the Ld. AO made an addition under section 40A(3) of the Act for the following expenditure: -

| Sl.No | Particulars | : | Amount |
|--------------|--|----------|----------------|
| i. | Consultancy Fee Account | : | Rs.38,93,154/- |
| ii. | Hospital maintenance (Under section 37(1) of the Act Rs.14,92,734/- and under section 40A(3) of the Act Rs.9,32,734/- | : | Rs.24,25,468/- |
| iii. | Patient refund account (Under section 37 of the Act) | : | Rs.5,04,366/- |
| iv. | Other expenditure (Under section 40A(3) of the Act) | : | Rs.9,92,990/- |

5. Further Ld. AO also disallowed under section 37(1) under section 148(A) of the Act an amount of Rs.71,14,092/- considering the expenses cannot be allowed which has been incurred as a personal expenditure of the Directors.

6. Further, Ld. AO also considered an amount of Rs.2,11,000/- was disallowable as assessee violated Indian Medical Council (Professional Conduct Etiquette and Ethics) Regulations, 2002. Further, Ld. AO also noticed that the assessee has claimed Rs.4,46,88,994/- as expenditure incurred by Directors which are actual drawings made by the Directors.

7. On being aggrieved by the above additions made by the Ld. AO, assessee filed an appeal before the Ld. CIT(A). The Ld. CIT(A) considering the submissions made by the assessee, partly allowed the appeal of the assessee.

8. On being aggrieved by the order of the Ld. CIT(A), assessee is in appeal before us by raising following grounds of appeal: -

- “1. The learned CIT (Appeals) is erred in facts and law while passing the order.*
- 2. The Learned CIT (Appeals) is not justified in confirming the disallowance of Rs.22,62,318/- made u/s.37(1) of the I.T. Act towards lab referral commission.*
- 3. The Learned CIT (Appeals) is not justified in confirming the disallowance of Rs. 14,92,734/- made u/s.37(1) of the I.T.Act out of the expenditure incurred towards hospital maintenance.*
- 4. The Learned CIT (Appeals) is not justified in confirming the difference of Rs. 2,11,000/- between the amount claimed of Rs.73,25,092/- and allowed of Rs.71,14,092/- while adjudicating the ground in respect of expenditure claimed towards refund in respect of directors advance account.*
- 5. The Learned CIT (Appeals) not adjudicated the issue of addition made on account of net profit declared of Rs. 9,56,484/- even though appeal has been preferred on such addition also.*
- 6. The Learned CIT (Appeals) is not justified in directing the AO to estimate disallowance @ 25% out of the expenditure claimed under patient refund account of Rs.5,04,336/- without any basis and any justifiable evidence.*

7. *The Learned CIT (Appeals) is not justified in directing the AO to estimate disallowance @ 25% of the expenses claimed out of "Drawings" of directors amounting to Rs.4,46,88,994/- without any basis and any justifiable evidence even though it was categorically stated in that these have been spent for making additional payment of salaries, incentives to the nurses, staff members who were assigned with special duties and also towards purchase of hospital equipment to treat the patients by the doctors for specialized treatments.*

8. *On the facts and circumstance of the case, Assessment is not valid in the eyes of law as Certificate envisaged U/s 65B of the Evidence Act was not obtained before relying on the impounded tally backup data which is the taken from the impounded hard disk for making the Assessment.*

9. *Any other ground/grounds that may be urged at the time of hearing."*

9. Ground Nos. 1 & 9 are general in nature and needs no adjudication.
10. Ground Nos. 2, 3 & 4 are not pressed by the Ld. Authorised Representative [hereinafter "Ld.AR"] and hence dismissed as not pressed.
11. Ground No. 8 was withdrawn by the Ld.AR and hence dismissed as withdrawn.
12. With respect to Ground No. 5 wherein the profit of Rs.9,56,486/- was added to the total income of the assessee, Ld.AR did not argue on this ground and hence dismissed as not pressed.
13. With respect to Ground No. 6 wherein the Ld. AO estimated the disallowance @25% of the expenditure claimed under patient refund account, Ld.AR submitted that the Ld. AO erred in observing that certain amounts were paid to various Doctors throughout the year as referral payments, it claimed under patient refund account. He further vehemently submitted that these were

discounts / concessions given to the patients based on the recommendation of the Directors and on the referral by other Doctors and hence the disallowance made by the Ld. AO on presumption is not proper and acceptable. Ld. AO based on the seized material noticed the most of times, names of doctors and some other names are appearing and hence doubted the refund given to the patients. However, Ld.AR referred to Page No. 323 of the paper book wherein the names of the patients including the I.P.Nos and the doctor referred is clearly indicated against the amount of discount granted to such patients. He therefore pleaded that the Ld. CIT(A) considering these evidences estimated the disallowance @25% of such amount claimed by the assessee. He further argued that Ld.CIT(A) also presumed the percentage of disallowance wherein the assessee has actually incurred this expenditure in the form of discounts to the patients and shall be allowed as expenditure. He further submitted that during the survey also no evidences were gathered to justify that these payments were not made to doctors as referral fees. He further submitted that it is a regular practice in the hospital industry to grant such refund / concessions / discount to the patients which was referred by the Directors or any other doctors. He therefore pleaded that the estimate made by the Ld. CIT(A) be deleted.

14. Per contra, Ld. Departmental Representative [hereinafter in short “Ld.DR”] argued that the Ld. AO is right in disallowing the payments as it is violation of the Indian Medical Council (Professional Conduct Etiquette and

Ethics) Regulations, 2002 which prohibits such referral payments for patient references. Ld. DR placed reliance on the decision of the Hon'ble Calcutta High Court in the case of Peerless Hospitex Hospital and Research Center Ltd., v. Pr.CIT [[2002] 137 taxmann.com 359 (Calcutta)] and submitted that payments were held as violation of the professional ethics and thus not allowable as deductible business expenditure under section 37(1) of the Act. Ld. DR also relied on the decision of jurisdictional coordinate bench of the Tribunal in the case of Chalasani Hospitals (P.) Ltd., v. ACIT [2024] 165 taxmann.com 753 (Visakhapatnam – Trib.). He therefore pleaded that the Ld.CIT(A) has erred in estimating the disallowance made which is bad in law. He therefore prayed for restoring the order of the Ld. AO on this issue.

15. We have heard both the sides and perused the material available on record including the written submissions of the Ld.AR and Ld. DR. It is an undisputed fact that most of the patients who come for treatment either as out-patient or in-patient to hospitals would have consulted their own doctor and in the absence of such doctor having a fully equipped hospital may refer the patient to the assessee-hospital for treatment requesting the hospital to give concession to his patient. It is normal business practice with the hospital to consider such requests and allow concessions on the final bill and such amount to the extent will be refunded to the patient. It is the contention of the Ld. AO that these amounts were paid to various doctors periodically as referral

payments. However, revenue could not produce any documentary evidences either from the impounded material or otherwise substantiating the claim of the revenue that these payments were made to the various doctors as referral payments. Further, Ld. AO has also not identified that payments made to various doctors. The assessee also could not submit documentary evidences with respect to the claim of expenditure under the patient refund account. However, as demonstrated by the Ld.AR in the Hand Written document available in paper book Page No.323 the doctor's name is mentioned followed by the patient's name and I.P number of the patients alongwith the amount considered as discount to such patient. We therefore find no justification by the Ld. CIT(A) in estimating the disallowance @25% of the patient refund account without corroborating with any evidences available in the impounded material. We therefore set-aside the order of the Ld. CIT(A) on this issue thereby allow the ground raised by the assessee.

16. With respect to Ground No. 7 wherein the Ld. CIT(A) has estimated the disallowance @25% of expenses claimed out of "Drawings" of Directors. Ld.AR submitted that certain expenditure was incurred by the Directors of the assessee on behalf of the Company. He also further submitted that the drawings by the Directors was subsequently deposited in cash to the bank account after meeting the expenditure. Ld.AR further argued that the drawings made by the Directors was entirely used for meeting the certain business expenditure on

day-to-day basis. Further, the revenue has not impounded any material implicating the Directors has invested the drawings in any unaccounted assets during the impugned assessment year. He therefore pleaded that these facts have been submitted before the Ld. AO also. He also further argued that the doctors / Directors in orders to reward the staff who are working over-time depending on the emergency situations withdraw money from the system and made payments to various staff outside the regular books of accounts. Further he also submitted that if the drawings by the doctors / Director's expenditure is disallowed the profit percentage of the hospital will be huge which is not as per the declared undisputed profits in previous years. He therefore pleaded that the additions made by the revenue authorities to be deleted.

17. Per contra, Ld. DR heavily relied on the orders of the Revenue Authorities.

18. We have heard both the sides and perused the material available on record including the written submissions of the rival parties. It is the case of the Ld. AO that the assessee has not incurred any expenditure out of withdrawal by the Directors. However, it was the submissions of the Ld.AR that the Directors of the assessee's company have not made any investment out of such withdrawing whereas no such evidences are found by the revenue during the survey operations. Further Ld. AO also not brought on record any evidences

incriminating in nature arising out of the impounded material. Even though the revenue contentions are that the Directors during the course of survey proceedings recorded statement under section 133A of the Act which has no evidentiary value and the addition cannot be made based on such statements.

19. The Hon'ble Madras High Court in the case of CIT v. S. Khader Khan Son (2008) 300 ITR 157 (Madras) has laid down the ratio that admissions made during statement recorded under section 133A of the Act would not automatically bound on the assessee. Further there is also merit in the argument of the Ld.AR that due to the addition of the drawings made by the Directors the profit percentage increased to 25.45% as against the admitted net profit of 10.69% by the assessee. The profitability of 25.45% is not in accordance with the regular profit declared by the assessee which is not disputed by the revenue in the earlier assessment years. In these circumstances based on the submissions by Ld AR, we consider appropriate to estimate the disallowances at 10% of the drawings which can be considered as Directors personal drawings. We therefor direct the Ld. AO to disallow 10% of the Directors drawings amount of Rs.4,46,88,994/-, thus this ground raised by the assessee is partly allowed.

20. In the result, appeal of the assessee is partly allowed.

ITA No. 146/VIZ/2025 (A.Y. 2020-21)

21. Assessee has raised following grounds of appeal in its appeal:

“1. *The learned CIT (Appeals) is erred in facts and law while passing the order.*

2. *The Learned CIT (Appeals) is not justified in confirming the disallowance of Rs.32,51,079/- made u/s.37(1) of the I.T. Act out of patient refund account as spent for personal purposes by the director doctors and other resident doctors without bringing any evidence to prove that same spent for personal purposes.*

3. *The Learned CIT (Appeals) is not justified in confirming the disallowance of Rs. 30,91,538/- made u/s.37(1) of the I.T.Act and in violation of provisions of Section 40A(3) of the Act out of the expenditure incurred under patient refund account without bringing any corroborative evidences of such nature of payment.*

4. *The Learned CIT (Appeals) is not justified in directing the AO to estimate disallowance @ 25% out of the expenditure claimed under referral payments of Rs.34,84,567/- without any basis and any justifiable evidence.*

5. *The Learned CIT (Appeals) is not justified in confirming the addition made on account of hospital maintenance of Rs. 11,80,233/- as the AR could not demonstrate that such amounts were incurred exclusively for the business purposes even though it was stated that such payments are inevitable for the business claims.*

6. *The Learned CIT (Appeals) is not justified in directing the AO to estimate disallowance @ 25% of the expenses claimed out of "Drawings" of directors amounting to Rs.5,74,71,885/- without any basis and any justifiable evidence even though it was categorically stated in that these have been spent for making additional payment of salaries, incentives to the nurses, staff members who were assigned with special duties and also towards purchase of hospital equipment to treat the patients by the doctors for specialized treatments.*

7. *On the facts and circumstance of the case, Assessment is not valid in the eyes of law as Certificate envisaged U/s 65B of the Evidence Act was not obtained before relying on the impounded tally backup data which is the taken from the impounded hard disk for making the Assessment.*

8. *Any other ground/grounds that may be urged at the time of hearing.”*

22. Ground Nos. 1 & 8 of grounds of appeal, are general in nature and needs no adjudication.

23. Ground Nos. 2, 3 & 5 of grounds of appeal, were not pressed by the Ld.AR and hence dismissed as not pressed.

24. Ground No. 7 was withdrawn by the Ld.AR and hence dismissed as withdrawn.

25. Ground No. 4 is identical to Ground No. 6 raised by the assessee in ITA No. 145/VIZ/2025 for the A.Y. 2019-20 and hence adjudication of Ground No.6 in aforesaid paragraph shall apply mutatis mutandis to this ground raised by the assessee in ITA No.146/VIZ/2025 for the A.Y. 2020-21. Accordingly, ground raised by the assessee is allowed.

26. Similarly, Ground No. 6 is identical to Ground No. 7 raised by the assessee in ITA No. 145/VIZ/2025 for the A.Y. 2019-20 and hence adjudication of Ground No. 7 in aforesaid paragraph shall apply mutatis mutandis to this ground raised by the assessee in ITA No.146/VIZ/2025 for the A.Y. 2020-21. Accordingly, ground raised by the assessee is partly allowed.

27. In the result, appeal of the assessee is partly allowed.

ITA No. 147/VIZ/2025 (A.Y. 2021-22)

28. Assessee has raised following grounds of appeal: -

1. *The learned CIT (Appeals) is erred in facts and law while passing the order.*

2. *The Learned CIT (Appeals) is not justified in directing the AO to estimate disallowance @ 25% of the expenses claimed out of "patient refund account" amounting to Rs.2,14,54,806/- without any basis and any justifiable evidence even though it was categorically stated as this amount represents the refund given to patients which were referred by doctors mentioned in impounding material.*

3. *The Learned CIT (Appeals) is not justified in confirming the disallowance of Rs.11,53,650/- claimed as staff salaries paid during the COVID period without bringing any corroborative evidences that they do not represent the salaries paid to the staff.*

4. *The Learned CIT (Appeals) is not justified in directing the AO to estimate disallowance @ 25% of the expenses claimed out of "Drawings" of directors amounting to Rs.5,54,13,061/- without any basis and any justifiable evidence even though it was categorically stated in that these have been spent for making additional payment of salaries, incentives to the nurses, staff members who were assigned with special duties and also towards purchase of hospital equipment to treat the patients by the doctors for specialized treatments.*

5. *On the facts and circumstance of the case, Assessment is not valid in the eyes of law as Certificate envisaged U/s 65B of the Evidence Act was not obtained before relying on the impounded tally backup data which is the taken from the impounded hard disk for making the Assessment.*

6. *Any other ground/grounds that may be urged at the time of hearing."*

29. Ground Nos. 1 & 6 of grounds of appeal, are general in nature and needs no adjudication.

30. Ground No. 3 of grounds of appeal, was not pressed by the Ld.AR and hence dismissed as not pressed.

31. Ground No. 5 was withdrawn by the Ld.AR and hence dismissed as withdrawn.

32. Ground No. 2 is identical to Ground No. 6 raised by the assessee in ITA No. 145/VIZ/2025 for the A.Y. 2019-20 and hence adjudication of Ground No. 6 in aforesaid paragraph shall apply mutatis mutandis to this ground raised by the assessee in ITA No.147/VIZ/2025 for the A.Y. 2021-22. Accordingly, ground raised by the assessee is allowed.

33. Similarly, Ground No. 4 is identical to Ground No. 7 raised by the assessee in ITA No. 145/VIZ/2025 for the A.Y. 2019-20 and hence adjudication of Ground No. 7 in aforesaid paragraph shall apply mutatis mutandis to this ground raised by the assessee in ITA No.147/VIZ/2025 A.Y. 2021-22. Accordingly, ground raised by the assessee is partly allowed.

34. In the result, appeal of the assessee is partly allowed.

ITA No. 148/VIZ/2025 (A.Y. 2022-23)

35. Assessee has raised following grounds of appeal: -

“1. The learned CIT (Appeals) is erred in facts and law while passing the order.

2. *The Learned CIT (Appeals) is not justified in directing the AO to estimate disallowance @ 25% of the expenses claimed out of "patient refund account" amounting to Rs.3,82,56,431/- without any basis and any justifiable evidence even though it was categorically stated as this amount represents the refund given to patients which were referred by doctors mentioned in impounding material.*

3. *On the facts and circumstance of the case, Assessment is not valid in the eyes of law as Certificate envisaged U/s 65B of the Evidence Act was not w obtained before relying on the impounded tally backup data which is the taken from the impounded hard disk for making the Assessment.*

4. *Any other ground/grounds that may be urged at the time of hearing."*

36. Ground Nos. 1 & 4 of grounds of appeal, are general in nature and needs no adjudication.

37. Ground No. 3 was withdrawn by the Ld.AR and hence dismissed as withdrawn.

38. Ground No. 2 is identical to Ground No. 6 raised by the assessee in ITA No. 145/VIZ/2025 for the A.Y. 2019-20 and hence adjudication of Ground No. 6 in aforesaid paragraph shall apply mutatis mutandis to this ground raised by the assessee in ITA No.148/VIZ/2025 for the A.Y. 2022-23. Accordingly, ground raised by the assessee is allowed.

39. In the result, appeal of the assessee is allowed.

40. Now we proceed to adjudicate the appeals filed by the revenue.

41. These appeals are filed by the revenue against different orders of Learned Commissioner of Income Tax (Appeals), Visakhapatnam – 3 [hereinafter in short “Ld.CIT(A)”] vide respective DIN & Order No. as stated below:-

| ITA No. & A.Y. | DIN & Order No. | Dated |
|--|---------------------------------------|--------------|
| ITA No. 184/VIZ/2025 (A.Y. 2019-20) | ITBA/APL/S/250/2024-25/1072644049(1) | 28.01.2025 |
| ITA No. 185/VIZ/2025 (A.Y. 2020-21) | ITBA/APL/S/250/2024-25/1072644910(1) | 28.01.2025 |
| ITA No. 186/VIZ/2025 (A.Y. 2021-22) | ITBA/APL/S/250/2024-25/10726645302(1) | 28.01.2025 |
| ITA No. 187/VIZ/2025 (A.Y. 2022-23) | ITBA/APL/S/250/2024-25/1072645352(1) | 28.01.2025 |

42. Since the grounds raised by the revenue are common and identical, we take up the appeal in ITA No. 184/VIZ/2025 for the A.Y. 2019-20 as a lead appeal for adjudication.

ITA No. 184/VIZ/2025 (A.Y. 2019-20)

43. Facts are similar to the assessee’s appeal in ITA No. 145/VIZ/2025 for the A.Y. 2019-20 and hence not extracted.

44. Revenue has raised following grounds of appeal: -

“1. *The order of the Ld. CIT(A) is erroneous both on the facts and in law.*

2. *Under the facts and circumstances, the Ld. CIT(A) has erred in allowing relief of Rs 22,45,897/- without appreciating the fact that the payment was made to Dr B Chandra Sekhar, which is nothing but referral payment to a Medical Practitioner. The Ld. CIT(A) ought to have*

considered the fact that such expenditure is in violation of the provisions of Indian Medical Council (Professional conduct, etiquette and ethics) regulations, 2002 and also inadmissible u/s 37 of the I.T. Act 1961.

3. Under the facts and circumstances, the Ld. CIT(A) has erred in not considering the fact that the payment of Rs. 22,45,897/- paid to Dr B Chandra Sekhar was not subject to TDS and thus genuineness and allowability of the payment was not proved. The Ld. CIT(A) has not appreciated the fact that the said amount was not admitted by Dr B Chandra Sekhar in his returns.

4. Under the facts and circumstances, the Ld. CIT(A) has erred in allowing relief of Rs 38,93,154/-, without appreciating the fact that the payment was made towards Lab referrals, which is against the law. The Ld. CIT(A) ought to have considered the fact that such expenditure is in violation of the provisions of Indian Medical Council (Professional conduct, etiquette and ethics) regulations, 2002 and also inadmissible u/s 37 of the I.T. Act 1961.

5. Under the facts and circumstances, the Ld. CIT(A) has erred in allowing relief of Rs 61,39,051/- (Rs 22,45,897/- + Rs 38,93,154/-) holding that the provisions of sec 40A(3) are not applicable. The Ld. CIT(A) ought to have appreciated the fact that the disallowance of Rs 61,39,051/- was made for violation of provisions of sec 40A(3), as evidenced from the expenditure claimed in the impounded Tally data, which was clearly recorded in para 7.5 of the Assessment Order.

6. Under the facts and circumstances, the Ld. CIT(A) has erred in upholding only 25% of Rs 5,04,336/-, without appreciating the fact that out of the expenditure claimed by the assessee company at Rs 11,61,792/-, an amount of Rs.5,04,336/- was disallowed holding that it was paid to referral Doctors/RMPs, which is against the law. The Ld. CIT(A) ought to have appreciated the fact that the same is in violation of the provisions of Indian Medical Council (Professional conduct, etiquette and ethics) regulations, 2002 and also inadmissible u/s 37 of the I.T. Act 1961.

7. The Ld. CIT(A) has erred in upholding only 25% of Rs 5,04,336/-, without appreciating the fact that the assessee company could not produce any evidence to prove the same is genuine. The Ld. CIT(A) ought to have upheld the entire disallowance of Rs 5,04,336/-, without restricting the disallowance @ 25%. The Ld. CIT(A) ought to have appreciated the fact that if such expenditure was incurred for making payments to Doctors/RMPs towards referrals, the entire expenditure calls for disallowance, but not at any other proportion, i.e. @25%.

8. Under the facts and circumstances, the Ld. CIT(A) has erred in allowing relief of Rs 9,92,904/-, holding that the provisions of sec 40A(3) are not applicable. The Ld. CIT(A) ought to have appreciated the fact that the disallowance of Rs 9,92,904/- was made for violation of provisions of

sec 40A(3), as evidenced from the expenditure claimed in the ledger extracts produced by the assessee company and impounded material, which was clearly recorded in para 7.7 of the Assessment Order.

9. *Under the facts and circumstances, the Ld. CIT(A) has erred in allowing relief of Rs 71,14,092/-, holding that periodic amounts drawn by the Directors of the assessee company was for incurring business exigencies/expenditure. The Ld. CIT(A) ought to have appreciated the fact that out of the total expenditure of Rs 1,56,86,095/- towards "Patient Refund", a finding was given by the Assessing Officer that all expenditure was not refunded to the Patients and accordingly, the amounts diverted/withdrawn by the Directors of the assessee company was quantified at Rs 71,11,092/- and findings were clearly recorded at para no. 7.8 of the Assessment Order.*

10. *Under the facts and circumstances, the Ld. CIT(A) has erred in allowing relief of Rs 71,14,092/-, holding that this expenditure was for the purpose of Business, by ignoring the fact that the assessee company could not furnish any documentary evidence either in the scrutiny proceedings or in the Appellate proceedings. The Ld. CIT(A) ought not to have drawn inference without any further evidence from the side of the assessee company.*

11. *Under the facts and circumstances, the Ld. CIT(A) has erred in allowing relief of Rs 71,14,092/-, without appreciating the fact the said amount was paid to referral Doctors/RMPs, which is against the law. The Ld. CIT(A) ought to have appreciated the fact that the same is in violation of the provisions of Indian Medical Council (Professional conduct, etiquette and ethics) regulations, 2002 and also inadmissible u/s 37 of the I.T. Act 1961.*

12. *Under the facts and circumstances, the Ld. CIT(A) has erred in upholding only 25% of the disallowance of Rs 4,46,88,994/-, by accepting that this amount was utilised to make cash payments in its business. The Ld. CIT(A) ought to have considered the fact that various heads/entries, in the impounded material were exactly matched with the entries in Tally software and thus, the amounts drawn under the head "Drawings" can't be equated with any of the Business expenditure incurred outside the books of account, as claimed by the assessee company.*

13. *Under the facts and circumstances, the Ld. CIT(A) has erred in upholding only 25% of the disallowance of Rs 4,46,88,994/-, by accepting that this amount was utilised to make cash payments in its business, The Ld. CIT(A) ought to have considered the amounts withdrawn by the Directors towards "Drawings" were for their personal purpose, but not for the purpose of business and the assessee company could not establish the said fact along with any documentary evidence.*

14. Under the facts and circumstances, the Ld. CIT(A) has erred in upholding only 25% of the disallowance of Rs 4,46,88,994/-, by accepting that this amount was utilised to make cash payments in its business. The Ld. CIT(A) ought to have considered the fact that the Directors of the assessee company have admitted in their respective statements recorded during the course of Survey operation u/s 133A accepting that the Drawings were received by them for their personal expenditure in equal proportion, out of the cash receipts. Reliance is placed on decision of Hon'ble Apex Court in the case of *Sri B Kishore Kumar Vs DCIT* 2015) 62 taxmann.com 215/234 Taxmann771, wherein it was held that even a Sworn statement shall also constitute incriminating material to dislodge any earlier finding for the purpose of making an assessment u/s 153A.

15. The Ld. CIT(A) ought to have considered the decision of Hon'ble Supreme Court in the case of *Bannalal Jat Constructions P Ltd Vs ACIT*

(2019) 106 Taxmann.com 128(SC)/264 Taxmann 5(SC), wherein it was held that "where High Court upheld the addition made by authorities below relying upon statement made in course of search proceedings by Director of assessee company, since assessee failed to discharge its burden that admission made by Director in his statement was wrong and said statement was recorded under duress and coercion, SLP filed against decision of High Court was to be dismissed."

16. The Ld. CIT(A) ought to have considered the decision of Hon'ble High Court of Karnataka in the case of *PCIT Vs Rajesh Exports Ltd* (2023) 150 taxmann.com 18 (Karnataka), wherein it was held that "the assessee failed to substantiate loss with no credible evidences before lower authorities thereby failing to discharge primary onus lies on him to do so in respect of expenditure claimed by him in the return of income, order of Tribunal deserved to be set aside."

17. The Ld. CIT(A) ought to have appreciate the fact that admissions are relevant and may be proved as against the person who makes them, as per the section 21 of the Indian Evidence Act 1872. In the instant case, the statements given by the Directors of the assessee company during the Survey proceedings has an evidentiary value in the light of concurrent corroborative evidences. The CIT(A) has erred in not considering the evidence that was found and seized in the form of Tally accounts has evidentiary value as per the provisions of sec 65A and sec 65B of Indian Evidence Act 1872.

18. Under the facts and circumstances, the Ld. CIT(A) has erred in allowing payments made towards "referrals" to Doctors/RMPs, keeping in view of the decision of Hon'ble Supreme Court in the case of *M/s Apex Laboratories Vs DCIT* (Special Leave Petition (Civil) No. 23207 of 2019) dt. 22.02.2022.

19 The Ld. CIT(A) ought to have considered the fact that had the Department not conducted Survey action u/s 133A, the fact of non-admission of sale proceeds would not have come to light and the modus operandi of the assessee firm would not have unearthed.

20 The Ld. CIT(A) ought to have considered the fact that the assessee firm had not voluntarily made any true and full disclosure of its income. The Ld. CIT(A) ought to have appreciated the fact that it was only after detection by the Department, the unaccounted money of the assessee firm was brought to tax.

21. The Ld. CIT(A) ought to have considered the statement given by the Directors of the assessee company at the time of Survey proceedings, wherein he categorically accepted the modus operandi of the business operations. The Ld. CIT(A) ought to have considered the fact that the statement recorded at the time of survey has a locus standi and the burden lies on the assessee company to establish that the admission made in the statement at the time of survey was wrong and that there was no additional income.

22. Under the facts and circumstance of the case, the Ld. CIT(A) has erred in relying on the decision of Hon'ble High Court of Delhi in the case of CIT Vs Anand Swarup Khandelwal (2009) (177 taxman 450) and the decision of the jurisdictional Tribunal ITAT, Visakhapatnam in the case of Smt. Bommana Swarna Rekha Vs. ACIT (147 taxman 59), wherein the facts are different from the present case and is not applicable to the facts of the present case.

23. The Ld. CIT(A) is not justified in allowing relief to the assessee company without applying the decision of Hon'ble Apex Court in the case of Sumati Dayal v CIT (1995) 214 ITR 801 (SC), wherein it was held that Surrounding circumstances and test of applying human probabilities "Though an apparent must be considered real until it was shown that there were reasons to believe that the apparent was not real in the case where a party relied on self-serving recitals in document, it was for that party to establish the truth of those recitals. Taxing authorities were entitled to look into the surrounding circumstances to find out the reality of the recitals".

24. The Ld. CIT(A) is not justified in allowing relief towards proportionate disallowance of interest u/s. 36(1)(iii) and without applying the decision of Hon'ble Apex Court in the case of CIT v. Durga Prasad More(1971) 82 ITR 540 (SC) (546,547), wherein it was held that "Science has not yet invented any instrument to test the reliability evidence placed before a Court or a Tribunal. Therefore, the courts and the Tribunals have to judge the evidence before them by apply the test of Human Probabilities. Human minds may differ as reliability of a piece of evidence, but that sphere decision of the final fact-finding authority is made conclusive by law

25. Any other ground that may be urged at the time of hearing."

- 45.** We proceed to adjudicate the issues ground wise.
- 46.** Ground Nos. 1 and 5 are general in nature and needs no adjudication.
- 47.** Ground Nos. 2 &3 are relating to payment of Rs.22,45,897/- wherein the Ld. CIT(A) has allowed relief to the assessee. On this issue Ld. DR submitted that these amounts were paid to Doctors as referral fees which is in violation of the provisions of section Indian Medical Council (Professional Conduct Etiquette and Ethics) Regulations, 2002 and hence rightly held by the Ld. AO has inadmissible under section 37(1) of the Act. He further submitted that the assessee has also not deducted tax at source on these payments. He therefore pleaded that order of the Ld. AO be upheld.
- 48.** Per contra, Ld.AR submitted that these amounts paid to various visiting doctors specialised in various treatments. He further argued that these payments were not doubted by the revenue but were wrongly considered as referral fees to various doctors. He further argued that if the revenue has considered these payments are not subjected to TDS the Ld. AO ought to have disallowed the same under section 40(a)(ia) of the Act. He further submitted that these expenditures were examined by the Ld. CIT(A) and allowed. He therefore pleaded that the order of the Ld. CIT(A) be upheld on this issue.
- 49.** We have heard both the sides and perused the material available on record. It is the case of the Ld. AO that the assessee has incurred these amounts

towards referrals to doctors wherein Ld. AO has held that the assessee has paid an amount of Rs.45,08,215/- as consultancy fee to single doctor. However, from the submissions made by the Ld.AR before Ld. CIT(A), we find that the charges paid to the extent of Rs.22,45,847/- is made to Dr. B. Chandrasekhar, who is a stationed doctor in the hospital, towards his consultancy fee for the services rendered. It was submitted by the Ld.AR that doctor was providing the specialised services in the hospital and the expenditure incurred towards consultancy charges paid to the doctor is during the course of business and hence allowable under section 37(1) of the Act. The Ld. CIT(A) has examined the submissions made by the Ld.AR and has held in para no 6.5.1 as follows:

“6.5.1 Consultation Fees paid (Rs.84,01,360/-) :-

Out of the total consultancy charges paid of Rs.91,24,989/-, the Assessing Officer had disallowed a sum of Rs.84,01,369/- as not allowable u/s.40A(3) of the Act. This sum of Rs.84,01,369/- also includes an amount of Rs.45,08,215/- which is inadmissible expenses u/s.37 of the Act. First, we will decide upon the issue involved in the sum of Rs.45,08,215/- which was added as inadmissible u/s.37 of the Act. This sum of Rs. 45,08,215/- consists of two components -

- (a) a sum of Rs.22,45,897/- which was paid to Dr. B. Chandrasekhar and*
- (b) sum of Rs.22,62,318/- paid on account of lab referral fees.*

With regard to the sum of Rs.22,45,897/-, which was paid to Dr.B.Chandrasekhar, the appellant had submitted that the said Dr.B.Chandrasekhar is a stationed doctor in the hospital and the amount represents the consultancy charges for the services rendered. The appellant further submitted that this consultancy fees is paid to the doctor for providing specialized services in the hospital.”

50. From the observations of the Ld. CIT(A), we find that the revenue has not brought in any material to evidence that these are not incurred in the course of

the business of the assessee. The only contention of the Ld. DR is that these payments made as referral payments but he has failed to produce any documentary evidences stating that the doctor is not stationed in the hospital and the payments are referral payments made in violation of the provisions of Indian Medical Council (Professional Conduct Etiquette and Ethics) Regulations, 2002. We therefore find no infirmity in the order of the Ld.CIT(A) and hence no interference is required on this issue.

51. Ground Nos. 4 and 5 relates to lab referral wherein the Ld. CIT(A) has allowed the relief of Rs.38,93,154/-. Ld. DR raised similar objections argued for the Ground Nos. 2 & 3 stating that these expenditures arise in violation of Indian Medical Council (Professional Conduct Etiquette and Ethics) Regulations, 2002. Further, he also submitted that these expenditure were incurred in violation of the provisions of section 40A(3) of the Act and Ld.CIT(A) has erred in holding that the provisions of section 40A(3) are not applicable. He therefore pleaded that the order of the Ld. AO be upheld on this issue.

52. Per contra, Ld.AR submitted that Ld. AO has not doubted the genuineness of the expenditure and once genuineness is not doubted, section 40A(3) of the Act has no application. On this issue, he relied on the decision of the Hon'ble Delhi High Court in the case of CIT v. Indeo Airways Private

Limited ([2012] 26 Taxmann.com 244). Further, he also submitted that where an addition is made based on the impounded material various judicial pronouncements have held that section 40A(3) of the Act has no application. He therefore pleaded that if the genuineness has not been doubted by the Ld.AO the expenditure cannot be disallowed under section 37(1) of the Act and similarly section 40A(3) has no application when the additions are made based on the impounded material. He therefore pleaded that the Ld. CIT(A) has rightly adjudicated and prayed for upholding the same.

53. We have heard both the sides and perused the material available on record. There is merit in the argument of the Ld.AR wherein various judicial pronouncements have held that, when genuineness of the expenditure is not doubted the same cannot be disallowed under section 40A(3) of the Act. The provisions of section 40A(3) of the Act does not apply when the income is not computed on the basis of regular books of accounts. In the instant case the income is computed based on certain impounded documents and hence we are of the considered opinion that disallowance under section 40A(3) of the Act could not be applied in these circumstances. Ld. CIT(A) by relying on the following cases has held that the disallowances under section 40(3) cannot be made when the additions are made based on impounded materials:-

- (i) *CIT Vs. Indeo Airways (P) Limited [2012] 26 Taxmann.com 244.*

- (ii) *[2015] 63 taxmann.com289 (Punjab & Haryana) Gurdas Garg Vs .CIT(Appeals), Bathinda.*
- (iii) *CIT Vs. P.D. Abraham Alias Appachan [349 /TR 442] (Kerala High Court).*
- (iv) *Biren V. Savia Vs. ACIT (2006) 100 TTJ (Mumbai) 1006.*
- (v) *[2019] 110 taxmann.co,4 (Mumbai-Trib.) ITAT Mumbai Bench 'H' DCIT Central Circle-23Vs. Kanakia Hospitality (P) Ltd.*
- (vi) *Dhanvarsa builders and developers pvtLtdVs DCIT (2006) 102 ITD 375(Pune trib).*
- (vii) *SRS Mining Vs. UOI (2022)(141 Taxmann.com 272 (Madras High court).*
- (viii) *Rainbow promoters Pvt. Ltd. vs ACIT reported in (2022) 139 taxmann.com332(Delhi-Trib).*
- (ix) *Sri Kedar Nath Sawhney Vs ACIT by Hon'ble ITAT in ITA NO. 5191/Del/ 2019.*

54. The submission of the Ld. DR is that the Ld. CIT(A) has erred in relying on the jurisdictional ITAT decision in the case of Smt Bommana Swarna Rekha v. ACIT [147 Taxman 59] wherein it is distinguishable on the fact that it is a block assessment and not a searched assessment. We disagree with the argument of the Ld.DR that once when addition is made based on the impounded material the provisions of section 40A(3) of the Act has no application irrespective to the fact that whether it is a block assessment or search/survey assessment. This view has been fortified by various judicial pronouncements as relied on by the Ld.AR. We therefore find no infirmity in the order of the Ld. CIT(A) and hence no interference is required. Accordingly, Ground Nos. 4 & 5 raised by the revenue are dismissed.

55. Ground Nos. 6 &7 relates to restricting the disallowances @25% with reference to the reference fees paid to various doctors in the guise of patient discount. This issue has already been adjudicated in the assessee's appeal in ITA No. 145/VIZ/2025 for the A.Y. 2019-20 in the aforesaid paragraphs, which mutatis mutandis applies to the grounds raised by the Revenue. Accordingly, grounds raised by the revenue are dismissed.

56. Ground No. 8 is with relation to the applicability of provisions of section 40A(3) of the Act with respect to disallowances of expenditure of Rs.9,92,904/- by the Ld. AO wherein the Ld. CIT(A) has allowed relief for the same. Our decision in the aforesaid paragraphs with respect to the applicability of section 40A(3) of the Act wherein the additions were made based on the impounded material shall be mutatis mutandis applies to this ground. Accordingly, this ground raised by the revenue is dismissed.

57. Ground Nos. 9, 10 & 11 is with respect to the disallowances of expenditure by the Ld. AO amounting to Rs. 71,14,092/- spent by Director out of the advance receipts, wherein Ld. CIT(A) has allowed relief for the same. This issue is identical to the Ground No. 7 raised by the assessee in ITA No.145/VIZ/2025 for the A.Y. 2019-20 and adjudicated in the aforesaid paragraphs shall mutatis mutandis applies to the ground raised by the revenue. Accordingly, these grounds are dismissed.

58. Further, Ground Nos. 12, 13 & 14 relates to upholding of disallowance @25% of Rs. 4,46,88,994/- by the Ld. CIT(A). Similar Ground No.7 has been raised by the assessee in ITA No. 145/VIZ/2025 for the A.Y. 2019-20 and the adjudication in the aforesaid paragraphs in ITA No. 145/VIZ/2025 shall mutatis mutandis applies to these grounds raised by the revenue. Accordingly, grounds raised by the revenue are partly allowed.

59. Ground Nos. 15 to 24 are argumentative in nature wherein the revenue has cited several decisions which was not argued as the similar grounds raised by the assessee in its appeal was dismissed as not pressed / withdrawn, while adjudicating the assessee's appeal. Accordingly, these grounds are not adjudicated and dismissed as infructuous.

60. In the result, appeal of the revenue is Partly allowed.

ITA No. 185/VIZ/2025 (A.Y. 2020-21)

ITA No. 186/VIZ/2025 (A.Y. 2021-22)

ITA No. 187/VIZ/2025 (A.Y. 2022-23)

61. The grounds raised by the revenue in all these appeals are identical to grounds raised in ITA No. 184/VIZ/2025 for the A.Y. 2019-20, accordingly the decision in ITA No. 184/VIZ/2025 shall mutatis mutandis applies to ITA Nos.185,186, & 187/VIZ/2025.

62. In the results, appeals filed by the revenue in ITA Nos.185 & 186/VIZ/2025 are partly allowed and in ITA No. 187/VIZ/2025 is dismissed.

63. To sum-up, appeals are adjudicated as follows: -

| Sl.No. | ITA No. & A.Y. | Result |
|--------|-------------------------------------|----------------|
| 1. | ITA No. 145/VIZ/2025 (A.Y. 2019-20) | Partly Allowed |
| 2. | ITA No. 146/VIZ/2025 (A.Y. 2020-21) | Partly Allowed |
| 3. | ITA No. 147/VIZ/2025 (A.Y. 2021-22) | Partly Allowed |
| 4. | ITA No. 148/VIZ/2025 (A.Y. 2022-23) | Allowed |
| 5. | ITA No. 184/VIZ/2025 (A.Y. 2019-20) | Partly Allowed |
| 6. | ITA No. 185/VIZ/2025 (A.Y. 2020-21) | Partly Allowed |
| 7. | ITA No. 186/VIZ/2025 (A.Y. 2021-22) | Partly Allowed |
| 8. | ITA No. 187/VIZ/2025 (A.Y. 2022-23) | Dismissed |

Order pronounced in the open court on 18th June,2025.

Sd/-
(वीरवल्ली दुर्गा राव)
(VEERAVALLI DURGA RAO)
न्यायिक सदस्य/JUDICIAL MEMBER
Dated:18.06.2025
Giridhar, Sr.PS

Sd/-
(एस बाला कृष्णन)
(S. BALAKRISHNAN)
लेखा सदस्य/ACCOUNTANT MEMBER

आदेशकीप्रतिलिपिअग्रेषित/ Copy of the order forwarded to :-

1. निर्धारिती/ The Assessee : **M/s. NS Healthcare Services Private Limited**
C/o. CA, M.V. Prasad
Door No. 60-7-13, Ground Floor
Siddhartha Nagar, 4th Lane
Vijayawada – 521333
Andhra Pradesh
2. राजस्व/ The Revenue : **DCIT / ACIT – Central Circle**
Stalin Corporate Building
D.No. 55-17-2 to 4
A Block, 4th Floor, Industrial Estate
Jawahar Auto Nagar, Vijayawada – 520007
Andhra Pradesh
3. The Principal Commissioner of Income Tax
4. विभागीयप्रतिनिधि, आयकरअपीलीयअधिकरण, विशाखापटणम /DR,ITAT, Visakhapatnam
5. The Commissioner of Income Tax
6. गार्डफ़ाईल / Guard file

आदेशानुसार / BY ORDER

Sr. Private Secretary
ITAT, Visakhapatnam