

**IN THE INCOME TAX APPELLATE TRIBUNAL
“SMC” BENCH, MUMBAI**

BEFORE SHRI SANDEEP GOSAIN, JUDICIAL MEMBER

**I.T.A. No. 3465/Mum/2025
A.Y: 2014-15**

Vijayraghavan Subramanian Iyer 1/6, Sri Swathi Co.op Housing Society, Waman Tukaram Patil Marg, Govandi, Mumabi - 400088 PAN - AAFPI6968N (Appellant)	Vs	ITO, Ward 27(3)(5) Mumbai. (Respondent)
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Assessee by	Shri Mandir Vaidya
Revenue by	Shri Mahesh Parwani, Sr. DR

Date of Hearing	03.09.2025
Date of Pronouncement	21.11.2025

ORDER

Per: SHRI. SANDEEP GOSAIN, J.M.:

The present appeal has been filed by the assessee challenging the impugned order dt. 30.06.2023 passed under section 250 of the Income Tax Act, 1961 (‘the Act’), by the National Faceless Appeal Centre (NFAC) / CIT(A) for the assessment year 2014-15. The assessee has raised the following grounds of appeal:

- The Ld. CIT(A) fell in error of law in not appreciating that though deduction of tax (TDS) is only one of the deciding facts to recognize income of a particular year, TDS by itself does not mean that the whole amount mentioned in it should be taxed in a particular year since deduction of tax and completion of assessment are two different things.*

2. The Ld. CIT(A) erred in not appreciating that the amounts not received by the assessee might have been hypothetical income but cannot be said to be real income, notwithstanding the fact that the assessee was following mercantile system and while deciding on 'accrual' of income, the practical realities cannot be ignored.

3. The Ld. CIT(A) failed to appreciate that the the deduction of tax is not levy of tax but merely one of the modes of collection of tax.

4. The Ld. CIT(A) further failed to appreciate that the TDS provisions in sections 198, 199 etc., are machinery ones and not charging ones and hence not all tax deducted at source can be deemed to be income received of the deductee.

5. The Ld. CIT(A) failed to appreciate that though section 198 holds that the tax deducted at source shall be deemed to be income received, it does not specify the year in which the said deeming provision applies.

6. The Ld. CIT(A) was not justified in ignoring the assessee's contention that amounts were offered to tax in the year(s) when the same were received, thus leading to double taxation.

7. The appellant craves leave to add, alter, amend, modify any grounds of appeal

2. All the grounds raised by the assessee are interrelated and interconnected and relates to challenging the order of Ld. CIT(A) in sustaining the addition as undisclosed income.

3. I have heard the counsels for both the parties, perused the material placed on record, judgments cited before us and also the orders passed by the revenue authorities. From the records, I noticed that the addition of the amount of Rs. 18,70,435/- was confirmed by the department on the basis of Form No. 26AS. In this regard it was pleaded by the assessee that certain parties in order to claim expenses on

presumption basis deduction and pay the tax at source complying the provisions of TDS. But subsequently do not made such payments for which such provisions have been made.

4. Whereas the revenue authorities rejected the said contentions and submitted that as per audit report, the method of accounting is mercantile system of accounting and therefore, the assessee is required to offer the income on *accrual basis* and if required, later on, that portion of income which is not received can be claimed as bad debts in the subsequent year.

5. After hearing heard the counsels at length, I noticed that Ld. CIT(A) was not sure as to how much income has not been offered for taxation. Even Hon'ble Supreme Court in the case of **Godhra Electricity Co. Ltd., Vs. CIT, [1997] 91 taxman. 351 (SC)**, has held as under:

10. Under the Act income charged to tax is the income that is received or is deemed to be received in India in the previous year relevant to the year for which assessment is made or on the income that accrues or arises or is deemed to accrue or arise in India during such year. The computation of such income is to be made in accordance with the method of accounting regularly employed by the assessee. It may be either the cash system where entries are made on the basis of actual receipts and actual outgoings or disbursements or it may be the mercantile system where entries are made on accrual basis, i.e., accrual of the right to receive payment and the accrual of the liability to disburse or pay. In Shoorji Vallabhdas & Co.'s case (supra), it has been laid down:

"... Income-tax is a levy on income. No doubt, the Income-tax Act takes into account two points of time at which the liability to

tax is attracted, viz., the accrual of the income or its receipt; but the substance of the matter is the income. If income does not result at all, there cannot be a tax, even though in book-keeping, an entry is made about a 'hypothetical income', which does not materialise...." (p. 148)

This principle is applicable whether the accounts are maintained on cash system or under the mercantile system. If the accounts are maintained under the mercantile system what has to be seen is whether income can be said to have really accrued to the assessee-company. In H.M. Kashiparekh & Co. Ltd. v. CIT[1960] 39 ITR 706 , the Bombay High Court had said:

"... Even so, [the failure to produce account losses] we shall proceed on the footing that, the assessee-company having followed the mercantile system of account, there must have been entries made in its books in the accounting year in respect of the the amount of the commission. In our judgment, we would not be justified in attaching any particular importance in this case to the fact that the company followed the mercantile system of account. That would not have any particular bearing in applying the principle of real income to the facts of this case....." (p. 720)

The said view was approved by this Court in Birla Gwalior (P.) Ltd.'s case (supra) where the assessee maintained its accounts on the mercantile system. In that case this Court, after referring to the decision in Morvi Industries Ltd. v. CIT[1971] 82 ITR 835 , which was also a case where the accounts were maintained on mercantile system, has said:

"Hence it is clear that this court in Morvi Industries case did emphasise the fact that the real question for decision was whether the income had really accrued or not. It is not a hypothetical accrual of income that has got to be taken into consideration but the real accrual of the income." (p. 273)

In Poona Electric Supply Co. Ltd.'s case (supra) this Court has said:

"... Income-tax is a tax on the real income, i.e., the profits arrived at on commercial principles subject to the provisions of the Income-tax Act...." (p. 530)

In that case the Court has approved the following principle laid down by the Bombay High Court in KM. Kashiparekh & Co. Ltd.'s case (supra):

"The principle of real income is not to be so subordinated as to amount virtually to a negation of it when a surrender or concession or rebate in respect of managing agency commission is made, agreed to or given on grounds of commercial expediency, simply because it takes place some time after the close of an accounting year. In examining any transaction and situation of this nature the Court would have more regard to the reality and speciality of the situation rather than the purely theoretical or doctrinaire aspect of it. It will lay greater emphasis on the business aspect of the matter viewed as a whole when that can be done without disregarding statutory language." (p. 707)

In State Bank of Travancore's case (supra), after considering the various decisions of this Court, Sabyasachi Mukharji, J. (as the learned Chief Justice then was) has said:

"An acceptable formula of co-relating the notion of real income in conjunction with the method of accounting for the purpose of the computation of income for the purpose of taxation is difficult to evolve. Besides, any strait-jacket formula is bound to create problems in its application to every situation, it must depend upon the facts and circumstances of each case. When and how does an income accrue and what are the consequences that follow from accrual of income as well-settled. The accrual must be real taking into account the actuality of the situation. Whether an accrual has taken place or not must, in appropriate cases, be judged on the principles of real income theory. After accrual, non-charging of tax on the same because of certain conduct based on the ipse dixit of a particular assessee cannot be accepted. In determining the question whether it is hypothetical income or whether real income has materialised or not, various factors will have to be taken into account. It would be difficult and improper to extend the concept of real income to all cases depending upon the ipse dixit of the assessee which would then become a value judgment only. What has really accrued to the assessee has to be found out and what has accrued must be considered from the point of view of real income taking the probability or improbability of realisation in a

realistic manner and dovetailing of these factors together but once the accrual takes place, on the conduct of the parties subsequent to the year of closing an income which has accrued cannot be made 'no income'." (p. 154)

6. Therefore following the decision of Hon'ble Supreme Court in the case of **Godhra Electricity Co. Ltd (supra)**, I restore the matter back to the file of AO to examine in the light of the aforementioned principles laid down by Hon'ble Supreme Court and to verify the facts as to whether the income had really accrued or not. As it is not a Hypothetical accrual of income that has got to be taken into consideration, but the real accrual of the income.

7. Before parting, I make it clear that our decision to restore the matter back to the file of the AO shall in no way be construed as having any reflection or expression on the merits of the dispute, which shall be adjudicated by the AO independently in accordance with law. Needless to mention after providing adequate opportunity of hearing to the assessee.

8. In the result, the appeal filed by the assessee is allowed for statistical purposes.

Order pronounced in the open court on 21/11/2025

Sd/-
(SANDEEP GOSAIN)
(JUDICIAL MEMBER)

Mumbai:
Dated: 21/11/2025

KRK, Sr. PS.

Copy of the order forwarded to:

- (1) The Appellant
- (2) The Respondent
- (3) The CIT
- (4) The CIT (Appeals)
- (5) The DR, I.T.A.T.

True Copy

By order

(Asstt. Registrar)
ITAT, Mumbai