

IN THE INCOME TAX APPELLATE TRIBUNAL  
MUMBAI "SMC" BENCH : MUMBAI

BEFORE JUSTICE (RETD.) SHRI C.V. BHADANG, PRESIDENT  
AND  
SHRI VIKRAM SINGH YADAV, ACCOUNTANT MEMBER

ITA No. 5157/Mum/2025  
Assessment Year : 2014-15

Rajesh Mohan Singh Hajari, Type 4 B/293, Dr. BAM HOSP., Byculla, Mumbai-400030. PAN : AAZPH4367E	vs.	Income Tax Officer, Ward-16(3)(1), Aayakar Bhavan, Mumbai-400020.
(Appellant)		(Respondent)

For Assessee :	Shri Shailesh Bandi
For Revenue :	Shri Kavan N. Limbasiya, Sr.DR

Date of Hearing :	03-12-2025
Date of Pronouncement :	10-12-2025

**ORDER**

**PER VIKRAM SINGH YADAV, A.M :**

This is an appeal filed by the assessee against the order of the Learned Commissioner of Income Tax (Appeals)-National Faceless Appeal Centre (NFAC), Delhi [‘Ld.CIT(A)’], dated 21-07-2025, pertaining to Assessment Year (AY) 2014-15, wherein the assessee has taken the following grounds of appeal:

- “1. On the facts and circumstances of the case and in law, the Ld. CIT(A) grossly erred in confirming the action of the AO of reopening the case under section 148 of the IT Act, 1961.*
- 2. On the facts and circumstances of the case and in law, the Ld. CIT(A) grossly erred in confirming the action of the AO, the reassessment order*

*passed u/s 147 r.w.s 144B of the I.T. Act which interalia is beyond Jurisdiction and therefore bad in law.*

*3. On the facts and circumstances of the case and in law, the Ld. CIT(A) grossly erred in confirming the action of AO in taxing the Professional fees accrued but not received amounting to Rs. 202,968/- as Business/ Profession despite the fact that appellant offers income for Tax on cash basis & income of Rs. 2,02,968/- has not been received by the appellant.*

*4. On the facts and circumstances of the case and in law, the Ld. CIT(A) grossly erred in confirming the disallowance of Rs. 1,30,000/- made by the Assessing Officer being deduction claimed under chapter VI A of the IT. Act.”*

2. Briefly stated facts of the case are that the assessee has filed his original return of income on 28-11-2014, which was the subject matter of scrutiny assessment u/s. 143(3) of the Income Tax Act, 1961 ('the Act'), wherein the returned income was accepted vide order dt. 21-10-2016. Subsequently, basis information that the assessee has offered lesser professional receipts to tax during the year under consideration, notice u/s. 148 of the Act was issued to the assessee. In response to the notice, the assessee did not file the return of income and thereafter, the AO issued notice u/s. 142(1) of the Act and after taking into consideration the submissions filed by the assessee on 04-03-2022, completed the assessment u/s.147 r.w.s. 144B of the Act vide order dt. 22-03-2022, wherein he has brought to tax the difference in the professional receipts amounting to Rs. 2,02,968/- and against the originally assessed income of Rs. 13,87,349/-, re-assessed income was determined at Rs. 15,90,317/-.

3. The assessee thereafter carried the matter in appeal before the Ld.CIT(A) and the relevant finding of the Ld.CIT(A) are contained at paras 4.3 and 4.4 of the impugned order, which read as under:

*“4.3. The sole dispute in this matter is amount of professional receipts of the appellant during the A.Y. 2014-15. The assessment order in para 4 mentions that actual amount of receipts of the appellant as per 26AS statement for A.Y. 2014-15 was Rs.25,16,600/-. The appellant had also submitted a reply on*

04.03.2022 which is cited in para 2 of the assessment order, according to which professional receipts of the appellant for the F.Y. 2013-14 was Rs.25,16,610/- however, the appellant has disclosed professional receipts of Rs.22,13,642/-. Thus, the professional receipts, with reference to 26AS statement have been shown short by amount of Rs.3,02,968/-

4.4. The appellant had made the submission that he has recognized his income on cash basis and claimed the TDS credits according to disclosure of revenue rather than credits available in 26AS statement. The appellant has made a detailed reconciliation also as follows:

INCOME RECONCILIATION FY 2013-2014											
Name of the Party	TAN	As Per Books			As Per 26AS			Difference			Remarks
		received in Bank	TDS	Total	Amount as per 26AS	TDS	Total	in Amount Recd Vs. 26AS	TDS	Total	
SOCIETY OF THE SERVAANTS OF THE HOLY SPIRIT	MUM09040D	15,750	1,750	17,500	15,750	1,750	17,500				
DR BALABHA NANAVATI HOSPITAL	MUM01072D	2,72,827	34,376	3,41,777	2,21,851	85,255	6,62,056	4,49,024	40,017	4,89,041	This Amount is Recd. in Subsequent Year on 18/07/2014 and offered to Tax in AY 15-16
TDS Claimed u/s 19B			34,376						34,372	11,255	
SHUSHRISHA CITIZENS CO OP HOSP LTD	MUM29228D	2,82,768	28,784	3,11,542	2,56,043	28,784	2,87,827	-23,715		-23,715	Amount Recd. is actually more than what is shown in 26AS
MANOJ MURLIDHAR JOSHI	PNE01732E	2,90,000	32,222	3,22,222	2,90,000	32,222	3,22,222				No Difference
GLOBAL HOSPITAL AND RESEARCH CENTRE	MUM06717E	6,39,189	71,980	7,33,603	8,49,720	84,413	8,44,135	2,10,532	21,555	2,32,087	This Amount is Recd. in Subsequent Year on 17/04/2014 and offered to Tax in AY 15-16
TDS Claimed u/s 19B			71,980						21,555	-21,555	
DR NAMUOSH HOSPITAL PRIVATE LIMITED	MUM01143E	21,250	1,250	22,500	11,250	1,250	12,500	-10,000		-10,000	Amount Recd. is actually more than what is shown in 26AS
SUJAY HOSPITAL		20,000		20,000				20,000		20,000	Amount Recd. is actually more than what is shown in 26AS
THE BANDRA HOLY FAMILY HOSPITAL SOCIETY	MUM11064E	1,06,089	8,853	1,14,942	79,683	8,853	86,536	26,406		26,406	Amount Recd. is actually more than what is shown in 26AS
DR GOODALE'S HEART CARE CENTRE PRIVATE LIMITED	PNE00761C		1,000	1,000	9,000	1,000	10,000	9,000	1,000	10,000	This Amount is Recd. in Subsequent Year on 21/05/2014 and offered to Tax in AY 15-16
TDS Claimed u/s 19B			1,000						1,000	-1,000	
KALSEKAR HOSPITAL	PNE00591B	32,400	2,300	35,100	24,300	2,300	27,000	6,100		6,100	
KOHINOOR HOSPITALS PRIVATE LIMITED	MUMK18140D				4,351	483	4,834	4,351	483	4,834	
TDS Claimed u/s 19B			483	483					483	483	Amount Recd. is actually more than what is shown in 26AS
OTHER PROFESSIONAL RECEIPTS (less than 25000): NO TDS		2,92,973		2,92,973				-2,92,973		-2,92,973	Amount Recd. is actually more than what is shown in 26AS
<b>TOTAL</b>		<b>19,73,239</b>	<b>2,40,407</b>	<b>22,13,642</b>	<b>22,84,948</b>	<b>2,51,662</b>	<b>25,16,610</b>	<b>2,91,713</b>	<b>22,911</b>	<b>3,02,968</b>	

According to such reconciliation submitted on 28.06.2025, the appellant's total receipts as per 26AS statement were Rs.25,16,610/-, against such receipts the appellant has recognized the income of Rs.22,13,642/- Against the income of Rs.25,16,610/- the appellant had TDS credit available Rs.2,51,662/- whereas the appellant has claimed TDS credit of Rs.2,40,407/- against the recognized income of Rs.22,13,642/-. Thus, the revenue was recognized short by Rs.3,02,968/- and TDS credit was claimed short by Rs.11,255/-. Considering the appellant's explanation about recognition of income on cash basis and also claim of TDS credit corresponding to such disclosure of income, the difference amount of Rs. 1,90,412/- was liable to be added to the income whereas the AO has made the addition of Rs.2,02,968/-. Thus, addition has been made in excess of Rs. 12,556/-, in view of the appellant's explanation that income has been recognized on cash basis and TDS credit has been claimed corresponding to income recognition and that the balance amount of income has been claimed in next assessment year i.e. A.Y.2015-16. Considering the appellant's submission about disclosure of revenue in subsequent assessment year and also claim of TDS credit in subsequent assessment year, the grounds no. 1, 2 and 3 are disposed off with the direction to the AO to delete the addition to the extent of Rs.12,556/-and may carry out the verification whether remaining amount is disclosed in

*subsequent years or not. Technically, the grounds no. 1, 2 and 3 of appeal are allowed.”*

4. Regarding ground no. 2, the ld AR submitted that the AO has not issued notice u/s 143(2) and therefore, the whole of the reassessment proceedings u/s 147 and consequent order so passed by the AO is bad in law and deserve to be set-aside and in support, he has relied on various authorities.

5. The ld Sr. DR submitted that the assessee has not furnished return of income in response to notice u/s 148 of the Act and the AO thereafter, has issued notice u/s 142(1) and has completed the reassessment proceedings and passed the order u/s 147 r/w 144B of the Act. It was submitted that where no return of income has been furnished, there is no requirement to issue notice u/s 143(2) of the Act and thus, the contention advanced by the Ld.AR deserve to be dismissed.

6. We find merit in the submission of the Ld.DR that in absence of return of income in response to notice u/s 148, there is no requirement to issue notice u/s 143(2) of the Act. The various authorities relied upon by the AR also doesn't support the case of the assessee as in those cases as well, the return of income was filed and in that background, the Courts have held that issue of notice u/s 143(2) is mandatory and required to be issued. In the result, the ground No. 2 of the assessee's appeal is dismissed.

7. Regarding ground No. 3, the Ld. AR submitted that the assessee is following the cash basis of accounting consistently over the years and in the return of income also, he has clearly mentioned that he is following the cash based accounting and there is no change in the method of accounting as compared to the earlier years. It was accordingly submitted that where there is no change in the method of accounting, the AO has wrongly

brought an amount of Rs. 2,02,968/- to tax which the assessee has not received during the financial year relevant to the impugned assessment year. It was submitted that the said amount has been offered to tax in the subsequent assessment year 2015-16 and our reference was drawn to reconciliation statement placed at assessee's paperbook page 37. Our reference was also drawn to the submissions filed before the Ld.CIT(A), which read as under:

*"1. As stated, I am a Professional Doctor and having regularly following the Cash Basis of Showing and declaring my Income under the Income Tax Act.*

*2. I attach herewith the chart providing the Reconciliation of the Income declared by me on Cash Basis as Against income on the basis of 26AS (26AS & Reconciliation Chart is attached herewith as Annexure C&D alongwith the Bank statement for the FY. 13-14 as Annexure E and for F.Y. 14-15 as Annexure F.*

*3. From the said I state that during the Year under reference, I have received only Rs. 21,56,332/- Including TDS of Rs. 183,0977- deducted on the same. In addition to the same, as per section 199 of the L.T. Act, I have included the Amount of TDS of Rs. 57,310/- under my Income. Thus my Total Income declared is Rs. 22,13,642/- (Rs. 21,56,332/- + Rs. 57,310/-) on which I have claimed TDS of Rs. 2,40,407/-*

*4. That as per 26 AS the Total Income reflected is Rs. 25,16,610/- which inter alia is generated based on the TDS on the basis of the Provisions made by the Parties deducting the TDS. The Provisions made by such parties do not culminate in to amounts actually paid for which the difference is Rs. 3,02,968/-.*

*5. I further state that I have been following Cash Basis of accounting regularly and that out of the Rs. 3,02,968/- which is actually on NET basis as explained in the Chart mentioned hereinabove.*

*6. From the said chart, your Honours may please appreciate the fact that I have been offering my Income on actual Cash receipt basis, which inter alia is as per accounting provided in section 145(1) of the Income Tax Act, 1961, and in some of the cases as given in chart are more then the amount reflected in 26AS and the Difference between the Two i.e. based on the receipt basis have been offered to Tax in the Subsequent years.*

*7. I attach herewith Income Tax Return in Form ITR 4 filed for the year under reference in from the said ITR, your Honours will appreciate the fact that I have been following Cash Basis (Please Refer Part A-OI, in form 4 of ITR) i.e. Other Information (optional in a case not liable for audit under section 44AB),*

on Page 6 of the Said ITR in which against the question of Method of accounting employed in the previous year, I have stated CASH and against the Is there any change in method of accounting, I have stated NO (N). (ITR 4 for the A.Y. is attached as Annexure G)

8. It is therefore submitted that the addition made by the Ld. AO is bad -in law as he has made an assessment based on AIR/26AS which Inter alia is based on the provisions made by the deductors of TDS and not on the payments made by them whereas I have been consistently following CASH Basis of accounting which the LD. AO or any Quasi Judicial authority has no power to change the method of accounting employed by me as well as the same Income is being doubly taxed i.e. Firstly the additions made by the Ld. AO in the year under consideration and secondly in the subsequent year i.e. in the year of receipt in which I have offered to tax and thus it is submitted the Additions made may please be deleted.

9. I further state and submit that the additions made on the basis of AIR/26 AS are bad-in-law and in support of the same reliance is placed on the following Judicial pronouncements

- i. *M/s. ANS Law Associates vs. Assistant Commissioner of Income Tax 11(2) ITA No.5181/M/2012, wherein the AIR information showed that the assessee had received professional/technical fees from various persons aggregating to Rs.1,39,15,584/- which the Assessing Officer (hereinafter referred to as the AO) required the assessee to reconcile. The assessee reconciled a major portion of the amount but could not reconcile the amount of Rs.4,49,440/-allegedly received from Allied Digital Services Ltd. The assessee stated before the AO that it had never received the above amount. But the AO did not agree with the contention of the assessee and made the addition and was confirmed by the LD. CIT(A).*

*The Hon'ble Tribunal held that It has been held time and again by this Tribunal that the additions made solely on the basis of AIR information are not sustainable in the eyes of the law. If the assessee denies that he is in receipt of income from a particular source, it is for the AO to prove that the assessee has received income as the assessee cannot prove the negative. Reliance can be placed in this respect on the decision of the Tribunal in the case of "DCIT vs. Shree G. Selva Kumar" in ITA No.868/Bang/2009 decided on 22.10.10 and another case in the case of "Aarti Raman vs. DCIT in ITA No.245/Bang/2012 decided on 05.10.12.*

- ii. *In another similar case M/s. Kroner Investments Limited vs DCIT 5(2) in ITA no. 5125/M/2013 wherein the Ld. AO Made the Addition on the Basis of AIR and confirmed by the LD. CIT(A), the Hon'ble ITAT held that It has been held time and again by this Tribunal that the additions made solely on the basis of AIR information are not sustainable in the eyes of law.*

- iii. *That the Hon'ble Supreme court in the case of CIT v/s A. Krishnaswami Mudaliar 53 ITR 122 has drawn a distinction between Cash system of accounting and Mercantile system of accounting as*

*The Hon'ble Apex Court observed as under*

*Among Indian businessmen, as elsewhere, there are current two principle systems of bookkeeping. There is firstly the cash system in which a record is maintained of actual receipt and actual disbursements, entries being posted when money or money's worth is actually received, collected or disbursed. There is secondly, the mercantile system in which entries are posted in the books of account on the date of transaction, i.e., on the date on which the rights accrue or liabilities are incurred irrespective of the date of payment. For example, when goods are sold on credit, receipt entry is posted as of the date of sale, although no cash is received immediately in payment of such goods, and a debit entry is similarly posted when a liability is incurred although payment on account of such liability is not made at the time. There may have to be appropriate variations when this system is adopted by an assessee who carries on a profession. Whereas under the cash system no account of what are called the outstandings of the business either at the commencement or at the close of the year is taken, according to the mercantile method actual cash receipts during the year and the actual cash outlays during the year are treated in the same way as under the cash system, but to the balance thus arising, there is added the amount of the outstandings not collected at the end of the year and from this is deducted the liabilities incurred or accrued but not discharged at the end of the year.*

*Thus the Hon'ble Apex court has drawn a discernible distinction between the two accounting systems.*

- iv. *The Hon'ble Madras High Court in the case of CIT vs. Motor Credit Co. (p) Ltd. 6 taxman 63 has held that it only the regular mode of accounting that determines the mode of computing the taxable income and point of time at which the tax liability is attracted.*

*In View of the Above submission, it is thus submitted that the Addition made by the Ld.AO is Bad-in-law as I have been regularly following the CASH System of accounting, and no change has been effected in any of past or succeeding years of the year under consideration and no allegation of such change has also been made by the Ld. AO.*

*It is therefore humbly submitted that the addition made may please be deleted and no further additions may be made as proposed by your Honours in the Show cause notice dated 06/06/2025 under DIN ITBA/NFAC/F/APL\_2/2025-26/1076796862(1).”*

8. The Ld. DR has been heard, who has relied on the order passed by the AO as well as that of the Ld.CIT(A).

9. We have heard the rival contentions and perused the material available on record. We find merit in the contention advanced by the ld AR that where the assessee, engaged in medicine profession, is following cash basis of accounting his professional receipts and the income has been offered to tax consistently following the cash basis of accounting and there has been no change in the year under consideration, there is no legal and justifiable basis to bring the income to tax which has not been received by the assessee during the financial year relevant to impugned assessment year. We find that both the AO as well as Ld.CIT(A) has not disputed the cash basis of accounting so followed by the assessee. The Ld.AR has drawn our reference to the reconciliation statement between the income offered to tax in the return of income and which has been reflected in Form 26AS and it has been stated at the Bar that the difference reflects the transactions which, though has suffered TDS, however, the same has not been received during the financial year under consideration and the same has been received in subsequent financial year and accordingly offered to tax in subsequent assessment year 2015-16 and corresponding TDS credit has also been claimed in subsequent assessment year. We accordingly direct the AO to delete the addition of Rs. 2,02,968/- and allow necessary relief to the assessee. In the result, ground No. 3 of assessee's appeal is allowed.

10. Coming to Ground No. 4 of the appeal, wherein the assessee has challenged the disallowance of Rs. 1,30,000/- made by the AO being deduction claimed under chapter VIA of the Act. In this regard, it was submitted that the AO has not made any disallowance in respect of the claim of deduction under chapter VIA of the Act while passing the

reassessment order u/s 147 r/w 143(3) of the Act. However, while computing the income, in the computation sheet attached to the demand notice, claim of deduction under chapter VIA of the Act has not been allowed. It was submitted that the said claim was duly allowed while passing the original assessment order passed u/s. 143(3) of the Act and the assessee has also submitted the necessary proofs again before the Ld.CIT(A), which he has failed to take into consideration. It was accordingly submitted that the necessary directions may be given to the AO to allow the claim of deduction under chapter VIA of the Act.

11. We have heard the rival contentions and perused the material available on record. Where the claim of deduction has been allowed in original assessment proceedings and reassessment proceedings and relevant proofs are available on record in support of claim of deduction, we find merit in the contention advanced by the Ld.AR and the AO is hereby directed to allow the claim of deduction under chapter VIA of the Act. In the result, ground of appeal No. 4 is allowed.

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

Order pronounced in the open court on 10-12-2025

Sd/-

(JUSTICE (RETD.) C.V. BHADANG)  
PRESIDENT

Sd/-

(VIKRAM SINGH YADAV)  
ACCOUNTANT MEMBER

Mumbai,  
Dated: 10-12-2025

TNMM

Copy to :

- 1) The Appellant
- 2) The Respondent
- 3) The CIT concerned
- 4) The D.R, ITAT, Mumbai
- 5) Guard file

By Order

Dy./Asst. Registrar  
I.T.A.T, Mumbai