IN THE INCOME TAX APPELLATE TRIBUNAL
AHMEDABAD "A" BENCH

Before: Smt. Annapurna Gupta, Accountant Member
And Shri T.R. Senthil Kumar, Judicial Member

ITA No: 1001 & 1002/Ahd/2025
Assessment Year: 2013-14

Parvindar Indar Singh 18/105, Ellora Park, Race Course Circle, Vadodara-390007 Gujarat **PAN: AGTPS9138A** **(Appellant)**	Vs	The ACIT, Circle-1(1)(1), Vadodara **(Respondent)**

Assessee Represented: **Shri Tushar Hemani, Sr. Adv. & Shri Kushal Fofaria, A.Rs.**
Revenue Represented: **Shri Saresa Kartik Laxmanbhai, Sr. D.R.**

Date of hearing : 06-01-2026
Date of pronouncement : 07-01-2026

आदेश/ORDER

PER : T.R. SENTHIL KUMAR, JUDICIAL MEMBER:-

These two appeals are filed by the Assessee as against separate appellate orders dated 06.03.2025 and 07-03-2025 respectively passed by the Commissioner of Income Tax (Appeals), National Faceless Appeal Centre, Delhi, (in short referred to as "CIT(A)"), arising out of the reassessment order passed under section 147 of the Income Tax Act, 1961 (hereinafter referred to as 'the Act') and rectification order passed under section 154 of the Act relating to the same Assessment Year 2013-14.

2. Brief facts of the case is that the assessee is an individual and doctor by profession specializing in the field of cardiology. For the Asst. Year 2013-14, assessee filed his Return of Income on 02-09-2023 declaring total income of Rs. 4,82,69,350/-. The assessee was following cash system of accounting. Original assessment was completed on 28-01-2016 accepting the returned income. Thereafter beyond four years period, the assessment was reopened by recording the following reasons:

> "....1. Receipt from the professional fee was declared in the ITR after deducting TDS from the gross professional fee on netting basis. However gross receipts from the professional fees should be declared in the ITR.
>
> 2. The assessee declared exempted income of Rs. 44,27,654/- during the year in the ITR but he did not disallow interest expenses (which were incurred for earning the exempted income) u/s. 14A of the Act in the ITR as well as in the relevant column in the audit report,
>
> It is evident from the above facts that the assessee had not truly and fully disclosed material facts necessary for his assessment for the year under consideration thereby necessitating reopening u/s. 147 of the Act."

2.1. The assessee objected to the reopening of assessment as there is no failure on the part of the assessee to make full and true disclosure and all necessary details were placed on record in the original return and assessed to tax. Thus the reopening of assessment beyond four years period is not valid in law when there is no failure on the part of the assessee. Further, the reopening is merely based on change of opinion, which is not justified in the eyes of law and relied upon Jurisdictional High Court Judgment

and Supreme Court Judgments in the case of Kelvinator of India Ltd. However the assessing officer rejected the objection raised by the assessee on the ground that explanation 1 of section 147 provides that mere filing documents does not mean time and full disclosure and passed the reassessment order as the assessee has only offered net TDS as professional income and not offered current year TDS Rs. 1,23,23,506/- (Rs.4,01,06,434 – Rs.2,77,80,928) to tax. Thus the A.O. made addition of Rs.86,26,454/- after allowing 30% towards expenditure.

3. Aggrieved against the reassessment order, assessee filed an appeal before Ld. CIT(A) which was also dismissed by Ld. CIT(A).

4. Aggrieved against the appellate order, the assessee is in appeal before us raising the following Grounds of Appeal:

> *1. The Ld. CIT(A) has erred in law and on facts of the case in confirming reopening of the assessment by the Ld.AO u/s. 147 of the Act. Under the facts and circumstances of the case, the action of reopening is without jurisdiction and is not permissible either in law or on facts.*
>
> *2. The Ld. CIT(A) has erred in law and on facts of the case in upholding the addition made by Ld. AO of Rs.86,26,454/- made on account of 'TDS receivable' appearing in the balance sheet without appreciating the correct method of accounting.*
>
> *3. Both the lower authorities have erred in not appreciating that the addition in question is subject matter of reconciliation and therefore, if confirmed in the year under consideration, the same needs to be reduced from another assessment year else the same would result into double taxation that is not permissible.*
>
> *4. The Ld. CIT(A) and Ld. AO have erred in law and on facts of the case in not appreciating the submissions and documents placed on record during the course of the proceedings and not properly appreciating various facts and law in its proper perspective.*

5. The appellant craves leave to add, amend, alter, edit, delete, modify or change all or any of the grounds of appeal at the time of or before the hearing of the appeal.

5. Ld. Sr. Counsel Shri Tushar Hemani appearing for the assessee submitted that the assessee is a doctor by profession following cash system of accounting from the inception and practicing cardiologist. The assessee filed his original Return of Income on 02-09-2023 declaring total income of Rs. 4,82,69,350/- and regular assessment was completed on 28-01-2016 by passing assessment order u/s. 143(3) of the Act accepting the returned income. It is thereafter the assessment was reopened beyond period of 4 years on the ground that the gross receipts from the professional fees was not declared by the assessee. The assessing officer failed to establish that there is no failure on the part of the assessee in disclosing full and true income of the assessee. Therefore the reopening is merely based on verification of computation of income, which is not permissible and therefore the reopening is not justified and reliance is place on the decision of Hon'ble Gujarat High Court in the case of M/s. AIA Engineering Ltd. Vs. ACIT (2022) 138 taxmann.com 534 (Guj.) Ld. Sr. Counsel also placed on record the submissions made by the assessee during the original assessment proceedings, thus claimed the reopening is bad in law. On merits of the case both the lower authorities failed to appreciate the cash method of accounting followed by the assessee wherein income is offered based actual receipt of income while TDS is deducted by customers based on accrual basis resulting in difference between income as per accounts and Form 26AS. Such difference gets reconciled in the year and actual receipt of income.

Detailed reconciliation of the above figures were furnished during the original assessment proceedings itself. In fact the assessee has offered more income than 26AS for the year under consideration. Thus on merits also, the addition made by the assessing officer is not sustainable in law. Therefore the same is liable to be deleted.

6. Per contra, Ld. Sr. D.R. appearing for the Revenue supported the orders passed by the lower authorities and requested to uphold the same.

7. We have given our thoughtful consideration and perused the materials available on record including the Paper Book and case laws relied by the assessee counsel at Page No. 27 to 29 of the Paper Book, wherein the reply letter dated 23-12-2015 made by the assessee. More particularly on the difference between the gross amount of professional fees as per Form 26AS and with that of books of accounts wherein cash system of accounting is followed by the assessee wherein given detailed reply as follows:

> *"I am doing Profession as a "Practicing cardiologist" and since commencement of my profession I am consistently following the cash system of accounting for accounting the Professional Fees received by me. My professional fees are coming from the corporate entities as stated in the reconciliation statement of professional fees received and they are following the mercantile system of accounting and therefore they credit my account in respect of my fees on the basis of services rendered by me to them where as I account the same amount of fees as and when I receive the same as I am following the cash system of accounting and thus it is accounted as under.*
>
> *.....*
>
> *Normally the amount of Tax Deducted at Source is shown in the Balance Sheet as, Tax Deducted at source receivable till the assessment of the relevant year is over, because some time because of mismatch; credit of full amount of Tax Deducted at Source may not be allowed, thus it is to*

keep check over the claim of the credit of the amount of Tax Deducted at Source.

Thus the summation of the amount of (a) (b) and (c) will be equal to the amount of fees credited by my clients and therefore there is no difference in amount of accounting of professional fees.

I am pleased to furnish the Reconciliation of the Gross Amount of Professional Fees as per Form 26 AS and the Gross Amount of professional fees accounted by me on cash system of accounting in my Books of Account for the F.Y. 2011-12, 2012-13 and 2013-14.

Financial Year	*Gross amount of professional fees as per Form 26AS Rs.*	*Gross amount of professional fees accounted in my Books of Account as per cash system of accounting Rs.*	*Difference Rs.*
2011-2012	*3,23,29,278*	*2,90,37,950*	*32,91,328*
2012-2013	*3,60,10,975*	*4,49,01,386*	*88,90,411*
2013-2014	*3,40,27,746*	*3,45,11,993*	*4,84,247*

From the above chart your honour will appreciate that for the F.Y. 2011-12 the amount of fees offered for Tax is less by Rs. 3291328/- as compared to the amount shown in Form 26AS but for the F.Y. 2012-13 there is excess amount of fees offered for Tax is Rs. 8890411/- and for the F.Y. 2013-14 also there is excess amount of fees offered for Tax is Rs. 484247/- as compared to the amount shown in Form 26AS. Thus there is a case of over lapping of fees but that is because I follow cash system of accounting and the deductor of tax follow the mercantile system of accounting but as a whole full amount of fees is accounted by me and Tax payable on it is also paid. Further I am falling under Income Tax slab rate of 30% each year. So there is no loss to Revenue or there is no gain to me."

7.1. Considering the above reply filed by the assessee, the assessing officer passed regular assessment order u/s. 143(3) on 28-11-2016 accepting the returned income filed by the assessee. Thereafter beyond 4 years period, the very same issue was reopened by invoking 148 notice to the assessee. It is seen from the above reply filed by the assessee that the assessee had already furnished reconciliation statement reconciling the gross amount of

professional fees as per 26AS and the gross amount of professional fees accounted by him as per cash system of accounting for the Financial Year 2011-12, 2012-13 and 2013-14 at the time of original assessment as well as during the reassessment proceedings.

7.2. Perusal of the above table for the Financial Year 2011-12, the professional fees income as per 26AS was higher as that recorded in the books of accounts by Rs. 32,91,328/-. Due to the fact that actual amount of fees received by the assessee (on cash basis) was lower than the amount of TDS deducted by the clients on accrual basis. However for the next two financial years, the amount of professional fees income recorded in the books was higher than that referred in 26AS by an amount of Rs.88,90,411/- for the financial year 2012-13 and Rs. 4,84,247/- for the financial year 2013-14. This was due to the fact that the fees not received in previous years were received in the subsequent years and tax was paid on the same year of receipt as per cash basis of accounting. Thus the crux of the matter is that all the professional fees income is duly recorded by the assessee in his books and tax is paid on the same by the assessee. Furthermore, the assessee is taxed at the maximum rate of 30% slab for all these years, thus there is no escapement of income, even it is assessed in the other years.

7.3. Further it is for the same reason for the assessment year 2010-11, the assessment was reopened for rejecting of income of Rs.97,13,683/-. On proper explanation of the assessee and the detailed method of accounting year, no addition were made by the

assessing officer on this count and reassessment was completed vide order dated 29-11-2017. Though this fact was also brought to the knowledge of the assessing officer during the reassessment proceedings, the same was rejected by the A.O. by holding that the assessee is habitually netting his receipts with TDS deducted, without appreciating the basic accounting system of cash followed by the assessee. Thus in our considered view, the assessing officer is not correct in reopening the assessment when there is no failure on the part of the assessee in disclosing the full income before the Income Tax Authorities.

8. The second reason for reopening of assessment namely no disallowance under section 14A of the Act on the exempted income of Rs.44,27,654/-. The assessee vide its reply dated 17-11-2021 informed the assessing officer that the assessee had sufficient interest free funds from which he made investments in mutual funds. The assessee had no borrowings or loans for making such investment in mutual funds but out of his own funds. In the absence of any interest expenses, the disallowance u/s. 14A are uncalled for, since no borrowed funds utilized for making investment in mutual funds. Further perusal of the Profit and Loss account also clearly shows [at Page No. 77 of the Paper Book] that there is no interest expenses except bank charges of Rs. 634/- paid by the assessee. It is for the above reason, the Ld. A.O. though reopened the assessment for non-disallowance u/s. 14A, but pursuant to the reply filed by the assessee not made any addition u/s. 14A of the Act. Thus, there is no failure on the part of the assessee in disclosing the full income before the Income Tax Authorities.

8.1. The Hon'ble Jurisdictional High Court in the case of AIA Engineering Ltd. (cited supra) held that all aspects of matter sought to be relied upon for purpose of reopening were very much before the AO at the time of scrutiny assessment made u/s. 143(3), therefore the reopening of assessment being mere change of opinion was to be set aside by observing as follows:

> "*Section 72, read with sections 143 and 147, of the Income-tax Act, 1961 Losses - Carry forward and set off of business losses (Reassessment) Assessment year 2014-15-Assessment was sought to be reopened in case of assessee on ground that assessee had claimed business loss and absorbed depreciation aggregating to Rs. 10.56 crores and said losses were returned losses and not assessed losses and, in such circumstances, amount of Rs. 10.56 crores could be said to have escaped assessment - However, it was found that all aspects of matter sought to be relied upon for purpose of reopening were very much before Assessing Officer at time when scrutiny assessment under section 143(3) was carried out - Instant case was not one of any omission or failure on part of assessee in fully and truly disclosing all relevant aspects of matter - No new tangible material could be said to have come to knowledge of Assessing Officer after framing of assessment - Whether therefore, Instant case could be said to be one of mere change of opinion and thus impugned notice was to be quashed and set aside Held, yes [Paras 7 and 10] [In favour of assessee)*
>
> *Section 4, read with sections 143 and 147 of the Income-tax Act, 1961 Income Chargeable as (Capital receipt) - Assessment year 2014-15-Assessment was sought to be reopened in case of assessee on ground that assessee had shown capital receipt of Rs. 9.45 crores from SHIS which was utilized in purchase of fixed assets had not been added back and same had resulted in escapement of income - However, it was found that all aspects of matter sought to be relied upon for purpose of reopening were very much before Assessing Officer when scrutiny assessment under section 143(3) was carried out and no new tangible material could be said to have come to knowledge of Assessing Officer after framing of assessment - Whether therefore, reopening of assessment being mere change of opinion was to be quashed and set aside - Held, yes [Paras 7 and 10] [In favour of assessee]"*

8.2. The other case laws cited by the assessee are also support the above view taken by the Jurisdictional High Court. Thus we have no hesitation in quashing the reassessment proceeding is nothing but mere change of opinion. Consequently the addition made by

the assessing officer of Rs.86,26,454/- is liable to be deleted. Thus the grounds raised by the assessee are allowed.

9. In the result, **the appeal filed by the Assessee in ITA No. 1001/Ahd/2025 is hereby allowed.**

ITA No. 1002/Ahd/2025

10. The Grounds of Appeal raised by the assessee are as follows:

> *"1. The Ld. CIT(A) has erred in law and on facts of the case in confirming the rectification order passed by the Ld.AO u/s 154 of the Act. Under the facts and circumstances of the case, invoking of section 154 of the Act is illegal and without jurisdiction as there was no mistake apparent from the records.*
>
> *2. The Ld. CIT(A) has erred in law and on facts of the case in upholding the rectification made by the Ld. AO whereby he disallowed attributable expenses of Rs. Rs. 36,97,501/- that he allowed while framing the reassessment order dated 30.03.2022.*
>
> *3. The Ld. CIT(A) and Ld. AO have erred in law and on facts of the case in not appreciating the submissions and documents placed on record during the course of the proceedings and not properly appreciating various facts and law in its proper perspective.*
>
> *4. The appellant craves leave to add, amend, alter, edit, delete, modify or change all or any of the grounds of appeal at the time of or before the hearing of the appeal."*

11. This appeal is filed by the assessee as against the rectification order passed pursuant to the u/s 147 order for the very assessment year 2013-14, wherein the expenses of Rs. 36,97,051/- were added as the income of the assessee. Since the main reassessment order itself is quashed on jurisdiction issue, this rectification order has no legs to stand in the eyes of law. Therefore

the rectification order is hereby quashed and the addition is hereby deleted.

12. In the result, the appeal filed by **the Assessee in ITA No. 1002/Ahd/2025 is hereby allowed.**

Order pronounced in the open court on 07-01-2026

Sd/- **Sd/-**
(ANNAPURNA GUPTA) **(T.R. SENTHIL KUMAR)**
ACCOUNTANT MEMBER **JUDICIAL MEMBER**
Ahmedabad : Dated 07/01/2026

आदेश की प्रतिलिपि अग्रेषित / Copy of Order Forwarded to:-

1. Assessee
2. Revenue
3. Concerned CIT
4. CIT (A)
5. DR, ITAT, Ahmedabad
6. Guard file.

By order/आदेश से,

उप/सहायक पंजीकार
आयकर अपीलीय अधिकरण,
अहमदाबाद