

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

BEFORE SHRI VIKRAM SINGH YADAV, ACCOUNTANT MEMBER  
AND  
MS. KAVITHA RAJAGOPAL, JUDICIAL MEMBER

ITA No. 5582/Mum/2025  
Assessment Year : 2017-18

Rudra Infra Projects, B-506, 5 <sup>th</sup> Floor, Rashmi Crystal, Sai Compl, Near Joggers Park, Mira Road (East), Thane-401107. PAN : AASFR5526L	vs.	Deputy Commissioner of Income Tax, Circle-1, Thane.
(Appellant)		(Respondent)

For Assessee :	Shri Ronen Joshi
For Revenue :	Shri Annavaran Kosuri

Date of Hearing :	20-01-2026
Date of Pronouncement :	23-01-2026

**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 08-09-2023, pertaining to Assessment Year (AY) 2017-18.

2. At the outset, it is noted that there is a delay in filing the appeal as pointed out by the Registry. In this regard, the assessee has filed an affidavit, explaining the reasons for delay. The Ld.DR was also heard, who

did not controvert the contents of the affidavit so filed by the assessee. After hearing both the parties and perusing the facts placed on record, we find that there was reasonable cause for the delay in filing the present appeal and hence, the delay is hereby condoned and appeal is admitted for adjudication.

3. Briefly the facts of the case are that the assessment in this case was completed u/s. 143(3) of the Income Tax Act, 1961 ('the Act') vide order dt. 22-12-2019, wherein the AO has disallowed a sum of Rs. 63 lakhs claimed by the assessee u/s. 57 of the Act. Further the AO has disallowed 30% of the rental payment of Rs. 4,20,000/- i.e., Rs. 1,26,000/- in terms of section 40(a)(ia) of the Act. The assessee carried the matter in appeal before the Ld.CIT(A), who has since dismissed the appeal of the assessee and against the said order, the assessee is in appeal before us.

4. During the course of hearing, the Ld.AR submitted that due to serious dispute between the partners including filing of FIR, the firm functioning was severely disrupted which resulted in non-appearance before the Ld.CIT(A) and which has resulted in passing of an *ex-parte* order by the Ld.CIT(A).

5. It was submitted that the assessee is a partnership firm, primarily engaged in the business of infrastructure development and construction. During the year under consideration, the assessee has spent an amount of Rs. 63 lakhs towards professional fees against the income earned by way of professional fees amounting to Rs. 1,15,13,757/- from M/s. Royal Rose Real Estate LLP for providing feasibility study and related professional services. It was submitted that the said professional activity was ancillary and incidental to the assessee's primary business activities and the income

was erroneously offered by the tax consultant in the return of income under the head 'Income from Other Sources' as against 'Income from Business and Profession'. It was submitted that to execute the said professional assignment, the assessee engaged specialized service providers and incurred expenditure of Rs. 63 lakhs, which was claimed as deduction u/s. 57 instead of section 37(1) of the Act and the same was not allowed by the AO. It was submitted that all these expenses were duly recorded in the Books of Account, supported by invoices and subjected to tax deduction at source wherever applicable. It was submitted that during the course of assessment proceedings, the assessee made certain preliminary submissions giving details of the parties to whom the amount has been paid and the corresponding TDS has been done. However, the AO has disallowed the entire expenditure for the reason that the assessee has failed to explain the nexus between income and expenditure so incurred. It was submitted that the assessee wishes to place on record additional evidences in terms of the invoices to prove the genuineness of the transaction depicting detailed description of service rendered to the assessee, bank statement highlighting payment made to them, ledger confirmation showing payments made to them in full. It was submitted that in the interest of justice, the same may be admitted and the matter may be remitted for necessary examination/verification.

6. It was further submitted that the AO has disallowed a sum of Rs. 1,26,000/- being 30% of the rental payment of Rs. 4,20,000/- claimed by the assessee. It was submitted that the said rental payment has been made to Mr. Chintan Mehta and admittedly, the assessee has not deducted TDS on the said payment, at the same time, the payee has offered the same in his return of income and has paid taxes thereon. It was accordingly submitted that where the income has already been offered by

the payee and the taxes thereon have been paid by the assessee, the assessee cannot be held as assessee-in-default in terms of proviso to section 40(a)(ia) of the Act and, therefore, the disallowance so made by the AO be directed to be deleted and in support, the assessee wishes to place on record a copy of the rental agreement executed with Mr. Chintan Mehta.

7. The Ld.DR has been heard, who is relied on the orders of the authorities below. At the same time, the Ld.DR didn't raise any objection where the matter is set-aside.

8. We have heard the rival contentions and perused the material available on record. Admittedly, due to non-prosecution, the appeal of the assessee has been dismissed by the Ld.CIT(A) and there is no findings on the merits of the case and the findings of the AO have been summarily confirmed by the Ld.CIT(A). Further, we find merit in the contention of the Ld.AR that the head of income under which the income has to be assessed needs to be determined based on actual nature and character of the transaction and underlying documentation and not necessarily based on the filings in the return of income. As a necessary corollary, the allowability or otherwise of corresponding expenses needs to be examined applying the relevant provisions as applicable as per law. In the instant case, it is the claim of the assessee that it has rendered certain professional services and has earned professional fees and for the purposes, has incurred certain professional expenses and therefore, the correct head of income should be "income from business/profession" and not "income from other sources" and thus, the expenses so claimed are allowable u/s 37(1) of the Act as incurred wholly and exclusively for the purposes of its professional activities. We find prima facie merit in the

claim so made by the assessee, at the same time, given that the matter has not been examined by the AO from the perspective of nature of receipts so disclosed and the corresponding expenses, and the assessee has placed on record the additional evidences, we deem it appropriate to admit these additional evidences and the matter is remitted to the file of the AO to examine the same afresh as per law after providing reasonable opportunity to the assessee. The matter relating to disallowance of rental payment is also set-aside to the file of the AO to examine the same afresh as per law and the assessee is at liberty to raise the necessary contention as so advised.

9. In the result, the appeal of the assessee is allowed for statistical purposes.

Order pronounced in the open court on 23-01-2026

Sd/-

[MS. KAVITHA RAJAGOPAL]  
JUDICIAL MEMBER

Mumbai,  
Dated: 23-01-2026

TNMM

Sd/-

[VIKRAM SINGH YADAV]  
ACCOUNTANT MEMBER

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