

**IN THE INCOME TAX APPELLATE TRIBUNAL
PATNA 'SMC' BENCH AT KOLKATA**

[Virtual Court]

Before

**SHRI SONJOY SARMA, JUDICIAL MEMBER
&
SHRI RAKESH MISHRA, ACCOUNTANT MEMBER**

**ITA Nos.: 354 & 355/PAT/2025
Assessment Years: 2017-18 & 2018-19**

Shekhar Narayan (Appellant)	Vs.	NFAC, Delhi (Respondent)
PAN: ASCPN2134L		

Appearances:

Assessee represented by : Rakesh Kumar, Adv.
Department represented by : Ashwani Kr. Singal, JCIT.
Date of concluding the hearing : 08-January-2026
Date of pronouncing the order : 29-January-2026

ORDER

PER RAKESH MISHRA, ACCOUNTANT MEMBER:

Both these appeals filed by the assessee are against the separate orders of the Commissioner of Income Tax (Appeals)-NFAC, Delhi [hereinafter referred to as Ld. 'CIT(A)'] passed u/s 250 of the Income Tax Act, 1961 (hereinafter referred to as 'the Act') for AYs 2017-18 & 2018-19 dated 23.05.2025. Since the issues are common, both the appeals were heard together and are being decided vide this common order for the sake of convenience and brevity.

2. The assessee is in appeal before the Tribunal raising the following grounds of appeal:

I. ITA No. 354/PAT/2025; AY 2017-18:

"1. For that the Ld. CIT (A), NFAC, Delhi has erred in passing the order without considering the materials available on record.



2. For that the Ld. CIT (A), NFAC, Delhi has erred in relying on Section 194J read with Section 44A for the purposes of holding that teaching activity is not a profession.

3. For that the Ld. CIT (A), NFAC, Delhi has erred in holding that the agreement between the institute and the faculty member imposes various restrictions such as the process of recruitment, biometric attendance and scheduling of classes and imposition of monetary penalty in certain cases clearly indicate that the faculty members are salaried employee.

4. For that the Ld. CIT(A), NFAC, Delhi has erred in treating the income declared under the head profession as salary income and erred in disallowing expenses of Rs. 7,32,030/-

5. For that the Ld. CIT (A), NFAC, Delhi has erred in holding that the relation between the appellant and the Institute is a 'contract of service' and not 'contract for service'.

6. For that the Ld. CIT (A), NFAC, Delhi has failed to consider that the rules, regulations and guidelines have been imposed for the smooth functioning of the Institute and shall not be viewed as exercise of control by the employer.

7. For that the Ld. CIT (A), NFAC, Delhi has failed to consider that the restriction or regulation imposed was only on administrative requirements and not on the exercise and discharge of profession of the appellant.

8. For that the Ld. CIT (A), NFAC, Delhi has failed to consider that the in making variation in the income although there was no incriminating material to indicate any falsity in declaration of income under the head profession and the claim of expense against professional income. The TDS of appellant Shekhar Narayan presently working at Mentors Eduserv is also being deducted u/s 194 JB (Fee for Professional Services). For AY 2017-18 TDS return of Anand Kumar Jaiswal with TAN No.DELA17915C was accepted by Income Tax Department in which nature of payment of Faculty Member has been shown as Professional Payment and these return has not been rejected by the same till date.

9. For that the Ld. CIT(A), NFAC, Delhi has erred in relying on the Supreme Court Judgment in the cases of Shivnandan Sharma vs. Punjab National Bank Ltd. reported in AIR 1955 SC 404, Dharangadhra Chemical Works Ltd. Vs. State of Saurashtra reported in AIR 1957 SC 264 and order of the ITAT in Deputy CIT, Hyderabad Vs. Wockhardt Hospital Ltd. and also in the case of Max Mueller Bhawan reported in (2004) 264 ITR 31 (AAR) and has accordingly erred in holding that the institute supervises and controls the work of its faculty members through adopting different methods/restrictions and for the purposes of treating the income as salary income and disallowance of expense of Rs. 07,32,030/-.

10. For that the Ld. CIT (A), NFAC, Delhi has failed to consider that the as per section 13 of service agreement of Mentors Eduserv (first party) with Mr. Shekhar Narayan (service provider) which is being reproduced here sub section 13.1-No Agency: This agreement is entered into on a 'principal to principal' basis & the parties are independent of each other & nothing contained herein is intended to or shall be deemed to create any partnership, joint venture, EMPLOYEMENT or relationship of principal & agent between the parties here to or between the first part in the service provider. Also sub section 13.5-Severability: Each of the provisions contained in this agreement shall be severable & the unenforceability of one section shall not affect the enforceability of any others provisions or of the remainder of this agreement. Hence relation between Mentors Eduserv and Faculty Member is not of Employer and Employee rather it is of entrepreneur and professional.

11. For that the Ld. CIT (A), NFAC, Delhi has erred in relying on judicial precedence that too without confronting the appellant with the same and also without considering that the facts of the decision relied upon were starkly distinguishable from the facts of the appellant's case.

12. For that the treatment of income from profession as salary income and disallowance of expense of Rs.7,32,030/- is wrong, illegal and unjustified on the facts and in the circumstances of the appellant's case.

13. For that the Ld. CIT(A), NFAC, Delhi has erred in holding that ample opportunity of hearing was provided to the appellant before passing the order which is detrimental to the interest of the appellant.

14. For that the Ld. CIT (A), NFAC, Delhi has erred in holding that there is no violation of the principles of equity and natural justice by denying opportunity of hearing before the alleged approval.

15. For that the Ld. CIT (A), NFAC, Delhi has erred in upholding the variation in the income made by the AO although there was no incriminating material to indicate any falsity in declaration of income under the head profession, the claim of expense against professional income and the computation of capital gain.

16. For that the appellant reserves its right to furnish detailed written submission along with evidences and documents on or before the date of hearing.

17. For that the appellant may be given opportunity of personal hearing physically or virtually as the law permits at the time of hearing of the appeal.

18. For that the charging of interest under the provisions of Income Tax Act is wrong, illegal and unjustified on the facts and in the circumstances of the appellant's case.

19. For that the appellant may not be treated as assessee in default in respect of the disputed demand including interest.

20. For that the whole order is bad in fact and law of the case and is fit to be modified.

21. For that other grounds, if any, shall be urged at the time of hearing of the appeal.”

II. ITA No. 355/PAT/2025; AY 2018-19:

“1. For that the Ld. CIT (A), NFAC, Delhi has erred in passing the order without considering the materials available on record

2. For that the Ld. CIT (A), NFAC, Delhi has erred in relying on Section 194J read with Section 44A for the purposes of holding that teaching activity is not a profession.

3. For that the Ld. CIT (A), NFAC, Delhi has erred in holding that the agreement between the institute and the faculty member imposes various restrictions such as the process of recruitment, biometric attendance and scheduling of classes and imposition of monetary penalty in certain cases clearly indicate that the faculty members are salaried employee.

4. For that the Ld. CIT(A), NFAC, Delhi has erred in treating the income declared under the head profession as salary income and erred in disallowing expenses of Rs.7,32,030/-

5. For that the Ld. CIT (A), NFAC, Delhi has erred in holding that the relation between the appellant and the Institute is a 'contract of service' and not 'contract for service'.

6. For that the Ld. CIT (A), NFAC, Delhi has failed to consider that the rules, regulations and guidelines have been imposed for the smooth functioning of the Institute and shall not be viewed as exercise of control by the employer.

7. For that the Ld. CIT (A), NFAC, Delhi has failed to consider that the restriction or regulation imposed was only on administrative requirements and not on the exercise and discharge of profession of the appellant.

8. For that the Ld. CIT (A), NFAC, Delhi has failed to consider that the in making variation in the income although there was no incriminating material to indicate any falsity in declaration of income under the head profession and the claim of expense against professional income. The TDS of appellant Shekhar Narayan presently working at Mentors Eduserv is also being deducted u/s 194 JB (Fee for Professional Services). For AY 2017-18 TDS return of Anand Kumar Jaiswal with TAN No.DELA17915C was accepted by Income Tax Department in which nature of payment of Faculty Member has been shown as Professional Payment and these return has not been rejected by the same till date.

9. For that the Ld. CIT(A), NFAC, Delhi has erred in relying on the Supreme Court Judgment in the cases of Shivnandan Sharma vs. Punjab National Bank Ltd. reported in AIR 1955 SC 404, Dharangadhra Chemical Works Ltd. Vs. State of Saurashtra reported in AIR 1957 SC 264 and order of the ITAT in Deputy CIT, Hyderabad Vs. Wockhardt Hospital Ltd. and also in the case of Max Mueller Bhawan reported in (2004) 264 ITR 31 (AAR) and has accordingly erred in holding that the institute supervises and controls the work of its faculty members through adopting different methods/restrictions and for the purposes of treating the income as salary income and disallowance of expense of Rs. 07,32,030/-.

10. For that the Ld. CIT (A), NFAC, Delhi has failed to consider that the as per section 13 of service agreement of Mentors Eduserv (first party) with Mr. Shekhar Narayan(service provider) which is being reproduced here sub section 13.1 No Agency: This agreement is entered into on a 'principal to principal basis & the parties are independent of each other & nothing contained herein is intended to or shall be deemed to create any partnership, joint venture, EMPLOYMENT or relationship of principal & agent between the parties here to or between the first part in the service provider. Also sub section 13.5 Severability: Each of the provisions contained in this agreement shall be severable & the unenforceability of one section shall not affect the enforceability of any others provisions or of the remainder of this agreement. Hence relation between Mentors Eduserv and Faculty Member is not of Employer and Employee rather it is of entrepreneur and professional.

11. For that the Ld. CIT (A), NFAC, Delhi has erred in relying on judicial precedence that too without confronting the appellant with the same and also without considering that the facts of the decision relied upon were starkly distinguishable from the facts of the appellant's case.

12. For that the treatment of income from profession as salary income and disallowance of expense of Rs.7, 32,030/- is wrong, illegal and unjustified on the facts and in the circumstances of the appellant's case.

13. For that the Ld. CIT(A), NFAC, Delhi has erred in holding that ample opportunity of hearing was provided to the appellant before passing the order which is detrimental to the interest of the appellant.

14. For that the Ld. CIT (A), NFAC, Delhi has erred in holding that there is no violation of the principles of equity and natural justice by denying opportunity of hearing before the alleged approval.

15. For that the Ld. CIT (A), NFAC, Delhi has erred in upholding the variation in the income made by the AO although there was no incriminating material to indicate any falsity in declaration of income under the head profession, the claim of expense against professional income and the computation of capital gain.



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19. For that the appellant may not be treated as assessee in default in respect of the disputed demand including interest.

20. For that the whole order is bad in fact and law of the case and is fit to be modified.

21. For that other grounds, if any, shall be urged at the time of hearing of the appeal.”

3. The assessee has reproduced verbatim the grounds of appeal for A.Y. 2017-18 in the appeal for A.Y. 2018-19. However, since the issues are similar with only the quantum of disallowance being varied, the finding of A.Y. 2017-18 will, mutatis mutandis, apply for A.Y. 2018-19 as well. We shall first take up ITA No. 354/PAT/2025 for adjudication. Brief facts of the case are that the assessee is an individual and had filed his return of income for AY 2017-18 on 21.10.2017 showing total income of ₹6,12,330/-. During the search and seizure action conducted at the business premises of M/s. Mentors Eduserv, it was ascertained that the faculty members of the institute were admitting their salary income as professional receipts in the return of income filed by them and had claimed huge expenses on the income earned. The assessee, being one of the faculty members, had also declared his income from salary of ₹14,82,260/- as professional income and claimed huge expenses of ₹7,32,030/- and admitted the balance income as his income from business/professional income. Since the assessee had claimed bogus expenses of ₹7,32,030/- against the salary income, as such the

income to that extent had escaped the Assessing Officer (hereinafter referred to as the Ld. 'AO'). Hence, the assessment was reopened u/s 147 of the Act to assess the escaped income of ₹7,32,030/-. Accordingly notice u/s 148 of the Act was issued and served upon the assessee, in response to which the assessee filed his return and dated the same income of ₹6,12,330/-. Thereafter, statutory notice u/s 143(2) of the Act was issued to the assessee, along with the reasons for reopening the assessment for AY 2017-18 being Salary income offered as income from business and profession. After considering all the facts of the case and submission of the assessee, the Ld. AO treated ₹14,82,260/- as salary income received from the employer for AY 2017-18 and rejected the bogus expenses claimed at ₹7,32,030/- since the same was not an allowable expense against the income under the head salary. The Ld. AO assessed the total income of the assessee at ₹13,44,360/- u/s 147 r.w.s. 144B of the Act. Aggrieved with the assessment order, the assessee filed an appeal before the Ld. CIT(A) who considered the facts of the case, the written submission filed and the case laws relied upon by the assessee and held as under:

“6.1 Grounds No.1 to 8: In these grounds, the appellant has challenged the additions made by the AO, assessing total income at Rs.1344360/- against the total income of Rs.612330/- and disallowing expenses of Rs.732030/-. The appellant is working as a faculty in M/s. Mentors Eduserv at Patna. The search and seizure action was conducted in M/s Mentors Eduserv group at Patna. During the search, it was found that the faculty members are receiving salary but claiming expenses against the salary, which is not allowable. The AO has relied upon Section 194J in this regard and Section 44AA of the Income Tax Act. The AO made out the case that it is a clear case of employer and employee. The AO has also relied upon various judgments of various Courts on this issue. Hence, the AO has made the addition.

6.1.1 Now before me in the appellate proceedings, the appellant filed written submission. The appellant has mentioned that there was no employer and employee relationship. The appellant has also mentioned that no PF and

ESIC was ever paid. The appellant has also relied upon one judgment of Hon. Calcutta Tribunal that the Doctors coming to Hospital are not liable to pay TDS on salary, but this judgement is not applicable here because Doctors visit various hospitals, but the teachers earn huge salary from the coaching classes and it is seen that generally they are doing jobs in one coaching class. Hence, it is a clear cut case of employer and employee relationship, as made out by the AO. No expenses can be debited against the salary income. Only standard deduction can be granted on the salary income. Hence, the addition of the AO on all the grounds is confirmed and appeal of the appellant is dismissed.

7. The appeal of the appellant is Dismissed.”

4. Aggrieved with the order of the Ld. CIT(A), the assessee has filed the appeal before the Tribunal.

5. Rival contentions were heard and the submissions made have been examined. The Ld. AR submitted that the assessee was providing his services as a faculty in M/s Mentors Eduserv and was claiming the same as professional income after debiting the expenses. In the assessment order, the Ld. AO has tried to establish that an employer-employee relationship existed between M/s Mentors Eduserv and the assessee. The assessee had declared the income under section 44ADA of the Act. The Ld. AO considered the provision of sections 194J and 44AA, the evidence found during the course of the search, the fact that teaching is not included as a professional service under section 44AA of the Act and the non-compete clause for the services being exclusive to the institute, the training and development clause and other terms and conditions. It has also been mentioned that in the advertisement for recruitment of faculty and management staff, there was no mention of professional fee to be paid to the faculty but it was mentioned that they would be paid salaries. After relying upon the decision of Dharangadhra Chemical Works Ltd. v. State of Saurashtra and other [AIR 1957 S.C. 264] and the decision of the ITAT, Hyderabad Bench in the case of DCIT,

Circle 15(2), Hyderabad v Wockhardt Hospitals Ltd. (ITA No. 985 & 986 (Hyd.) of 2011) , he has held that the relationship between Mentors Eduserv and the assessee is of employer and employee and has assessed the income under the head Salaries. It was stated by the Ld. AR that the assessee was rendering professional services, and there was no employer employee relationship nor any such relationship has been established by the Ld. AO in the assessment order. The Ld. DR did not rebut the submissions made by the Ld. AR but relied upon the assessment order and the order of the Ld. CIT(A).

6. We have considered the facts of the case, the submissions made and the documents filed. The Ld. AO has relied upon the provisions of sections 194J and 44AA to dispute the claim of profession made with assessee and the consequential professional income while the definition in those sections is for the purpose of section 194J and for the purpose of maintenance of books of account respectively. However, for assessing the income under the head salary, there ought to be the relationship of employer and employee, which can be discerned from the agreement and the terms of contract. It has been held in the case of **Commissioner of Income-tax (TDS), Chandigarh vs. Ivy Health Life Sciences (P.) Ltd. [2015] 63 taxmann.com 362 (Punjab & Haryana)/[2016] 236 Taxman 292 (Punjab & Haryana)** that to resolve the controversy, it has to be seen whether the agreement between the assessee and the concerned doctors was a 'contract for service' or a 'contract of service'. In case, it is 'contract for service', the income of the doctors would fall under the head 'income from business or profession' whereas under 'contract of service', it would partake the character of salary which is dependent upon master-servant relationship. **It is always a vexed question to determine whether employer-employee**



relationship exists between the parties or not. There is no strait jacket formula prescribed under any statute or by any pronouncement on the basis of which it could be said that in a given eventuality, it would be characterized as employer-employee relationship. It is dependent upon several factors taken together which would result into such relationship. [Para 9] It is further held that in that case, it has been categorically recorded by the Commissioner (Appeals) that the **contract for service implies a contract whereby one party undertakes to render services i.e. professional or technical services whereas contract of service implies relationship of master and servant and involves an obligation to obey orders in the work to be performed and also as to its mode and manner of performance.** The professional doctors were not entitled for LTC, concession in medical treatment of relatives, PF, leave encashment and retirement benefits like gratuity. **They are required to follow some defined procedure to maintain uniformity in action and some administrative discipline but this did not mean that they had become employees of the hospital.** It is also held in **Dharangadhara Chemical Works Ltd. v. State of Saurashtra, (1957) SCR 152 (SC)** referred by the Ld. AO in the assessment order that the test which is uniformly applied in order to determine the relationship is the existence of a right of control in respect of the manner in which the work is to be done. **The nature or extent of control which is requisite to establish the relationship of employer and employee must necessarily vary from business to business and is, by its very nature, incapable of precise definition.** It is not necessary for holding that a person is an employee, that the employer should be proved to have exercised control over his work, that the test of control was not



one of universal application and that there were many contracts in which the master could not control the manner in which the work was done. It is also held in the case of **Indian Medical Association v. V. P. Shantha, AIR 1996 SC 550** that a 'contract for services' implies a contract whereby one party undertakes to render services (e.g., professional or technical services) to or for another in the performance of which he is not subject to detailed direction and control but exercises professional or technical skill and uses his own knowledge and discretion. On the other hand, a 'contract of service' implies relationship of master and servant and involves an obligation to obey orders in the work to be performed and as to its mode and manner of performance. Neither the Ld. AO nor the Ld. CIT(A) have conclusively established on the basis of the agreement that a master-servant relationship existed between Mentors Eduserv and the assessee so as to assess the income under the head Salaries. We also note that in **Ajji Basha Vs. CIT (2019) 111 taxmann.com 348 (Madras)** it has been held that a speaking order on merits with reasons and findings is to be passed by Commissioner (Appeals) on basis of ground raised in assessee's appeal; he cannot dispose the assessee's appeal merely by holding that the Assessing Officer's order is a self-speaking order which requires no interference. Hence, in the interest of justice and fair play it was considered by the Bench that one more opportunity may be provided to the assessee to explain the facts and to establish the claim that the income was assessable under the head Business or Profession and the case may be set aside before the Ld. AO so that the assessee may be allowed a proper opportunity of being heard. Hence, after examining the facts of the case, we deem it appropriate to set aside the order of the Ld. CIT(A) and remit the matter back to the Ld. AO for making the reassessment *de novo*.



Needless to say, the assessee shall be given a reasonable opportunity of being heard to make any further submission it wants to make in support of its grounds of appeal and furnish the evidences for the expenses claimed and shall not seek unnecessary adjournments. Accordingly, the grounds taken by the assessee in his appeal are partly allowed for statistical purposes.

7. Since the facts in the appeal in ITA No. 355/PAT/2025 for AY 2018-19 are identical, our findings in AY 2017-18 shall, *mutatis mutandis*, also apply in the appeal for AY 2018-19. The grounds taken by the assessee in this appeal are also partly allowed for statistical purposes

8. In the result, both the appeals filed by the assessee are partly allowed for statistical purposes.

Order pronounced in the open Court on 29th January, 2026.

Sd/-

[Sonjoy Sarma]
Judicial Member

Sd/-

[Rakesh Mishra]
Accountant Member

Dated: 29.01.2026

Bidhan (Sr. P.S.)



Copy of the order forwarded to:

1. **Shekhar Narayan, C/o- Jagdish Niwas Purani Parsa Bazar, PO & PS- Parsa Bazar, Patna, Bihar, 804453.**
2. **NFAC, Delhi.**
3. CIT(A)-NFAC, Delhi.
4. CIT-
5. CIT(DR), Patna Benches, Patna.
6. Guard File.

// True copy //

By order

Assistant Registrar
ITAT, Kolkata Benches
Kolkata