

**IN THE INCOME TAX APPELLATE TRIBUNAL "D" BENCH**  
**AT KOLKATA**

**Before Shri Rajesh Kumar, Accountant Member and  
Shri Pradip Kumar Choubey, Judicial Member**

**ITA No.2228/Kol/2025  
Assessment Year: 2016-17**

**DCIT, Circle 11(1), Kolkata.....Appellant**  
**Aayakar Bhawan, 6<sup>th</sup> Floor,**  
**P-7, Chowringhee Square,**  
**Kolkata - 700069.**

**vs.**

**P N Memorial Neuro Centre .....Respondent**  
**and Research Insitute Limited**  
**8/1A/1 Keyatala Road, Sarat Bose Road**  
**Kolkata-700029**  
**[PAN: AADCP4772G]**

**Appearances by:**

Shri Manoj Kataruka, Advocate, appeared on behalf of the assessee.  
Shri S. B. Chakraborty, DR, appeared on behalf of the Revenue.

Date of concluding the hearing : December 04, 2025

Date of pronouncing the order : March 02, 2026

**ORDER**

**Per Pradip Kumar Choubey, Judicial Member:**

This appeal filed by the assessee is directed against the order dated 24.01.2025 of the NFAC, Delhi ['CIT(A)'] passed under Section 250 of the Income-tax Act, 1961 (hereinafter referred to as "the Act").

2. The Registry informed that there is delay in filing of the appeal by the Revenue by 178 days and condonation petition for the said delay has been filed by the revenue. On perusal of the contents of the condonation petition, we find that the reasons mentioned therein are valid and reasonable. Hence, we condone the delay and admit the appeal of the revenue for adjudication.

3. Brief facts of the case are that the assessee is a company engaged in the business of Hospital Services and the return of income for the year under consideration was filed by declaring total income of Rs. 14,75,83,010/-. The case of the appellant company was selected for scrutiny and accordingly a notice u/s 143(2) of the Act was issued and

subsequently notices u/s 142(1) of the Act along with questionnaire were issued to the appellant company on various dates. In response to the same, certain information and documents were furnished by the appellant company and by considering the said submission of the appellant, the Assessing Officer has completed the assessment u/s 143(3) of the Act vide dated 26.12.2018 by disallowing or making various additions to the total income of the appellant company as under:

- i. Interest against TDS amounting to Rs.1,72,479/- was disallowed.
  - ii. Expenses u/s 36(1)(va) of the Act amounting to Rs.13,62,796/- were disallowed.
  - iii. Expenses u/s 37(1) of the Act amounting to Rs.33,502/- were disallowed.
  - iv. Interest on Income Tax amounting to Rs.3,74,640/- was disallowed.
  - v. 20% of claim of expenses on account of 'salary and wages' amounting to Rs. 13,13,08,997/- and 'bonus' amounting to Rs.59,00,000/-[i.e. 20% of Rs.13,13,08,997/- (+) Rs.59,00,000/-], which comes to Rs.2,74,41,799/- was disallowed.
  - vi. 30% of claim of miscellaneous expenses amounting to Rs.8,64,69,802/-i.e. Rs.2,59,40,940/- was disallowed.
  - vii. Claim of doctor referral fees amounting to Rs.32,24,511/- was disallowed.
  - viii. Claim of capital expenditure amounting to Rs.11,90,959/- u/s 37(1) of the Act was disallowed.
  - ix. Incentives amounting to Rs.5.42,21,943/- were disallowed
  - x. Expenses on sale promotion amounting to Rs.3,41,08,137/- were disallowed.
4. Being aggrieved by the said order, the assessee filed an appeal before the Ld. CIT(A) wherein the Ld. CIT(A) partly allowed the appeal of the assessee.

5. Being aggrieved and dissatisfied by the order of the Ld. CIT(A), the revenue filed the present appeal raising the following grounds of appeal:]

**P.N. MEMORIAL NEURO CENTRE & RESEARCH INSTITUTE LTD .**

**PAN: AADCP4772G**

**Assessment Year – 2016-17**

**Grounds of Appeal before the Income Tax Appellate Tribunal**

1. Whether on the facts and circumstances of the case and in law, the Ld. CIT(A) erred in allowing the appeal of the assessee by deleting the addition of Rs. 1,72,479/- as interest against TDS, without appreciating the fact that interest for non-payment of statutory dues is penal in nature.
2. Whether on the facts and circumstances of the case and in law, the Ld. CIT(A) erred in allowing the appeal of the assessee by deleting the addition of Rs. 2,74,41,799/-, without appreciating the fact that the assessee failed to substantiate its claim with documentary evidence even after availing itself of sufficient opportunities during the course of assessment proceedings; nor verifying the genuineness of the claim of the assessee,
3. Whether on the facts and circumstances of the case and in law, the Ld. CIT(A) erred in allowing the appeal of the assessee by deleting the addition of Rs. 32,24,511/- as doctor referral fee without appreciating the fact that the substantiate its claim with assessee failed to documentary evidence.
4. Whether on the facts and circumstances of the case and in law, the Ld. CIT(A) erred in allowing the appeal of the assessee by deleting the addition of Rs. 3,41,08,137/-as expenses on sale promotion without appreciating the fact that the assessee failed to substantiate its claim with documentary evidence.
5. That the appellant craves leave to add to and/or alter, amend, modify or rescind the grounds hereinabove before or at the time of hearing of this appeal.

Yours faithfully,



(Pramod Lakra)

**DCIT, Circle-11(1), Kolkata**

प्रमोद लकरा, भा.रा.से.  
PRAMOD LAKRA, I.R.S.  
उप आयकर अधिकारी, सर्किल-11(1), कोलकाता  
Deputy Commissioner of Income Tax  
Circle-11(1), Kolkata



6. Contrary to that, the ld. AR submits that during the course of assessment proceedings, the appellant company has incurred an expenditure of Rs.1,72,497/- on account of interest paid on delayed remittance of TDS and the said expenditure was disallowed by the Assessing Officer u/s 37(1) of the Act. The ld. submitted that, the interest payment on the delayed payment of TDS was not in the nature of penalty but the same was of compensatory in nature. In support of the same, the ld. AR relied on the decision of Hon'ble ITAT Calcutta in the case of M/s Narayanil Spat Pvt. Ltd. vide ITA No. 2127/Kol/2014. Ground No.2 is regarding addition of Rs.2,74,41,799/- being 20% of total expenditure of salary and wages and bonus deleted by CIT(A). The ld. AR submits that the CIT(A) held that the disallowance cannot be made on estimate basis without rejecting the books and without pointing out any defects in the books. He relied on the decision of the ITAT in assessee's appeal in ITA No. 328/Kol/2025 vide order dated 2.12.2025. Ground No. 3 is relating to addition of Rs.32,24,511/- being Doctor referral fees deleted by CIT(A). The ld. AR submits that During the course of appellate proceedings, the appellant has submitted that, the expenditure of Rs.32,24,511/- is allowable based on the decision of Hon'ble High Court of Delhi in the case of Max Hospital (vs) Medical Council of India vide WPC/1334/2013 dated 10.01.2014 and also the decision of Hon'ble Mumbai Tribunal in the case of DCIT (vs) PHIL Pharma reported in 49 CCH 124, wherein, the decision of CIT (vs) Kap Scan & Diagnostic Centre was distinguished and the appellant has also relied on the decision of Hon'ble Mumbai Tribunal in the case of India Medtronic Pvt. Ltd. (vs) DCIT reported in 52 CCH 43. Accordingly, the Hon'ble Tribunal has held that, the MCT guidelines are applicable to professional doctors only. The ld. AR further states that the said payments were made not to doctors but to ambulances, other diagnostic centres, nursing homes and mostly to person for marketing all over West Bengal. The ld. AR also submits that the ld. CIT(A) has rightly deleted the addition. Ground No. 4 is relating to addition of

Rs.3,41,08,137/- on account of expenditure of sales promotion. The ld. AR submits that CIT(A) had deleted Rs.2,38,75,696/- and confirmed Rs.1,02,32,441/- being 30% on account of 40(a)(ia) by holding that the disallowance cannot be made of the sales promotion expenses without rejecting the books and without pointing out any defects in the books. The ld. AR submits that the Hon'ble ITAT in assessee's appeal in ITA No. 328/Kol/2025 vide order dated 2.12.2025 while dealing with assessee's appeal regarding addition confirmed by CIT(A) of Rs.1,02,32,441/- (30% of Rs.3,41,08,137/- u/s 40(a)(ia)) observed that all the details of the expenses have been furnished and there is no adverse comments by the Tax Auditor regarding non-deduction of tax at source and books are audited and the assessee is declaring substantial income and paying substantial taxes. It was also observed that the necessary TDS has been deducted. He, therefore, submits that the ground of the revenue challenging the addition of Rs.3,41,08,137/- (actually it should be Rs.2,38,75,696/-) is not a valid one and same may be dismissed.

7. We have considered the submissions of the counsels of the respective parties and perused the materials on record. We find that the first ground raised by the revenue is relating to addition of Rs.1,72,497/- on account of interest of TDS. We find that the appellant company has incurred an expenditure of Rs.1,72,497/- on account of interest paid on delayed remittance of TDS and the said expenditure was disallowed by the Assessing Officer u/s 37(1) of the Act. We find that the interest payment on the delayed payment of TDS was not in the nature of penalty but the same was of compensatory in nature which is supported by the decision of Hon'ble ITAT Calcutta in the case of M/s Narayanil Spat Pvt. Ltd. vide ITA No. 2127/Kol/2014. We, therefore, allow this ground of the assessee. Ground No.2 is regarding addition of Rs.2,74,41,799/- being 20% of total expenditure of salary and wages and bonus deleted by CIT(A). The ld. AR submits that the CIT(A) held that the disallowance cannot be made on

estimate basis without rejecting the books and without pointing out any defects in the books. He relied on the decision of the ITAT in assessee's appeal in ITA No. 328/Kol/2025 vide order dated 2.12.2025. Ground No. 3 is relating to addition of Rs.32,24,511/- being Doctor referral fees deleted by CIT(A). We note that During the course of appellate proceedings, the appellant has submitted that, the expenditure of Rs.32,24,511/- is allowable based on the decision of Hon'ble High Court of Delhi in the case of Max Hospital (vs) Medical Council of India vide WPC/1334/2013 dated 10.01.2014 and also the decision of Hon'ble Mumbai Tribunal in the case of DCIT (vs) PHIL Pharma reported in 49 CCH 124, wherein, the decision of CIT (vs) Kap Scan & Diagnostic Centre was distinguished and the appellant has also relied on the decision of Hon'ble Mumbai Tribunal in the case of India Medtronic Pvt. Ltd. (vs) DCIT reported in 52 CCH 43. Accordingly, the Hon'ble Tribunal has held that, the MCT guidelines are applicable to professional doctors only. We further note that the said payments were made not to doctors but to ambulances, other diagnostic centres, nursing homes and mostly to person for marketing all over West Bengal. We also find that the ld. CIT(A) has rightly deleted the addition. Ground No. 4 is relating to addition of Rs.3,41,08,137/- on account of expenditure of sales promotion. We also note that CIT(A) had deleted Rs.2,38,75,696/- and confirmed Rs.1,02,32,441/- being 30% on account of 40(a)(ia) by holding that the disallowance cannot be made of the sales promotion expenses without rejecting the books and without pointing out any defects in the books. We further note that the Hon'ble ITAT in assessee's appeal in ITA No. 328/Kol/2025 vide order dated 2.12.2025 while dealing with assessee's appeal regarding addition confirmed by CIT(A) of Rs.1,02,32,441/- (30% of Rs.3,41,08,137/- u/s 40(a)(ia)) observed that all the details of the expenses have been furnished and there is no adverse comments by the Tax Auditor regarding non-deduction of tax at source and books are audited and the assessee is declaring substantial income and paying substantial taxes. It was also observed that

the necessary TDS has been deducted. We, therefore, hold that the ground of the revenue challenging the addition of Rs.3,41,08,137/- (actually it should be Rs.2,38,75,696/-) is not a valid one and same may be dismissed.

8. In the result, the appeal filed by the revenue is dismissed.

***Kolkata, the 2<sup>nd</sup> March, 2026.***

Sd/-  
**[Rajesh Kumar]**  
**Accountant Member**

Sd/-  
**[Pradip Kumar Choubey]**  
**Judicial Member**

Dated: 02.03.2026.

*Copy of the order forwarded to:*

1. Appellant -
2. Respondent -
3. CIT(A)-
4. CIT- ,
5. CIT(DR),

//True copy//

By order

Assistant Registrar, Kolkata Benches