

## In absence of evidence, ITAT couldn't allow 42% deduction from gross receipts towards non-receipt of fee

**Summary – The High Court of Madras in a recent case of Dr. Hakeem S.A. Syed Sathar, (the Assessee) held that where revenue made addition on account of suppressed receipts in case of medical practitioner, Tribunal in absence of materials or discussion of evidence could not have allowed 42 per cent deduction from gross receipts towards non-receipt of fees and cost of medicines**

### Facts

- The assessee was a medical practitioner in Unani medicine. A search was conducted at the Clinic of the assessee which revealed (i) suppression of receipts (ii) Inflation of expenses in the purchase of medicine (iii) Investing the unaccounted income generated, by suppressing collection (iv) Bogus sundry debtors (v) Omission to account advertisement expenses (vi) No accounting of income received on lodging house. Cash was also found and seized and gold jewellery weighing 1522.6 grams was also found, but not seized.
- Block assessment in case of assessee was completed under section 158BC read with section 143(3) and the total undisclosed income at Rs.2.59 crores was determined as against the income submitted by the respondent/assessee of Rs.69.40 lakhs.
- On appeal the Commissioner (Appeals), partly allowed the appeal of the assessee by confirming all the additions, however, deleting a sum of Rs.24.48 lakhs on inflation or cost of medicines.
- On second appeal, the Tribunal held that the assessee had been suppressing the professional receipts and held that 42 per cent gross receipts calculated by the revenue are allowed as deduction on account under receipt and/or cost of medicines estimated towards non-receipt of fee as well as cost of medicines.
- On revenue's appeal:

### Held

- The Tribunal has clearly stated that assessee has been suppressing professional receipts. Therefore, revenue has given an option that there should not be professional receipts on the basis of Consultation register and accepted the order passed by the authority. It is also stated that initially assessee has submitted that 20 per cent of the money was not received and thereafter, submitted that upto 30 per cent of the money was not received. The Tribunal has granted relief to the respondent/assessee on the ground that the Commissioner (Appeals) has passed an order by stating that there are unaccounted receipts and there would be unaccounted purchase of medicines, but no benefit was granted in the absence of any proof for the same. But the Tribunal, by taking into consideration of the contention of the respondent/assessee, granted deduction of 42 per cent from

the gross receipts estimated for non-receipts of fee, as well as cost of medicines. The block assessment has been made only, with the books seized and suppression of undisclosed income. Without any materials and guidelines, the Tribunal has granted relief of 42 per cent deduction on the cost of medicines and non-receipt of fees. Simply by observing that the Assessing Officer himself has estimated the cost of medicine at about 42 per cent for the year 2001-02, the Tribunal has granted deduction 42 per cent towards cost of medicines and non-receipt of fees, and the same which is not explained. Therefore, the respondent/assessee is not entitled for the deduction of 42 per cent from the gross receipts towards non-receipt of fees and cost of medicines. The Commissioner (Appeals) has granted deduction only for the purchase of medicines and not for the non-receipt of fees by the respondent/assessee. There is no discussion or any evidence, to come to such conclusion by the Tribunal, for granting deduction of 42 per cent towards cost of medicines and non-receipt of fees.

- There are no materials or guidelines or discussion of evidence with regard to deduction of 42 per cent granted by the Tribunal towards non-receipt of fees and cost of medicines, thus, the order passed by the Tribunal is liable to be set aside.
- In the facts and circumstances of the case, the appeal is allowed. The impugned order of the Tribunal is set aside and the matter is remanded to the Tribunal to consider the issues afresh and pass an appropriate order in accordance with the provisions of law.