IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH, 'E': NEW DELHI

BEFORE SHRI SHAMIM YAHYA, ACCOUNTANT MEMBER AND
Ms. ASTHA CHANDRA, JUDICIAL MEMBER

ITA No.3130/DEL/2018
[Assessment Year: 2014-15]

Mrs. Nalini Mahajan, 31, Central Drive, Chattarpur DLF Farms, Chattarpur, Delhi-110074	Vs	ACIT, Circle-61(1), New Delhi
PAN-AEAPM7517A		
Assessee		Revenue

Assessee by	Sh. Gaurav Jain, Adv. & Sh. Sudarshan Roy, Adv.
Revenue by	Sh. Sumit Kumar Verma, Sr. DR

Date of Hearing	**23.03.2023**
Date of Pronouncement	**06.04.2023**

ORDER

PER SHAMIM YAHYA, AM,

This appeal by the assessee is directed against the order of ld. CIT (Appeals)-20, New Delhi, dated 31.03.2018 and pertains to Assessment Year 2014-15.

2. The grounds of appeal reads as under:-

"1) The learned CIT (A) has grossly erred in law in holding that Rs. 3.2 Crore received by the assessee form NOVA IF Clinic Pvt. Ltd as consideration for exclusive arrangement and goodwill for closing down her hospital are taxable Under section 28(1) of Income Tax Act, 1961 instead section 28(IV) as done by the AO without confronting the assessee about change of taxable head in income tax Act, 1961.

2) The Learned CIT (A) has grossly erred in Law in holding that Rs.189,00,000/- received by the assessee consideration for not carrying out independently the professional activities in future which is exempt Us 28(IVA) of Income Tax Act, 1961 as a professional income and is taxable U/s 28(1) of Income Tax Act, 1961

3) The Learned CIT (A) has grossly erred in law and on the facts of the case that the consideration of Rs. 1.31 crore received as goodwill for her expertise and knowledge and also for closing down her hospital Mother and Child is not Tax Free as per section 55(2) of Income Tax act, 1961 but is a Business Income earned by the assessee form profession and taxable U/s 28(1) Of the Act..

4) The assessee seeks leave to add or amend any additional grounds of appeal if it is necessary in the interest of justice."

3. Brief facts of the case are that the assessee is an individual and doctor by profession and was running hospital under the name and style of Mother and Child New Delhi. A 'Service Agreement', was executed on 28.10.2012, between Nova Pulse IVF Clinic Pvt. Ltd. and assessee Smt. Nalini Mahajan. As per the agreement company (Nova Pulse IVF Clinic Pvt. Ltd.) engaged the assessee as a consultant, and the assessee has agreed to be exclusively engaged with the company (Nova Pulse IVF Clinic Pvt. Ltd.) for providing her professional services. The AO noted that the fee payable to assessee by the company is to be decided by the sub-clause 2 'Fees' of the service agreement executed on 28.10.2012 between Nova Pulse IVF Clinic Pvt. Ltd. and assessee. Thereafter, reproducing certain portion of the agreement, the AO found that the assessee has provided her professional services to the Nova Pulse IVF Clinic Pvt. Ltd. during the relevant assessment year. The assessee has received professional income during the year, along with Rs.3,20,00,000/- detail of which is described here:-

Particulars of 'Consideration received'	Consideration received (Rs.)
For exclusive engagement with Nova Pulse IVF Clinic Pvt. Ltd.	1,89,00,000/-
For bringing her associated Goodwill to Nova Pulse IVF Clinic Pvt. Ltd.	75,00,000/-
For bringing her associated Goodwill to Nova Pulse IVF Clinic Pvt. Ltd.	56,00,00/-
Total	3,20,00,000/-

3.1. The AO noted that the assessee has increased her capital by Rs.3,20,00,000/- on account of payment receipt from the said company the payment said to be for exclusive for engagement goodwill. The AO was of the opinion that the assessee has provided professional services to the company. The assessee explained that the said company has paid the amount of Rs.3,20,00,000/- because the assessee has transferred her practice and associated goodwill to the company which cannot be taxed as profits and gains of business or profession. However, the AO was not in agreement and he held that the said amount is taxable in the hands of the assessee u/s 28(va) of the Income Tax Act being value of any benefit or perquisite, arising from business or the exercise of a profession. The AO concluded as under:-

> *"In the case under consideration assessee has provided her professional services to the Nova Pulse IVF Clinic Pvt. Ltd., as per the Service Agreement, executed on 28-10-2012, between Nova Pulse IVF Clinic Pvt. Lid. and assessee: The relevant clause of the Service Agreement also states that Company Nova Pulse IVF Clinic Pvt. Ltd. will pay the consideration to the assessee, in consideration of the exclusive engagement, and performances of the Services. Therefore, various payments as mentioned in the Annexure 'B' of the Service Agreement are nothing but, the benefit or perquisite received from Nova Pulse IVF Clinic Pvt. Ltd. by the assessee for carrying out Professional Activity there, for the Nova Pulse IVF Clinic Pvt. Ltd. Therefore Rs. 3,20,00,000/- as received by the assessee from Nova Pulse IVF Clinic Pvt. Ltd. during the relevant assessment year, is added to the total taxable income of the assessee, as profits and gains of business of profession w/s 28(iv) of the IT Act."*

4. Upon assessee's appeal, the Ld. CIT(A) confirmed the action of the AO but changed the section under which the said amount is taxable to section 28(1) of the Act. The Ld. CIT(A) referred to the assessee's written submission and opined that the payment towards exclusive engagement

and goodwill is subject to the services given by the company. Hence, he rejected the plea that it is a capital receipts, he noted that the assessee is being paid only for professional services and no goodwill is transferred to this company as these payments are linked with the services of the assessee to be continued with the company. One reason given by the ld. CIT(A) for this was that the company is not using the name of the clinic of the assessee run in the name of Mother and Child and now the name used by the company is Nova Plus IVF Clinic Pvt. Ltd. Further, he opined that the good will being a capital receipt is transferred once and in the case of the assessee, it is linked with here services given to the company. The ld. CIT(A) further opined that the same is not exclusive engagement and goodwill, wherein, it is linked to the continues services given by the assessee to the company. Hence, the ld. CIT(A) held that the assessee hasgiven professional expertise in the form of professional services which is being utilized by the company which is mentioned in clause 1(a), 2(a) and clause 3 of the service agreement. He held that however, by such method, the assessee is getting this money for her professional services only which is deliberately bifurcated into three parts to evade the tax. Thereafter, the ld. CIT(A) noted the assessee's objection and after analyzing and without confronting to the same to the assessee, he confirmed the addition u/s 28(i) of the Act. The relevant part of the order of the Ld. CIT(A) reads as under:-

> *"4.3.9. During the course of appellate proceedings, the appellant in her written submission has mentioned that this consideration should not be taxable u/s 28(va) of the Act or u/s 55 of the Act which is applicable wef. A.Y. 2017-18. The plea of the appellant deserves to be rejected as section 55*

deals with the transfer of goodwill which is a capital asset and in this case no goodwill of the clinic 'Mother & Child' is transferred to the company and section 28 (va) deals with any sum received for not carrying out any activity in relation to the profession whereas in this case all the payments are given to the appellant for her continued services given to the company as per the service agreement as per detailed discussion mentioned supra.

4.3.10 The plea of the appellant that the A cannot considered this as the perquisite or other benefit taxable us 28(iv) because a contractual payment received as per agreement could not be considered as perquisite or as an income from other sources as suggested by him. Though, the Assessing Officer has mentioned in the assessment order that this income is to be taxed under section 28(iv) of the Act where the value of any benefit or perquisite, arising from business or the exercise of a profession should be added to the taxable income of assessee, as profits and gains of business or profession. However, from the discussion made supra it is apparent that the said consideration of Rs.3,20,00,000/- is nothing but the professional receipt of the appellant which is taxable under section 28(i) of the Act as per which the profits & Gains of any business or profession which was carried on by the assessee at any time during the previous year will be chargeable to income tax under the head Profits & Gains of Business or Profession. Considering the relevant clauses of the service agreement it is apparent that the amount received by the appellant is nothing but the professional receipts and whatever expenses the appellant has incurred has already been claimed by her and allowed by the Assessing Officer. However, the Assessing Officer has wrongly taken the income to be taxed us 28 (iv) which should be taxed under section 28 (i) of the Act and as I have the co-terminus power with the Assessing Officer, the addition made by the Assessing Officer is confirmed under section 28(i) of the Act and not under section 28(iv) and the Assessing Officer is directed to take this in the total income accordingly.

5. Against this order, the assessee has filed appeal before us.

6. The ld. Counsel for the assessee made elaborate submission. He summarized the facts as under:-

"1. The assessee, an individual, is a renowned doctor specializing in the field of IVF, who was running as proprietary

nursing home under the name and style of “mother & Child”, since last 40 years.

2. In the previous year relevant to assessment year 2013-14, the assessee entered into a Service Agreement dated 28.10.2012 with an independent/unrelated company viz., Nova Plus IVF Clinic Pvt. Ltd. (“Nova”) again specializing in the field of IVF, whereby Nova agreed to engaged the assessee as consultant for rendering exclusive services to it, in the lieu of following consideration.

(Refer: Para 3, Annexure-B)

"3) Consideration for Services

In lieu of Services rendered by the Doctor, the Doctor's fees shall be as under

1. For the period of 12 months from the Commencement Date,

a. The Doctor shall be entitled to a minimum assured sum of Rs. 17,00,000/ (Rupees Seventeen Lakhs only) for monthly revenue upto Rs. 61,00,000/- (Rupees Sixty One Lakhs only) billed by the Company towards procedures and / or cycles and / or consultations performed by the Doctor."

3. In addition to the above, Nova placed restrictive covenant on the assessee to only render services exclusively to Nova and not to any other third-party including assessee's private practice through the proprietary concern. The relevant portion of the agreement is as under:

(Para 4 at page 18)

"4. During the Term, the Doctor shall carry on her infertility practice exclusively at the Company's Clinic in Africa Avenue, Delhi ("Clinic") or such other place as may be mutually agreed to by the Parties: it is hereby clarified that, on or before the Commencement Date, all the infertility practice (including consultations, lab tests, pharmacy, Laparoscopy & Hysteroscopy procedures. IF treatments including pickups and transfers, egg freezing, frozen embryo transfers, Uis, etc) in her clinic in Defence Colony, New Delhi ("Doctor's Existing Clinic) shall be transferred to the Clinic of the Company and the Doctor's Existing Clinic shall continue to operate till one year, from the commencement of this agreement, only for the sole purpose of consulting its clients/patients to the Company’s clinic.”

(Para 13 at page 19)

“13. Non-compete and Non-solicit

During the Term of this Agreement, the Doctor covenants that the Doctor shall not, directly or indirectly, carry on any activity which competes with the Business of the Company nor shall the Doctor solicit customers / clients or employees of the Company for any other purpose."

4. The consideration for exclusive engagement with Nova and not to compete/not to carry the activity with any other person and to also not share her goodwill with any other party, the consideration was agreed as per the following:

(Page 21...Annexure-B)

"FEES PAYABLE

1) Consideration for exclusive engagement:

In consideration of the Doctor agreeing to be exclusively associated with the Company and as consideration for the Doctor moving her medical practice and associated goodwill to the Company, the Doctor will be paid the following consideration:

(a) Subject to the Doctor continuing to render Services to the Company under this Agreement, an amount of Rs. 1,26,00,000/- (Rupees One Crore I wenty six lakhs only) every year spread across four equal instalments in a year in the middle of each quarter.

*2) **Consideration for Goodwill:***

a) Subject to the Doctor continuing to render Services to the Company under this Agreement, an amount of Rs. 75,00,000/- (Rupees Seventy Five Lakhs only) on the date of signing the Agreement and thereafter Rs. 75,00,000/- (Rupees Severity Five Lakhs only) per annum for a period of 2 years on 01st April, 2013 and 01 April, 2014.

5. In accordance with the terms of the aforesaid agreement, while the monthly revenue and the profit share for services, agreed as per Clause-3 of agreement for services, was offered to tax as professional income year after year, the amount of consideration for exclusive engagement; in other words for undertaking restrictive covenant of not to carry profession and share her goodwill with any other person, was received in different years in the following manner:

S. No.	A.Y.	Fee towards no other engagement	Fee towards not sharing associated Good Will	Total	Status in Assessment
1	2013-14	NIL	7500000	7500000	Processed and accepted u/s. 143(1) of the Act
2	2014-15	18900000	13100000	32000000	Assessment made u/s. 143(3) and presently under appeal
3	2015-16	9450000	7500000	169500000	Processed and accepted u/s. 143(1) of the Act
4	2016-17	12600000	7500000	201000000	Processed and accepted u/s. 143(1) of the Act
5	2017-18	31500000	0	3150000	Processed and accepted u/s. 143(1) of the Act
		44100000	35600000	79700000	

6. As can be noticed from the above, the non-compete fees received for exclusive arrangement and not sharing goodwill was treated as capital receipt in AYs 2013-14 to 2016-17 which was accepted by the Revenue in all the aforementioned A Ys except the impugned AY i.e. AY 2014-15 and in A Y 2017-18, where the amount was suo moto treated as revenue receipt and offered to tax by virtue of amendment in section 28(va) by Finance Act, 2016 w.e.f. 01.04.2017 (i.e. AY 2017-18 and onwards), discussed in detail infra.

Order of AO/CIT(A)

7. As regards the impugned AY 2014-15, the AO treated the aforesaid non-compete fee as benefit/perquisite under section 28(iv) of the Act, which was rejected and modified by the CIT(A) to be a normal professional receipt as consideration for services, by misconstruing the aforesaid clauses of consideration. The CIT(A) also held the split of two consideration where consideration for services and non-compete clause to be artificial split.

6.1. Thereafter, he summarized the submissions in this regard in the following manner:-

SUBMISSIONS

A. The consideration(s) towards non-compete fee(s) cannot be doubted or held as artificial

8. It is the respectful submission of the assessee that, the CIT(A) completely erred in misconstruing the provisions of the subject service agreement entered between the assessee and NOVA to hold that the impugned amount received was in lieu of services and not in lieu of the restrictive covenant of not engaging or sharing goodwill with any other person.

9. The relevant portion of the clauses 1 and 2 relating to consideration(s) reproduced above, clearly prescribe that the same

were paid in consideration of exclusive engagement with the company; in other words, in lieu of restrictive covenant of not engaging with any other person and sharing goodwill of the assessee with any other person. The consideration for rendering services was independently and separately agreed vide clause-3, which was undisputedly offered to tax. The phrase Subject to the Doctor continuing to render Services to the Company' only meant, that the non-compete fee, which was to be paid in installments shall be paid only if, the Doctor/assessee rendered professional services to the Nova and not otherwise. The said phrase has been misconstrued by the CIT(A).

10. Thus, the CIT(A) erred in misconstruing the relevant clause of the agreement, which needs to be reversed.

11. As regards, the cryptic observation of CIT(A) at para 4.3.2, holding that the aforesaid split between consideration for services and non-complete fee was collusive to evade tax by observing - "however, by such method, the appellant is getting this money for her professional services only, which is deliberately bifurcated into 3 parts, to evade the tax", it is submitted that the CIT(A) cannot step into the shoes of businessman and dictate the content of the agreement entered between independent parties. The Revenue, it is submitted, cannot go behind the substance of the agreement bonafidely entered into between independent parties, which govern various terms and conditions of their respective engagement. When the other terms of the engagement as per the aforesaid agreement, like service fee, movement of medical practice, profit sharing, the non-compete clause etc. were not in dispute, there was no reason for the Revenue to only doubt the portion of the agreement relating to consideration agreed for non-compete.

12. It is a settled legal position that the Revenue should only look at the agreement and not 'look through* the binding agreements entered between the parties, in a manner that suits the Revenue.

- **The Hon'ble Supreme Court in the case of Vodafone International Holdings B. V. V. UOI: 341 ITR 1 (SC) observed as under:**

  "68. ... In this connection, we may reiterate the "look at" principle enunciated in W.T. Ramsay Ltd. case (supra) in which it was held that the Revenue or the Court must look at a document or a transaction in a context to which it properly belongs to. It is the task of the Revenue/Court to ascertain the legal nature of the transaction and while doing so it has to look at the entire transaction as a whole and not to adopt a dissecting approach. The Revenue cannot start with the question as to whether the impugned transaction is a tax deferment/saving device but that it should apply the "look at" test to ascertain its true legal nature [See Craven (Inspector of Taxes) (supra) which further observed that genuine strategic tax planning has not been abandoned by any decision of the English Courts till date]"

- **The Hon'ble Supreme Court of India in the case of CIT v. Motors & General Stores (P.) Ltd.: 66 ITR 692 (SC) observed as under:**

> It is not disputed that the document in question was intended to be acted upon and there is no suggestion of mala fides or that the document was never intended to have any legal effect. In the absence of any suggestion of bad faith or fraud the true principle is that the taxing statute has to be applied in accordance with the legal rights of the parties to the transaction. When the transaction is embodied in a document the liability to tax depends upon the meaning and content of the language used in accordance with the ordinary rules of construction."

13. The aforesaid issue of looking through the non-compete agreement and holding the consideration for services and non-compete fee to be artificial split is squarely covered by the decision of Supreme Court in the case of **Shiv Raj Gupta v. CIT: 425 ITR 420** wherein in the similar factual matrix, where the Revenue had held the amount of consideration received by the assessee towards non-compete clause, to be an artificial split, and was nothing but consideration of sale of shares was held to be invalid. To the same effect is the decision of the Delhi High Court in the case of **CIT v. Mrs. Tara Sinha: 85 taxmann.com 9**

14. In view of the above, it is submitted that, the CIT(A) erred in holding the fee received towards non-compete fee as towards rendering professional services, on the aforesaid grounds, and, therefore, the order of CIT(A) needs to be reversed.

B. Non-compete fee(s) in relation to provision - a capital receipt not taxable until amendment in section 28(va) w.e.f. AY 2017-18

15. Having submitted as above, that the impugned fee was towards non-compete clause, it is the respectful submission of the assessee, that the same was in the nature of capital receipt, not exigible to tax for the following reasons:

16. The issue of taxability of amount received in lieu of undertaking a restrictive covenant of non-compete/not-carrying any other competing activity has been settled by the Hon'ble Supreme Court in the case of Guffic Chem Pvt. Ltd. v. CIT: 332 ITR 602. The relevant observations of the aforesaid decision is as under:

> "**Decision**
>
> 5. The position in law is clear and well-settled. There is a dichotomy between receipt of compensation by an assessee for the loss of agency and receipt of compensation attributable to the negative/restrictive covenant. The compensation received for the loss of agency is a revenue reccipt whereas the compensation attributable to a negative/restrictive covenant is a capital receipt.

.....

Payment received as non-competition fee under a negative covenant was always treated as a capital receipt till the assessment year 2003-04. It is only vide Finance Act, 2002 with effect from 1-4-2003 that the said capital receipt is now made taxable (Sce: Section 28(a). The Finance Act, 2002 Itscir indicates that during the relevant assessment year compensation received by the assessee under non-competition agreement was a capital receipt, not taxable under the 1961 Act. It became taxable only with effect from 1-4-2003. It is well-settled that a liability cannot be created retrospectively. In the present case, compensation received under Non-Competition Agreement became taxable as a capital receipt and not as a revenue receipt by specific legislative mandate vide section 28(va) and that too with effect from 1-4-2003. Hence, the said section 28(va) is amendatory and not clarificatory.....

17. The aforesaid decision has been repeatedly followed by various High Court and Tribunal; a useful reference, however, can be made to the subsequent decision of the Supreme Court in the case of Shiv Raj Gupta v. CIT: 425 ITR 420

18. It would be pertinent to point out that sub-clause (va) was inserted in section 28, prospectively by the Finance Act, 2002 w.e.f. 01.04.2003 and at the time of original insertion it only covered non-compete clause relating to business'. The non-compete fee 'relating to profession' was first time inserted by the Finance Act, 2016 w.e.f. 01.04.2017. The relevant extract of the Memorandum explaining Finance Bill of 2016 is reproduced hereunder for ready reference:

...It is proposed to amend clause (va) of section 28 of the Act to bring the non-compete fee received/receivable(which are recurring in nature) in relation to not carrying out any profession, within the scope of section 28 of the Act i.e. the charging section of profits and gains of business or profession**. Further, it is also proposed to amend the proviso to clarify that receipts for transfer of right to carry on any profession, which are chargeable to tax under the head "Capital gains", would not be taxable as profits and gains of business or profession.....**

These amendments will take effect from Ist April, 2017 and will, accordingly, apply in relation to the assessment year 2017-18 and subsequent years"

19. In view of the above, it is submitted that, since non-compete fee relating to profession was made taxable only w.e.f. A. Y.2017-18, non-compete fee in relation to profession for period prior to A.Y.

2017-18 would be governed by the dictum laid down by the Hon'ble Supreme Court in the case of Guffic Chem (supra) and would be treated as a capital receipt.

20. A useful reference can be made to the following decisions, wherein it has been held that the word "business' and 'profession' are mutually exclusive and are independent from each other; therefore, until the word 'profession' was inserted in section 28(va), the same cannot be construed to fall within the meaning of "business'

- G. K. Choksy & Co. v. CIT: 295 ITR 367 (SC)
- Dr. K. Premraj v. DCIT: (2014| 149 ITD 339 (Chennai - Trib.)

21. In view of the above, it is submitted that, since the impugned non-compete fee of Rs. 3.20 crore was received in relation to no competition in the medical profession, the same was to be treated as a non-taxable capital -receipt.

C. Principle of Consistency

22. Further, it is the respectful submission of the assessee, that the aforesaid issue additionally needs to be decided in favour of the assessee on the principle of consistency, in as much as, as per details given above, the deferred trenches of the aforesaid non-compete fee received in other years, i.e., AY 2013-14, 2015-16, 2016-17 (except AY 2017-18, where amount was offered to tax after prospective amendment in section 28(a)) was treated as capital receipt, which has been accepted by the Revenue in the assessments completed under section 143(1) of the Act.

23. Reliance is placed on the decisions of Supreme Courts in the cases of Excel Industries: 358 ITR 295 and Radhasoami Satsang Saomi Bagh v. CIT: 193 ITR 321.

D. Conclusion and Prayer

24. In view of the above, it is submitted that the impugned aggregate payment of Rs.3.2 crores received towards undertaking restrictive covenant of not imparting service to any other person and not to share associated goodwill of medical practice, being in the nature of non-compete fee was a capital receipt, not taxable under the provision of the Act; the lower authorities have erred in holding the same to be taxable as a normal professional income, which calls to be reversed and appeal of the assessee deserves to be allowed.

7. Per contra, the ld. DR relied upon the orders of the authorities below.

8. We have heard both the parties and perused the records. First of all, we note that there is a proper agreement which provides for the non-compete fee/goodwill. The agreement has been turned down by the authorities below as it is colorable device. This observation is not backed by any proper reasoning. The case laws relating to the proposition is that the Revenue should only look at the agreement and not look through the binding agreements between the parties. For this, the reliance on case laws as mentioned above, which are referred by the ld. Counsel for the assessee is germane and supports the case of the assessee. The various case laws and proposition relied upon by the ld. Counsel for the assessee also supports the case of the assessee. We further note that the AO has made addition u/s 28(va) of the Act as detailed above. The amendment to bring profession also, into the said clause was brought in w.e.f. AY 2017-18. Hence, non-compete fee related to profession is made taxable only w.e.f. AY 2017-18 and the non-compete fee in relation to profession for period prior to AY 2017-18 would be treated as capital receipt. Furthermore, the ld. CIT(A) has changed the section from 28(va) to section 28(1) of the Act without confronting the assessee. This is a fatal mistake. The reasoning of the ld. CIT(A) that since the name of the new entity is different than the assessee's clinic called Mother and Child, the agreement is not to be believed. It is noted that it is the doctor and the skill which has got reputation and not the name board of the said clinic. Hence, the ld. CIT(A)'s finding fault in the non-user of assessee's own clinic name is not sustainable. Furthermore, the assessee deserves to succeed also on the principle of consistency in as much as for Assessment Years 2013-14,

2015-16 and 2016-17, the same was treated as capital receipt and the same had been accepted by the Revenue. The reference to the decision of the Hon'ble Supreme Court in the case of Excel Industries (Supra) and in the case of Radhasoami Satsang Saomi Bagh vs CIT (Supra) is also germane and supports the case of the assessee. In the background of the aforesaid discussion and precedent, we are of the opinion that a sum of Rs.3.2 cores received towards undertaking restrictive covenant of non imparting service to any other person and not to share associated goodwill of medical practice being in the nature of non compete fee is a capital receipt and not taxable under provision of the Act. Hence, assessment by the AO u/s 28(va) as noted above is not sustainable and similarly the order of the Ld. CIT(A) whereby he changed the head from section 28(va) to section 28(1) without confronting the assessee is also not sustainable and the ld. CIT(A)'s view that the same is taxable under the normal professional income is also not sustainable in the background of the aforesaid discussion, the agreement and the case law referred above. In these circumstances, in the background of aforesaid discussion and precedent, we set-aside the orders of the authorities below and delete the addition.

9. In the result, this appeal of the assessee stands allowed.

Order pronounced in the open court on 06th April, 2023.

Sd/-	**Sd/-/-**
[ASTHA CHANDRA]	**[SHAMIM YAHYA]**
JUDICIAL MEMBER	**ACCOUNTANT MEMBER**

Delhi; Dated: 06.04.2023.

Shekhar,

Copy forwarded to:

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

Asst. Registrar,
ITAT, New Delhi