

**IN THE INCOME TAX APPELLATE TRIBUNAL  
BANGALORE BENCHES "C", BANGALORE**

**Before Shri George George K, JM & Ms.Padmavathy S, AM**

ITA No.675/Bang/2022 : Asst.Year 2017-2018

Sri.Vinod Raghavendra Deshpande Opp: Dr.Halakatti Hospital Extension Area Bagalkot - 587 101 <b>PAN : AANPD9333N.</b>	v.	The Income Tax Officer Ward 1 Bagalkot.
(Appellant)		(Respondent)

Appellant by : Smt.Preethi Patel, Advocate  
Respondent by : Smt.Priyadarshini Baseganni, Addl.CIT-DR

<b>Date of Hearing : 22.09.2022</b>	<b>Date of Pronouncement : 23.09.2022</b>
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**ORDER**

**Per George George K, JM :**

This appeal at the instance of the assessee is directed against CIT(A)'s order dated 23.05.2022. The relevant assessment year is 2017-2018.

2. The grounds raised read as follows:-

*“1. The order of the Hon’ble Commissioner of Income Tax (Appeals)-2, Panaji, is opposed to law and facts of the case.*

*2. The Hon’ble Commissioner of Income Tax (Appeals)-2, Panaji, ought to have held that the statements recorded during the survey was under duress and hence has no evidentiary value.*

*3. The Hon’ble Commissioner of Income Tax (Appeals)-2, ought to have held that the figures noted in the diary are not based on any material / evidence on record, therefore, no additions can be made on the basis of the imaginary figures noted in the diary.*

4. *Alternatively and without prejudice, the Hon'ble Commissioner of Income Tax (Appeals)-2, ought to have allowed the expenditure as claimed by the appellant.*

5. *The Hon'ble Commissioner of Income-tax (Appeals)-2, ought to have held that expenditure allowed @25% of the receipts is very much on a lower side.*

6. *The appellant craves for leave to add to, delete from or amend the grounds of appeal."*

3. The brief facts of the case are as follows:

The assessee is an Advocate by profession. For the assessment year 2017-2018, the return of income was filed on 03.08.2017 declaring total income of Rs.3,07,530. There was a survey u/s 133A of the I.T.Act on 20.02.2018 in the premises of the assessee. During the course of survey, certain documents were found with regard to undisclosed professional income during the relevant year under consideration. From the impugned diary VRD-4/2017-18, it was seen from pages at 1 to 3 that certain amounts were written against the name of the assessee's clients. The assessee did not explain the nature of the same, however, stated that the said receipts are not reflected in his return of income. Accordingly, he admitted that these are receipts received from the clients and voluntarily disclosed a sum of Rs.69,34,300 for the relevant assessment year, over and above the regular income disclosed for the assessment year 2017-2018. Thereafter, the assessee filed a revised return electronically on 23.03.2018, wherein the assessee declared an amount of Rs.34,67,150 as against Rs.69,34,300 disclosed during the course of survey on account of unaccounted

professional receipts. The assessee had claimed the expenses at 50% in view of the provisions of section 44ADA of the I.T.Act, and thus, worked out the additional income at Rs.34,67,150.

4. The A.O., however, rejected the contentions of the assessee. The A.O. held that the gross professional receipts of the assessee during the relevant previous year exceeded Rs.50 lakh and therefore, the provisions of section 44ADA of the I.T.Act is not applicable. The A.O., however, allowed the deduction of 25% towards the expenses out of the total undisclosed professional income disclosed by the assessee and concluded the assessment.

5. Aggrieved, the assessee filed an appeal before the first appellate authority. Before the first appellate authority, it was contended that there is no evidence in support of the survey figures and the assessee had declared the income under pressure to cooperate with the Income Tax Department and had paid the tax on the same. Even the income declared in the revised return amounting to Rs.34,67,150 is not supported by any evidence / record but taken by guess / imaginary figure. The CIT(A), however, rejected the contention of the assessee and confirmed the view taken by the Assessing Officer.

6. Aggrieved by the order of the CIT(A), the assessee has filed the present appeal before the Tribunal. The learned AR submitted that the assessee is a lawyer by profession, aged 65

years. It was stated that during the course of survey, the assessee had declared gross professional receipts and taking clue from section 44ADA of the I.T.Act, it was submitted that earning such undisclosed professional income, the assessee was entitled to deduction towards expenditure at 50% of the same.

7. The learned Departmental Representative relied on the orders of the AO and the CIT(A).

8. We have heard rival submissions and perused the material on record. In spite of repeated requests, the statement recorded during the course of survey from the assessee was not placed on record either by the learned AR or by the learned DR. The solitary issue for our adjudication is whether the declaration made by the assessee is entitled to deduction of 50% towards expenditure against a sum of Rs.69,34,300 declared during the course of survey. The assessee is an Advocate aged 65. The amounts disclosed as unaccounted professional income is admittedly gross receipt and not net. The A.O. himself has allowed 25% towards expenditure out of amount disclosed as unaccounted professional receipts. The fact the assessee had declared only gross undeclared professional receipts is also evident from the A.O.'s and CIT(A)'s order. The CIT(A), in the impugned order at para 4.2 has observed as follows:-

*“During the course of survey, certain documents were found which pointed to undisclosed income of the assessee during the year under consideration. Pages 01 to 03 of the*

*impounded diary – VRD-4/2017-18, showed amounts written against name of the assessee's clients. The assessee could not explain the nature of the same and accepted that the said receipts were received from his clients as professional fees and were not reflected in his returns of income.”*

9. From the above it is clear, that the assessee had disclosed gross undeclared professional income and A.O. estimated 25% of the expenditure incurred for earning the same. Section 44ADA of the I.T.Act permits a professional like the assessee to compute his total income on presumptive basis wherein 50% of the expenditure is allowed as deduction towards the gross receipts (provided the gross receipts does not exceed during the relevant assessment year more than Rs.50 lakh). In the instant case, admittedly, the gross professional receipts of the assessee during the relevant year exceeded Rs.50 lakh. Therefore, the assessee would not be governed by the provisions of section 44ADA of the I.T.Act. However, we can take a clue from the above said section, which permits a deduction of 50% gross receipts as expenditure. In the instant case, admittedly, since the AO and the CIT(A) had also taken the assessee's declaration as gross receipts from professional income, the figures arrived for arriving at the total income is only an estimation. The assessee, out of the undisclosed professional income would have certainly incurred expenses such as filing fees, clerkage charges, etc. On the facts of the instant case, we are of the view that the grant of 25% of the gross receipts towards expenses is very much on the lower side. In the interest of justice and equity, we are of the view that the expenditure of

40% towards the gross receipts should be allowed as deduction. It is ordered accordingly.

10. In the result, the appeal filed by the assessee is partly allowed.

Order pronounced on this 23<sup>rd</sup> day of September, 2022.

**Sd/-**  
**(Padmavathy S)**  
**ACCOUNTANT MEMBER**

**Sd/-**  
**(George George K)**  
**JUDICIAL MEMBER**

Bangalore; Dated : 23<sup>rd</sup> September, 2022.  
Devadas G\*

Copy to :

1. The Appellant.
2. The Respondent.
3. The CIT(A)-2, Panaji
4. The Pr.CIT (Central), Bengaluru.
5. The DR, ITAT, Bengaluru.
6. Guard File.

Asst.Registrar/ITAT, Bangalore