

**IN THE INCOME TAX APPELLATE TRIBUNAL,
ALLAHABAD BENCH, ALLAHABAD
BEFORE SHRIVIJAY PAL RAO, JUDICIAL MEMBER
AND SHRI RAMIT KOCHAR, ACCOUNTANT MEMBER**

ITA No.23/Alld./2020
Assessment Year: 2011-2012

Mr. Vijay Gautam, 21, Muir Road, Allahabad - 211002,U.P.	v.	Assitt. Commissioner of Income Tax, Circle- II, Allahabad-211001, U.P.
PAN:AEFPG1598N		
(Appellant)		(Respondent)

Appellant by:	Shri Praveen Godbole, C.A.
Respondent by:	ShriA.K. Singh ,Sr. D.R.
Date of hearing:	27.12.2022
Date of pronouncement:	05.01.2023

ORDER

PER SHRI RAMIT KOCHAR, ACCOUNTANT MEMBER:

This appeal, filed by assessee, being ITA No.23/Alld./2020, is directed against an appellate order dated 01.10.2019 in Appeal No. CIT(A),Allahabad/10388/2014-15 passed by learned Commissioner of Income Tax (Appeals), Allahabad(hereinafter called "theCIT(A)"),for assessment year(ay):2011-2012, the appellate proceedings had arisen before learned CIT(A)from assessment order dated 25th March, 2014 passed by learned Assessing Officer (hereinafter called "the AO") under Section 143(3) of the Income-tax Act,1961(hereinafter called " the Act") .We have heard this appeal through physical hearing mode in Open Court proceedings .

2. The grounds of appeal raised by assessee in ITA No. 23/Alld./2020 for assessment year 2011-2012, in memo of appeal filed with Income-Tax Appellate Tribunal, Allahabad Bench, Allahabad(hereinafter called “ the tribunal”) , reads as under:-

“1- That in any view of the matter the assessment order dated 25.03.2014 passed u/s 143(3) of the IT Act by the assessing officer by determining the income at Rs. 77,86,860/- whimsically and his action as partly confirmed by the learned Commissioner of Income Tax (Appeal) ignoring the correct facts is bad both on the facts and in law.

2- That in any view of the matter the appellant claimed the expenditure against the professional receipt but the learned Commissioner of Income Tax (Appeal) allowed only 40% of the expenditure instead of 60% which is unfair and on too Lower side because for generating professional receipt huge overhead expenditures under various heads were incurred, and even in this regard observations of the Commissioner of Income Tax (Appeal) at page 20 of the his order are contrary to the actual facts of the case.

3- That in any view of the matter agriculture income of Rs. 2 lacs disclosed by the appellant as per past practice as considered and confirmed as professional receipt by the two lower authorities without appreciating the correct facts, specially when proof of agriculture holdings was placed on record, is highly unjustified and illegal, hence the addition is liable to be deleted in the facts and circumstances of the case.

4-That in any view of the matter since the income declared as per revised computation is liable to be considered therefore the additions so made and maintained in haste ignoring the correct facts by the two lower authorities are liable to be deleted in all fairness and in interest of justice.

5- That in any view of the matter the interest as charged under different sections of the IT Act is highly unjustified and illegal.

6-That in any view of the matter the appellant reserves his right to take any fresh ground before hearing of the appeal.”

3. The brief facts of the case are that the assessee has claimed to be an advocate practicing for last more than 20 years before Hon’ble Allahabad High

Court, both before Hon'ble Allahabad Bench and Hon'ble Lucknow Bench. The assessee has declared income from profession as well income from other sources, in the return of income filed with the department. The short question which has arisen in this appeal before tribunal is concerning the dispute with respect to cash deposits made by the assessee in its bank account to the tune of Rs. 31,86,420/- which was not disclosed and declared to the Revenue as well as cash deposits introduced in the capital account in the books of accounts by the assessee by way of cash receipts allegedly from wife to the tune of Rs. 12,00,000/- as well cash receipts by the assessee to the tune of Rs. 19,50,000/- allegedly as gift from relatives of the assessee. There was also an alleged agricultural income received in cash to tune of Rs. 2,00,000/- declared by the assessee in its ITR filed with department which stood credited in capital account of the assessee in its books of accounts, and which has not been accepted by department as agricultural income. Further, interest income credited in the bank account not declared to the department was also brought to tax. The AO observed that the assessee has added an amount of Rs. 33,19,705/- to his capital account during the year under consideration. On being asked by the AO, the assessee explained that Rs. 12,00,000/- was deposited in cash by his wife Smt. Abha Gautam from their joint bank account, and the rest amount of Rs. 19,50,000/- was received in cash as gift from relatives. The assessee was asked by the AO to prove the creditworthiness, genuineness of the aforesaid transactions, and furnish the income tax returns and

confirmatory letters of his wife and other relatives from whom the assessee has claimed to have received gifts in cash. The assessee could not ultimately furnish the requisite details to prove, substantiate and satisfactorily explain the ingredients of Section 68 with respect to the aforesaid sum of Rs. 12,00,000/- and Rs. 19,50,000/- which stood credited in the assessee's books of account , and the aforesaid amount of Rs. 12,00,000/- as well as Rs. 19,50,000/- was added by the AO to the income of the assessee as assessee's professional receipts by invoking provisions of Section 68 of the Act.

3.2 Further, from the AIR information and on-going through the 26AS generated from AST software of the department, it was observed by the AO that the assessee has deposited Rs. 31,86,420/- in cash in State Bank of India, High Court Branch, Allahabad in his Bank Account No. 30747477708 which was not disclosed/declared by the assessee to the Department. The said bank account is in the name of the assessee, and the entire cash deposit was not declared and disclosed to the department. The assessee was asked by AO to explain the same. The assessee submitted that due to clerical error which occurred inadvertently , the above bank account was not accounted for at the time of filing of income tax returns and hence the same was not disclosed to the department. The assessee claimed that there are so many expenses which were incurred by the assessee such as stamp duty, court fee, notarial charges etc. for which receipts are not available, but the same are to be allowed as deduction. The assessee submitted

that around 60% of the cash deposit of Rs. 31,86,420/- should be allowed as deduction towards professional expenditure, while 40% of the said cash deposit of Rs. 31,86,420/- can be treated as income. There was credit of Rs. 58,498/- towards interest income on the aforesaid saving bank account no. 30747477708 with SBI, which assessee submitted before the AO that the said interest income is now accounted for in the revised computation of income. The assessee submitted revised computation of income before AO. The AO observed that as per Audit Report filed along with ITR, the assessee has declared gross professional receipts to the tune of Rs. 36,68,810/- out of which the assessee has claimed Rs. 22,17,558/- as expenses under various heads, which means that the assessee has already claimed all expenses incurred . The AO invoked deeming provisions of Section 69A of the Act , that no deduction shall be allowed in respect of deemed income being added back to assessee's income . On being not satisfied with the contention of the assessee , the AO brought to tax cash deposited to the tune of Rs. 31,86,420/- in the undisclosed bank account bearing Account No. 30747477708 with SBI, High Court Branch , Allahabad , however , the AO allowed deduction of Rs. 20,584/- as the bank charges debited by the bank, and net amount of Rs. 31,65,836/- was brought to tax by the AO by treating the same as undisclosed and unexplained receipts which were deemed to be the income of the assessee u/s 69A of the 1961 Act.

3.3 Further, the AO observed from the perusal of bank statement of the undisclosed bank account number 30747477708 maintained by assessee with SBI, High Court Branch, Allahabad, that the assessee has received interest income of Rs. 58,498/- which was not disclosed /declared to the department. The AO treated the same as assessee's undisclosed receipt and deemed it to be the income of the assessee , which stood added by the AO to the income of the assessee u/s 69A of the 1961 Act.

3.4 Further, the AO observed that the assessee has shown agricultural income of Rs. 2,00,000/- in its return of income filed by the assessee with department. The AO asked assessee to substantiate the same, but the assessee could not substantiate the same. The AO observed that the assessee furnished copy of annual 'Khautauni' in which the owner of the land was one Mr. Hari Mohan s/o Late Shri S. D. Gautam. The AO observed that the assessee is neither owner of the said land nor the assessee produced any receipts in support of the income so received. The AO also observed that no evidence is brought on record that any agricultural operations were carried out by the assessee in the said land . The AO treated said cash income of Rs. 2,00,000/- as professional receipts of the assessee, and added back the same to the income of the assessee u/s 68 of the 1961 Act.

4.1. Being aggrieved by assessment framed by the AO, the assessee filed first appeal with Ld. CIT(A) . Ultimately, the assessee could not prove and substantiate

satisfactorily the receipt of Rs. 12,00,000/-in cash from her wife Mrs. Abha Gautam, which stood credited in his capital account . Further, the assessee also could not prove and substantiate satisfactorily receipt of gifts in cash from his relatives to the tune of Rs. 19,50,000/- , which stood credited to the capital account of the assessee. Further, the assessee also could not prove and substantiate satisfactorily deposit of cash to the tune of Rs. 31,86,420/- (net amount of Rs. 31,65,836/- after adjustment of bank charges to the tune of Rs. 20,584/- debited by bank) in his undisclosed bank account bearing number 30747477708 maintained with SBI, High Court Branch , Allahabad . Further ,the assessee could not prove satisfactorily the cash receipt of Rs. 2,00,000/- as agricultural income which stood shown in the return of income. The ld. CIT(A) treated all these aforesaid four credits/receipts aggregating to Rs. 65,15,836/- as professional income earned by the assessee, which has not been declared by the assessee to the Revenue The ld. CIT(A) allowed deduction towards expenses @40% of the aforesaid credits/receipts aggregating to the tune of Rs.65,15,836/- , , while remaining 60% of aforesaid credit/receipts of Rs. 65,15,836/- were brought to tax by ld. CIT(A) as net income of the assessee from profession chargeable to tax , which was earlier not disclosed by assessee to the Revenue. The ld. CIT(A) considered the same ratio of declared expenses vis-à-vis declared professional receipts wherein declared expenses constituted 39.55% of the Gross

declared professional receipts, while allowing expenses on the professional receipts not declared to the Revenue aggregating to Rs. 65,15,836/- .

4.2 So far as interest income of Rs. 58,498/- which was received by assessee by way of credit in the undisclosed bank account of the assessee with SBI is concerned, the assessee could not give any satisfactory explanation, and hence the said addition was made by the AO to the income of the assessee, which was later sustained by Id. CIT(A).

5. Aggrieved by appellate order passed by Id. CIT(A), the assessee has come in second appeal before the tribunal . The learned counsel for the assessee submitted before the Bench that the assessee is an advocate and earning professional receipts. The Id. Counsel for the assessee submitted that the assessee received Rs. 12,00,000/- in cash from his wife Smt. Abha Gautam which was credited in the capital account in the assessee's books of accounts, and a further sum of Rs. 19,50,000/- was received in cash from various relatives as gifts which was also credited in capital account in the assessee's books of accounts . It was also submitted that a sum of Rs. 31,86,420/- (Rs. 20584/- were bank charges debited by bank which was allowed as deduction) was deposited in cash by assessee in his bank account number 30747477708 maintained with SBI, High Court Branch , Allahabad . It was submitted that assessee has further received in cash Rs. 2,00,000/- agricultural income , which was declared in the return of income. It was

submitted that these entire four credits/receipts aggregating to Rs. 65,15,836/- were treated by ld. AO as undisclosed professional receipts and brought to tax, while ld. CIT(A) also treated the said receipts as undisclosed professional receipts but allowed 40% expenses from these undisclosed professional receipts while balance 60% was treated as income from profession and brought to tax. It was submitted that so far as relief granted by ld. CIT(A) is concerned , the same has attained finality as Revenue has not come in appeal before tribunal against part relief granted by ld. CIT(A) nor C.O. is filed by Revenue before tribunal. The ld. Sr. DR also could not point out that Revenue has come in appeal before the tribunal against the part relief granted by ld. CIT(A) nor it could be shown that department has filed any C.O.. The Ld. Counsel for the assessee submitted that the assessee is not contesting treatment of aforesaid credits/receipts as professional receipts as the assessee is not agitating the same , but the assessee is praying that 60% of the said undisclosed professional receipts should be allowed as deduction towards expenses incurred for earning the said undisclosed professional receipts , while 40% of the same can be brought to tax .It was submitted that revised computation of income was filed before the AO. It was also submitted that in the light of Section 44ADA which was inserted by Finance Act, 2016 w.e.f. 01.04.2017 , 50% deduction is allowed towards expenses on presumptive basis in case professional receipts are less than Rs. 50 lacs. The ld. Counsel for the assessee submitted that the ld. CIT(A) allowed expenditure of 40% of the aforesaid undisclosed

professional receipts, while the 60% of the aforesaid undisclosed professional receipts were treated as income of the assessee by Id. CIT(A) and brought to tax. The Id. Counsel for the assessee confirmed that all the amounts in the said undisclosed bank account were deposited in cash, and the said bank account was not declared to the revenue. Our attention was drawn to page No. 21-22 of the paper book filed by the assessee, wherein revised computation of income is placed. Our attention was also drawn to page 23 of the paper-book , wherein summary of bank account is placed, and it was submitted that the assessee withdrew Rs. 6,00,000/- in cash in December, 2010. Our attention was also drawn to Page No. 75-76 of the paper-book to show from bank statement of SBI that Rs. 6Lacs were withdrawn from bank in cash in December, 2010. It was also submitted that Rs 2,00,000/- received in cash by the assessee was declared as agricultural income , but the same was treated as undisclosed professional receipt. It was also submitted that an amount of Rs. 58,498/-was credited in the aforesaid undisclosed bank account with SBI, High Court Branch, Allahabad . It was submitted that said interest income was declared in the revised computation of income filed before the AO. It was submitted that there were two bank accounts maintained by assessee with the SBI, High Court Branch, Allahabad, out of which one bank account was declared ,while another bank account bearing account no. 30747477708 maintained by assessee with SBI, High Court Branch, Allahabad was not disclosed to department , in which Rs. 31,86,420/- was deposited in cash, and

it was an inadvertent clerical mistake of the assessee in not disclosing the said bank account to the department and not offering to tax said cash deposits.

5b. The Ld. Sr. DR submitted that ld.CIT(A) is more than reasonable in allowing 40% expenses against undisclosed professional receipts. It was submitted that Revenue has not filed an appeal against the decision of ld. CIT(A) granting part relief to the assessee. The Ld. Sr. DR relied upon the appellate order passed by ld. CIT(A) , and prayers were made to uphold the appellate order passed by ld. CIT(A)

5c. The Ld. Counsel for the assessee submitted in rejoinder that the assessee is an advocate and lenient view should be taken.

6. We have considered rival contentions and perused the material on record. We have observed that the assessee has claimed to be an advocate of standing of more than 20 years, appearing before Hon'ble Allahabad Bench and Lucknow Bench of Hon'ble Allahabad High Court. The assessee has earned professional receipts as well income from other sources. The case of the assessee was selected by Revenue for framing scrutiny assessment. It transpired from the 26AS generated from AST software and AIR information that there were cash deposits in the assessee's bank account to the tune of Rs. 30,97,470/- , during the year under consideration . During the course of assessment proceedings, the assessee was called upon by AO to explain the said cash deposits in the bank account. The assessee initially submitted before the AO that he has not deposited cash to the tune of Rs.

30,97,470/- in the bank account . The AO collected information directly from the Bank. From the information so collected by AO directly from Bank, it transpired that the assessee has one bank account bearing number 30747477708 maintained with SBI, High Court Branch , Allahabad, and the said bank account was not disclosed by the assessee to the department, and in the aforesaid bank account there are deposits to the tune of Rs. 31,86,420/- in cash during the year under consideration which was not offered for taxation . The assessee was asked by AO to explain the said cash deposits in the bank account number 30747477708 maintained by assessee with SBI, High Court Branch , Allahabad, to which the assessee responded by stating that due to clerical mistake inadvertently committed by the assessee, the said bank account was not disclosed and declared to the department and the amount credited in the said bank was not offered for taxation. The assessee also submitted before the AO that these cash deposits in this bank account to the tune of Rs. 31,86,420/- were not offered for taxation by the assessee in the return of income filed with the department. The AO after considering the entire facts and circumstances and by invoking deeming fiction of Section 69A brought to tax the entire cash deposits in the said bank account to the tune of Rs. 31,65,836/- (after allowing deduction of Rs. 20,584/- as bank charges debited by the bank in the aforesaid bank account) as undisclosed professional income of the assessee. It was further observed by the AO that the assessee has credited in its capital accounts in the books of accounts Rs. 12,00,000/- as cash

received allegedly from his wife Mrs. Abha Gautam and also the assessee has credited Rs. 19,50,000/- to his capital account with its books of accounts being received in cash allegedly as gifts from relatives. The assessee was asked to explain the same by the AO, but the assessee could not prove , substantiate and offer satisfactory explanation before the AO as to creditworthiness of the persons making such payments in cash nor genuineness of the transaction could be proved, and ultimately not being satisfied, the AO brought to tax aforesaid amount of Rs. 12,00,000/- as well Rs. 19,50,000/- as undisclosed professional income of the assessee by invoking provisions of Section 68 of the 1961 Act. The AO further observed that the assessee has shown alleged agricultural income received in cash in its ITR filed in return of income. The assessee on being asked by AO, could not satisfactorily explain as to the ownership of land in his name, receipts issued for agricultural produce nor the assessee could prove carrying out of agricultural operations for earning agricultural income , and the said alleged agricultural income of Rs. 2,00,000/- was brought to tax by the AO as undisclosed professional income of the assessee, by invoking provisions of Section 68. The AO also brought to tax interest income of Rs. 58,498/- credited by SBI In assessee's undisclosed bank account no. 30747477708 maintained with SBI, High Court Branch , Allahabad , which was not offered to tax by the assessee, while filing return of income. The matter reached Id. CIT(A) at the behest of the assessee. The assessee could not offer any satisfactory explanation before Id. CIT(A), who was pleased to

upheld the decision of the AO so far as treating cash deposit of Rs. 31,65,836/- in undisclosed bank account of the assessee bearing bank account number 30747477708 maintained with SBI, High Court Branch , Allahabad, Rs. 12,00,000/- as cash allegedly received from assessee's wife Mrs. Abha Gautam being credited by assessee in his capital account in its books of accounts, Rs. 19,50,000/- as cash received by assessee as alleged gift from relatives being credited by assessee in his capital account in its books of accounts and also cash receipt of Rs. 2,00,000/- which was allegedly shown as agricultural income by crediting to capital account of the assessee, as undisclosed professional receipts of the assessee with respect to all the four aforesaid credits/receipts, aggregating to Rs. 65,15,836/-, but however, ld. CIT(A) allowed deduction of 40%(based upon ratio of declared expenses vis-à-vis declared professional receipts in the return of income filed with department) of aforesaid undisclosed professional receipts towards expenses against undisclosed professional receipts of Rs. 65,15,836/- and balance 60% was brought to tax as income of the assessee. The learned CIT(A) also sustained addition to the income of the assessee on account of interest income of Rs. 58,498/- credited by SBI In assessee's undisclosed bank account no. 30747477708 maintained with SBI, High Court Branch , Allahabad , which was not offered to tax by the assessee, while filing return of income. The assessee has now filed second appeal with the tribunal against the additions which were confirmed by ld. CIT(A). However, the Department has not filed any appeal before tribunal

nor any Cross Objections(C.O.) are filed by Department before tribunal against part relief granted by Id. CIT(A) , and hence the appellate order passed by Id. CIT(A) so far as relief granted to the assessee has attained finality. The Id. Counsel for the assessee has submitted before us that the assessee is not agitating so far as treatment by AO as well Id. CIT(A) of all the aforesaid four credits/receipts aggregating to Rs. 65,15,836/- being treated as undisclosed professional receipts , and the only grievance which the assessee is agitating before tribunal is that the assessee should be allowed 60% of the aforesaid undisclosed professional receipts as deduction towards expenses instead of 40% allowed by Id. CIT(A), while rest 40% of the aforesaid undisclosed professional receipts can be brought to tax as income of the assessee, as there are several expenses to be incurred by the assessee as advocate for which no receipts are available such as court fee, stamp duty, notarial charges etc. which expenses should be allowed as deduction while computing income chargeable to tax w.r.t. undisclosed professional receipts . Further, it is claimed that the assessee has withdrawn Rs. 6,00,000/- in cash from this undisclosed bank account of the assessee maintained with SBI, which is claimed to be spent towards expenses for earning aforesaid undisclosed professional receipts. Further, it is claimed that some expenses to junior advocates were paid in subsequent year but these expenses related to the year under consideration and hence deduction should be allowed in the year under consideration. While, the Id. Sr. DR relied upon appellate order passed by Id.

CIT(A) and contentions are raised that already ld. CIT(A) was more than reasonable in granting deduction towards expenses to the tune of 40% against undisclosed professional receipts, and no further deduction be allowed to the assessee. The prayers were made by ld. Sr. DR to sustain the appellate order passed by ld. CIT(A). We have gone through the entire bank statement of undisclosed bank account bearing number 30747477708 maintained by the assessee with SBI, High Court Branch , Allahabad (page 41-78/paper book filed by assessee with tribunal) , wherein there were admittedly cash deposits to the tune of Rs. 31,86,420/- during the year under consideration which were neither declared to department in return of income filed nor offered to tax by the assessee, while filing return of income. The said undisclosed bank account of the assessee with SBI starts with opening balance of Rs. 2,46,163/- as at 01.04.2010. There were consistently large number of cash deposits in this bank account until 08.11.2010 , while there are no withdrawals except charges debited by bank on these deposits until 08.11.2010 , and the Bank balance in this undisclosed bank account of the assessee with SBI galloped to Rs. 31,35,891/- as on 08.11.2010 from merely Rs. 2,46,163/- as at 01.04.2020. Thus, there is not even a single withdrawal until 08.11.2010 from this undisclosed bank account , except debit of minor amounts of bank charges debited by bank on deposits of the amounts in the bank. On 10.11.2010, there were debit of Rs. 2,00,000/- each three entries aggregating to Rs. 6,00,000/- paid by assessee vide clearing cheque no. 80267,

80268 and 80269 issued by assessee in favour of 'Goenka Motors' and cleared on being presented by HDFC Bank through clearing house to the credit of their customer 'Goenka Motors' .On being asked by the Bench, the assessee's counsel explained that this payment of Rs.6,00,000/- was towards purchase of Motor Car. Then ,again deposits in this undisclosed bank account of the assessee with SBI continued in large number, and on 27.12.2010 , the assessee withdrew cash of Rs. 2,00,000/- from the said undisclosed bank account number 30747477708 maintained by assessee with SBI, High Court Branch , Allahabad. Then , there was refund of Rs.2,00,000/- each three cheques aggregating to Rs. 6,00,000/- from 'Goenka Motors' on 28.12.2010 which were refund by 'Goenka Motors' through cheques issued from HDFC bank presented through clearing house. Then , on 30.12.2010 and 31.12.2010, the assessee's above bank account was debited with 2 cheques of Rs.2,00,000/- each vide cheque no. 80273 and 80274. the assessee has claimed that this Rs. 4,00,000/- was also cash withdrawn from said undisclosed bank account of the assessee with SBI. The bank balance on 31.12.2010 with this undisclosed bank account of the assessee with SBI, was Rs. 27,27,498/-. Thereafter, again consistently large number of deposits continued in the said bank account until 31.03.2011. Thus, the only withdrawal from this bank account was Rs. 6,00,000/- during the entire year.So far as cash receipt of Rs. 12,00,000/- allegedly from wife , cash receipt of alleged gift from relatives of Rs. 19,50,00/- as well alleged agricultural income of Rs. 2,00,000 are concerned , the same are

accounted for by the assessee by crediting the same to Capital account in the books of accounts, and whatever the expenses incurred in connection with assessee's profession are duly accounted for and set off is already claimed by the assessee against declared professional receipts while computing income chargeable to tax, in the return of income filed with the department. The Balance sheet for 31.03.2011 as well for 31.03.2010 is filed by the assessee in the paper book filed with tribunal (refer page 158-160 and 166-167 of paper book filed by assessee with tribunal). Perusal of the same reveals, that in this year 2010-11 in the capital account, the assessee has credited Rs.33,19,705/- in the capital account as 'Additions', which was later explained as alleged gift of Rs. 19,50,000/- in cash from relatives as well Rs. 12,00,000/- as cash allegedly received from wife Mrs. Abha Gautam. The assessee has further credited Rs.2,00,000/- in the capital account being alleged 'Agricultural Income'. These credits are sources of fund being all received in cash aggregating to Rs. 33,19,705/-, and credited to capital account in books of accounts of the assessee. There was also credit of Rs. 14,51,252.89 in the capital account being 'Net Income' for the year under consideration. On the usage side, the assessee has purchased Toyota Fortuner for Rs. 22,02,110/- during the year under consideration. The assessee has invested Rs. 19,17,600/- in Jaypee Home, during the year under consideration. The assessee has also advanced Rs. 4,65,331/- to Omaxe Sangam, during the year under consideration. The assessee has given advance of Rs. 1,27,125/- towards new

office. The bank balance of declared bank accounts had also increased to Rs. 26,33,426.30 as at 31.03.2011 from Rs. 15,89,968.30 as at 31.03.2010. There are insurance payments aggregating to Rs. 2,18,880/- to LIC, Bajaj Alliance as well Tata AIG, during the year under consideration . The assessee also purchased CCTV camera for Rs. 45,000/- , Refrigerator for Rs. 53,000/-as well TV for Rs. 70,000/- , during the year under consideration. Thus, the entire amount added to the capital account to the tune of Rs. 35,19,705/- towards receipt in cash of Rs. 12,00,000/- allegedly from wife, cash gifts allegedly received of Rs. 19,50,000/- from relatives and Rs. 2,00,000/- alleged agricultural income in cash which was reflected in books of accounts of the assessee, stood fully utilized/consumed as detailed above, and nothing remains further to be appropriated towards expenses to be set off against undisclosed professional receipts to the tune of Rs. 65,15,836/-, as whatever expenses already incurred being spent from the books of accounts viz. Rs. 23,12,706.60 were already set off by assessee against declared professional receipts to the tune of Rs. 36,68,810/- and interest income to the tune of Rs. 95,149.49, to arrive at net profit of Rs. 14,51,252.89. The Id. CIT(A) while adjudicating appeal has already allowed deduction/set off of unrecorded expenses to the tune of 40% of undisclosed professional receipts , to be set off against undeclared professional receipt of Rs. 65,15,836/-which means that undisclosed/unrecorded expenses to the tune of Rs. 26,06,334/- were allowed by Id. CIT(A) to be set off against undisclosed professional receipt of Rs.65,15,836/- ,

while at the most the assessee has cash availability of Rs. 6,00,000/- during the year under consideration (being cash withdrawn from the undisclosed bank account) to meet unrecorded/undisclosed expenses to be set off against undisclosed professional receipts and for that too also no details/evidences for such expenses have been submitted by the assessee on which the onus lay. Thus, the Id. CIT(A) was more than reasonable/lenient in allowing 40% of undisclosed professional receipts as deduction towards undisclosed/unrecorded expenses , from undisclosed professional receipts. The assessee has also claimed that some of the expenses were paid in next year such as fee of juniors, although no evidence is brought on record by assessee , while the onus was squarely on the assessee to have brought evidence on record. Thus, in our considered view already an extremely liberal view has been taken by Id. CIT(A) in granting part relief to the assessee as above and no further relief can be granted to the assessee keeping in view the facts and circumstances of the case as there is no availability of funds/cash to meet any further unrecorded expenses, and hence the appeal filed by the assessee stands dismissed. So far as interest income of Rs. 58,498/- credited by SBI In assessee's undisclosed bank account no. 30747477708 maintained with SBI, High Court Branch , Allahabad , which was not offered to tax by the assessee, while filing return of income, we donot find any error in the orders of authorities below in bringing to tax said interest income in the hands of the assessee , as the said bank account pertains to the assessee and the assessee never offered such

bank interest to tax in the return of income filed with the department, thus, we uphold this additions as were confirmed by Id. CIT(A). While dismissing the appeal filed by the assessee, we note that the Revenue did not come in appeal before tribunal against the part relief granted by Id. CIT(A) nor any Cross objections were filed by Revenue. Thus, this appeal filed by the assessee fails. We order accordingly.

7. In the result, appeal filed by assessee in ITA no. 23/Alld/2020 for ay: 2011-12 stands dismissed. We order accordingly.

Order pronounced on 05/01/2023 at Allahabad U.P. in open Court.

Sd/-
[VIJAY PAL RAO]
JUDICIAL MEMBER

Sd/-
[RAMIT KOCHAR]
ACCOUNTANT MEMBER

DATED: 05/01/2023

KD Azmi

Copy forwarded to:

1. Appellant –Mr. Vijay Gautam, 21, Muir Road, Allahabad -211002, U.P.
2. Respondent –The Assistant Commissioner of Income Tax, Circle-II, Allahabad-211001, U.P.
3. The CIT(A) –AayakarBhawan, Civil Lines, Allahabad-211001, U.P.
4. The CIT, Allahabad, U.P.
5. The Id. Sr. DR. ,ITAT, Allahabad, U.P.

6. The Guard File

By Order

P.S.