

**IN THE INCOME TAX APPELLATE TRIBUNAL,
MUMBAI BENCH "J", MUMBAI**

**BEFORE SHRI G.S. PANNU, ACCOUNTANT MEMBER AND
SHRI SANJAY GARG, JUDICIAL MEMBER**

**ITA No.5834/M/2014
Assessment Year: 2010-11**

Mr. Jackie Shroff, 901, 9 th Floor, Freeda One, Karter Road, Bandra (West), Mumbai – 400 050 PAN: AAJPS6596A	Vs.	Asst. Commissioner of Income Tax-11(1), Aayakar Bhavan, M.K. Marg, Mumbai - 400020
(Appellant)		(Respondent)

Present for:

Assessee by : Shri Pankaj Jain, A.R.

Revenue by : Shri Jeevan Lal, D.R.

Date of Hearing : 27.06.2016

Date of Pronouncement : 30.06.2016

ORDER

Per Sanjay Garg, Judicial Member:

The present appeal has been preferred by the assessee against the order dated 30.07.2014 of the Commissioner of Income Tax (Appeals) [hereinafter referred to as the CIT(A)] relevant to assessment year 2010-11.

2. The sole issue raised by the assessee in this appeal is relating to the addition of Rs.7,69,708/- on account of mismatch between the AIR information and the details submitted by the assessee relating to the credit card payments paid to American Express Banking Corporation (AEBC). As per the AIR information, the assessee had paid a sum of Rs.9,92,813/- to AEBC, during the year under consideration, out of which only payments amounting to Rs.2,23,105/- were reflected in the books of accounts. The Assessing Officer (hereinafter referred to as the AO) therefore added the difference of the same amounting to Rs.7,69,708/- into the income of the assessee treating the same as unexplained expenditure.

3. In appeal before Ld. CIT(A), the assessee submitted that the AIR information was incorrect as the assessee had not incurred the expenditure as detailed in the AIR information. He further submitted that a request was made to the AO to provide the full details of transactions with regard to payments to AEBC. However the AO had not provided the same.

4. The Ld. CIT(A), however, rejected the above contention of the assessee and held that the assessee himself would have made inquiries from the AEBC and explained the same to the AO. He held that the onus to explain the expenditure was upon the assessee. He, therefore, upheld the additions so made by the AO.

5. Before us, the Ld. A.R. of the assessee reiterated the submissions as were made before the Ld. CIT(A). He has also relied upon various decisions of the Tribunal wherein it has been held that the addition cannot be made solely on the basis of AIR information especially when, the assessee denies any such receipt; that the burden to prove such receipts is on the AO as the assessee cannot be asked to prove the negative. The Ld. A.R., in this respect, has relied upon the decision of the Bangalore Bench of the Tribunal in the case of “DCIT vs. Shree G. Selvakumar” ITA No.868/Bang/09 decided vide order dated 22.10.10 and further in the case of M/s. Arati Raman vs. DCIT” ITA No.245/Bang/12 decided vide order dated 05.10.12 and in the case of “M/s. A.F. Ferguson and Company vs. JCIT” ITA Nos.5037/M/12 and 473/M/13 decided vide order dated 17.10.14 (Mumbai Tribunal).

6. We find that the Ld. CIT(A) has totally ignored the above decisions of the Tribunal while confirming the additions made by the AO on this issue. The Ld. A.R. has brought our attention to the copy of the letter dated 12.03.13 furnished by the assessee before the AO to state that the assessee had already given the details of the transactions as per the bank accounts to the AO. Under such circumstances the burden shifted upon the AO to rebut the accounts

submitted by the assessee. When the assessee had specifically asked for the details of the AIR information so that he may specifically admit or deny the transactions, then under such circumstances the AO was supposed to contradict/rebut the accounts of the assessee regarding the specific transactions not shown by the assessee in his accounts.

7. In view of this, the impugned order of the Ld. CIT(A) is set aside and the matter is restored to the file of the AO with a direction to provide full details to the assessee regarding the transactions of expenditure as per the AIR information and then to give opportunity to the assessee to rebut the said information. The AO is directed to make inquiries regarding the authenticity of the AIR information from the concerned bank also. With the above directions, the matter is restored to the file of the AO for fresh adjudication on this issue.

8. In the result, the appeal of the assessee is treated as allowed for statistical purposes.

Order pronounced in the open court on 30.06.2016.

Sd/-
(G.S. Pannu)
ACCOUNTANT MEMBER

Sd/-
(Sanjay Garg)
JUDICIAL MEMBER

Mumbai, Dated: 30.06.2016.

* Kishore, Sr. P.S.

Copy to: The Appellant
The Respondent
The CIT, Concerned, Mumbai
The CIT (A) Concerned, Mumbai
The DR Concerned Bench

//True Copy//

By Order

Dy/Asstt. Registrar, ITAT, Mumbai.