

**IN THE INCOME TAX APPELLATE TRIBUNAL  
DELHI BENCH "A" NEW DELHI**

**BEFORE SHRI BHAVNESH SAINI, JUDICIAL MEMBER  
AND SHRI PRASHANT MAHARISHI, ACCOUNTANT MEMBER**

आ.अ.सं./I.T.A No.2063/Del/2014  
निर्धारणवर्ष/Assessment Year:2008-09

DCIT Circle-2(1) New Delhi.	बनाम Vs.	Axis Risk Consulting Services Pvt. Ltd. Genpact Tower, DLF City, Phase-V, Sector-53, Gurgaon.  PAN No. AAECA9833G
अपीलार्थी Appellant		प्रत्यर्थी/Respondent

राजस्वकीओरसे /Revenue by	Shri James Singsam, Sr. DR
निर्धारितकीओरसे /Assessee by	Shri Tarandeep Singh, Adv.

सुनवाईकीतारीख/ Date of hearing:	28.01.2020
उद्घोषणाकीतारीख/Pronouncement on	29.01.2020

**आदेश /O R D E R**

**PER BHAVNESH SAINI, J.M.**

1. This appeal by Revenue has been directed against the order of Ld. CIT(Appeals)-V, New Delhi dated 15.01.2014 for Assessment Year 2008-09.
2. We have heard Ld. Representatives of both the parties and perused the material on record.
3. On ground no. 1 Revenue challenged the deletion of addition on account of vehicle expenses amounting to Rs. 30,32,620/-. The assessee filed breakup of the vehicle expenses before AO. The AO asked the assessee to furnish supporting bills and vouchers. The assessee filed the

submission before AO explained that same expenses are incurred wholly and exclusively for business purposes. The AO in absence of supporting evidences made the disallowance of the expenses. The assessee submitted that complete details were submitted before the AO and no adverse inference has been drawn in preceding assessment year as well. The Ld. CIT(A) found that similar expenses were made in preceding financial year in which no adverse inference has been drawn and that entire expenses have been disallowed without any reasons. The assessee enclosed sample copies of the vehicle expenses invoices. Therefore, such addition is wholly unjustified. Ld. CIT(A), accordingly, deleted the addition.

4. On ground no. 2 Revenue challenged the deletion of addition of Rs. 19,76,615/- on account of mismatch of AIR Information. The AO at the assessment proceedings requested the assessee to provide reconciliation of AIR Statement provided by the AO with books of account. The AO added the amount on account of alleged transaction with M/s contiloe Films Pvt. Ltd. and M/s Unitech Perfect Pvt. Ltd. as reflected in the AIR Statement on the ground that said transaction does not match with the assessee's record. The assessee submitted before Ld. CIT(A) that AO made this addition without making any enquiry. It was submitted that total amount of income from consultancy credited to profit and loss account and, accordingly, offered for tax in assessment year under appeal, which was Rs. 120,323,375/-. Total amount of legal and professional fees appearing in AIR Statement/ITS Form was Rs. 75,507,106/- only and as such much

more income was offered for tax which appeared in ITS Form. The assessee has reconciled all the transactions. Assessee submitted that it has not received any income from these two parties in assessment year under appeal and AO made the addition without verifying the facts.

5. Ld. CIT(A) considering the explanation of the assessee noted that assessee cannot be forced to prove negative. The assessee explained that it has not rendered any services for these two parties and did not receive any income and these figures appeared wrongly in AIR Information. Therefore, it was the duty of the AO to verify the facts from these parties. In absence of any enquiry Ld. CIT(A) deleted the addition. Ld. CIT(A) also noted that this view is further fortified from the fact that total legal and professional fees appearing in AIR Statement was only for Rs. 7.55 crores while assessee had in his return of income had shown total legal and professional fees for Rs. 12.03 crores. Therefore, AIR Information cannot be taken on its face value and cannot be treated as sacrosanct without further enquiry. Ld. CIT(A), accordingly, deleted the addition and allowed the appeal.

6. On ground no. 3 Revenue challenged the deletion of addition of Rs. 77,37,027/- on account of communication expenses. The assessee filed copies of the sample invoices before AO. The AO in absence of supporting bills and vouchers made the addition. The assessee submitted before Ld. CIT(A) all details of expenses were submitted which was supported by bills and vouchers and that some are incurred wholly and exclusively for

business purpose. Further, the assessee submitted that out of the above sum, an amount of Rs. 44,06,760/- payable to RSM Advisory Pvt. Ltd. has been reversed in F.Y. 2008-09 the same was credited to profit and loss account and offered for tax in AY 2009-10 in the return of income. Therefore, this amount would be double addition. Assessee submitted that complete details were submitted, therefore, this addition is wholly unjustified. The Ld. CIT(A) accepted the contention of the assessee and found that communication expenses are supported by complete details and accounts of assessee are audited, therefore, this addition was deleted.

7. On ground no. 4 Revenue challenged the deletion of addition of reimbursement expenses amounting to Rs. 46,31,882/-. The AO in absence of supporting documents made the disallowance out of these expenses. Assessee submitted before Ld. CIT(A) that complete details and bills before the AO, therefore, there is no purpose in making the addition. Ld. CIT(A) accepted the contention of the assessee and deleted the addition.

8. Ld. DR submitted that all these additions have been deleted by Ld. CIT(A) without considering the findings of the AO that assessee did not produce bills and vouchers before AO. He has further submitted that there was mismatch in AIR Information and no opportunity was given to the AO to file remand report on AIR mismatch addition. Therefore, order of the Ld. CIT(A) may be reversed.

9. On the other hand, Ld. Counsel for assessee reiterated the submissions made before authorities below and submitted that vehicle expenses and communication expenses have been totally disallowed and entire amount is taken from the profit and loss account. He has submitted that in earlier year and subsequent year no addition of the similar nature have been made by the AO. The assessee produce complete details before AO and accounts are audited. The AO has not pointed out as to for which amount, no bills and vouchers have been produced. Therefore, the additions have been correctly deleted by Ld. CIT(A).

10. We have considered the rival submission. The AO in the assessment order has noted that assessee has filed necessary details as requisitioned from time to time, which have been verified by him. The AO has not pointed out as to which of the bills and vouchers have not been produced by the assessee. The AO disallowed the entire vehicle expenses and communication expenses as claimed in the profit and loss account without pointing out as to which bills have not been produced or verified by him. The Ld. Counsel for assessee submitted before Ld. CIT(A) complete details and bills have been produced which have been verified by Ld. CIT(A) and that assessee denied the mismatch in AIR Information with the books of account because the assessee did not receive any amount from the concerned two parties. The AO did not verify any fact from these parties and merely relying upon AIR Information made the addition. Thus, the Ld. CIT(A) correctly observed that assessee cannot be put to negative onus.

Considering the totality of the facts and circumstances, we do not find any merit in the Departmental appeal. The same is, accordingly, dismissed.

11. In the result, the departmental appeal is dismissed.

Order pronounced in the open court.

Sd/-  
(PRASHANT MAHARISHI)  
ACCOUNTANT MEMBER

Sd/-  
(BHAVNESH SAINI)  
JUDICIAL MEMBER

Dated: 29<sup>th</sup> January, 2020

*\*Kavita Arora, Sr. P.S.*

Copy of order sent to- Assessee/AO/Pr. CIT/ CIT (A)/ ITAT (DR)/Guard file of ITAT.

By order

Assistant Registrar, ITAT: Delhi Benches-Delhi