

**IN THE INCOME TAX APPELLATE TRIBUNAL (VIRTUAL COURT)
"SMC" BENCH, MUMBAI**

BEFORE SHRI C.N. PRASAD, HON'BLE JUDICIAL MEMBER

ITA NO. 7629/MUM/2019 (A.Y: 2011-12)

M/s. Flying Unicorn Entertainment Plot No. 614-615, 14 th Road Khar Pali Road, Andheri (W) Mumbai -400052 PAN: AABFF6408J	v.	Income Tax Officer -16(1)(1) Room No. 467, Aayakar Bhavan M.K. Road, Mumbai - 400020
(Appellant)		(Respondent)

Assessee by	:	Vimal Punmiya
Department by	:	Smita Verma
Date of Hearing	:	16.09.2021
Date of Pronouncement	:	25.11.2021

ORDER

PER C.N. PRASAD (JM)

1. This appeal is filed by the assessee against order of the Learned Commissioner of Income Tax (Appeals)-4, Mumbai [hereinafter in short "Ld.CIT(A)"] dated 30.09.2019 for the A.Y. 2011-12. Assessee challenged the order of the Ld.CIT(A) in sustaining the addition of ₹.10,80,000/- as income of the assessee.
2. Briefly stated the facts are that, the Assessing Officer while completing the assessment u/s. 143(3) of the Act noticed that there was

a credit entry in Form – 26AS from Kingfisher Airlines Ltd. Assessee was required to explain as to why this credit entry was not considered in its Books of Accounts. Assessee requested for time to explain the discrepancy. The Assessing Officer issued notice u/s. 133(6) of the Act to Kingfisher Airlines Ltd., to gather information, however, no information could be gathered through the notice. As the information was not forthcoming from the assessee, Assessing Officer treated ₹.10,80,000/- as income of the assessee for the F.Y. – 2010-11 relevant to A.Y. 2011-12. Before the Ld.CIT(A) the assessee contended that neither the assessee received any additional income from Kingfisher Airlines Ltd., nor corresponding TDS was claimed by it and therefore no addition can be made merely based on the statement in Form – 26AS. However, the Ld.CIT(A) sustained the addition.

3. Before me, Learned Counsel for the assessee submitted that assessee Firm has raised an invoice in October 2010 on Kingfisher Airlines Ltd., towards management, production and event expenses incurred for children's event organized by them on 21st November, 2010 for ₹.3,30,000/- plus service tax @ 10.30% totaling to ₹.3,63,990/-. Ld. Counsel for the assessee submits that this amount was paid by Kingfisher Airlines Ltd., on 22.11.2010 by way of account payee cheque

after deducting TDS. Ld. Counsel for the assessee submits that apart from this transaction there was no other transaction with Kingfisher Airlines Ltd., during the year under consideration. Ld. Counsel for the assessee submits that the Assessing Officer merely relied on Form – 26AS and considered the amount of ₹.14,43,990/- as total amount received from Kingfisher Airlines Ltd., during the year under consideration and added the difference of ₹.10,80,000/- to the income of the assessee. Ld. Counsel for the assessee submits that transaction of ₹.3,63,990/- was the only invoice raised during the year and it had been duly reflected in the Books of Accounts of the assessee. Ld. Counsel for the assessee submits that no service other than the one mentioned above has been rendered by the assessee. Ld. Counsel for the assessee further submits that Kingfisher Airlines Ltd., has wrongly entered the PAN details of the assessee. It was also submitted that the assessee never claimed the TDS also. Therefore, it is submitted that based on the above facts there is no valid reason to include the amounts entered in Form – 26AS as income of the assessee just because Kingfisher Airlines Ltd., filed ETDS in the name of the assessee.

4. Ld. Counsel for the assessee further placing reliance on the decisions in the case of *i2i Telesource Pvt. Ltd., v. ITO* in ITA.No.

6823/Mum/2017, ITO *v.* Star Consortium in ITA.No. 04/KOL/2020 and P.K. Rajasekar *v.* ITO [74 taxmann.com 151 (Chennai – Trib)] submitted that, where assessee claimed that there was wrong credit entry by payer client in Form – 26AS the Assessing Officer has to examine its genuineness and no addition merely based on information available in Form – 26AS.

5. Ld. DR vehemently supported the orders of the authorities below.

6. Heard rival submissions, perused the orders of the authorities below. Assessee before me contended that the only transaction entered into by the assessee with Kingfisher Airlines Ltd., was to the tune of ₹.3,30,000/- and the transactions reflected in Form – 26AS by Kingfisher Airlines Ltd., to an extent of ₹.10,80,000/- were never transacted at any point of time. I agree that merely because the transactions were reflected in Form – 26AS the same cannot reflect the correct position when the credit entry by payer client was wrongly credited in Form – 26AS. The Assessing Officer should have examined its genuineness of the transaction especially when the assessee contends that the transactions were never happened during the F.Y. 2010-11 relevant to the A.Y. 2011-12. The case laws relied on by the Ld. Counsel for the assessee supports the contention of the assessee that no addition merely based on information available in Form – 26AS and the Assessing Officer had to examine its genuineness

when there was a credit entry wrongly made by payer-client in Form-26AS. Thus, I am of the opinion that this matter should go back to the file of the Assessing Officer who shall examine the transactions reflecting in Form – 26AS and if the Assessing Officer prove that the assessee has in fact rendered the service to the Kingfisher Airlines Ltd., the transactions may be considered in the hands of the assessee or otherwise the said transactions cannot be considered in the hands of the assessee as its income merely based on the statement in Form-26AS. With these observations the issues are restored to the file of the Assessing Officer for re-examination afresh in accordance with law after providing adequate opportunity of being heard to the assessee.

7. In the result, appeal of the assessee is allowed for statistical purpose.

Order pronounced on 25.11.2021 as per Rule 34(4) of ITAT Rules by placing the pronouncement list in the notice board.

Sd/-
(C.N. PRASAD)
JUDICIAL MEMBER
Mumbai / Dated 25.11.2021
Giridhar, Sr.PS

Copy of the Order forwarded to:

1. The Assessee
2. The Respondent.
3. The CIT(A), Mumbai.
4. CIT
5. DR, ITAT, Mumbai
6. Guard file.

//True Copy//

BY ORDER

(Asstt. Registrar)
ITAT, Mum