IN THE INCOME TAX APPELLATE TRIBUNAL "K" BENCH, MUMBAI

BEFORE SHRI VIKAS AWASTHY, JM
AND
SHRI PRASHANT MAHARISHI, AM

ITA No. 4727/Mum/2016

(Assessment Year 2010-11)

Capgemini India Pvt. Ltd. C/o Kalyaniwalla & Mistry, Army & Navy Bldg, 3rd Floor, 148, M.G. Road, Fort, Mumbai-400 001	Vs.	The Dy. Commissioner of Income Tax, Circle 10(2), R. No. 475, Ayakar Bhavan, M.K. Road, Mumbai-400 020
(Appellant)		**(Respondent)**
PAN No. AAACK2632B		

Appellant by	:	Shri M M Golvala, AR
Respondent by	:	Ms. Vatsalaa Jha, CIT DR

Date of hearing:	15.02.2022
Date of pronouncement :	12.05.2022

O R D E R

PER PRASHANT MAHARISHI, AM:

01. This appeal is filed by Capgemini Technology Services India Ltd. (formerly known as Capgemini India Pvt. Ltd.) [Assessee/ Appellant] against the order of The Commissioner of Income-tax (Appeals)-55, Mumbai [The Learned CIT(A)] dated 8th February, 2016 for AY 2010-11.

02. The assessee has raised 12 grounds of appeal which are as under:-

"1. The lower authorities erred in making a transfer pricing adjustment of Rs. 20,49,93,848/- in respect of reimbursement of expenses incurred by the Appellant on behalf of its AEs.

2. The lower authorities erred in holding that the Appellant should have earned a mark-up of 12% on reimbursement of expenses incurred by the Appellant on behalf of its AEs.

3. The lower authorities failed to appreciate that the Appellant has earned a mark-up 19.45% on costs even if the reimbursements of expenses received from AEs were to be considered as the cost of base of the Appellant, therefore, an Arm's Length Price was recovered.

4. The learned Commissioner of Income Tax (Appeals) erred in relying on conjectures and surmises which were unjustified in the facts of the Appellant's case.

5. Having regard to the facts and circumstances of the case, the transfer pricing adjustment of Rs.20,49,93,848/- is unwarranted and needs to be deleted.

6. The lower authorities erred in reducing the loss of Chennai unit (Section 10A unit) of Rs.6,45,94,565/- from the deduction under section 10A allowable to the Appellant in respect of profits of other eligible units. The Appellant submits that the

Assessing Officer he directed to set off the said loss against taxable business income.

7. The learned Commissioner of Income Tax (Appeals) erred in not following the decision of the Bombay High Court and the Mumbai Tribunal in the Appellant's own case oil issue indicated in Ground Nos.6 above.

8. The learned Commissioner of Income-tax (Appeals) erred in holding that the data line costs (telecommunication expenses) of eligible units (Section 10A units) amounting to Rs. 1,46,12,448/- should be reduced from the Export Turnover of the eligible units.

9. The learned Commissioner of Income Tax (Appeals) erred in not following orders of the Bombay High Court and the Mumbai Tribunal in the assessee's own case on this particular issue.

10. The lower authorities erred in reducing the expenses incurred by the following eligible units (section 10A units) in foreign exchange from the Export Turnover of the units:

Eligible Unit	Expenditure in foreign exchange (Rs.)
Mumbai II	2,37,00,533/-
Mumbai III	55,35,92,703/-
Bangalore	21,72,73,668/-
Pune II	10,24,86,513/-
Hyderabad	7,99,83,267/-
Total	97,70,36,684/-

11. The learned Commissioner of Income-tax (Appeals) erred in not following the order of the Mumbai Tribunal for Assessment Year 2009-10 on this very issue.

12. The learned Commissioner of Income-tax (Appeals) erred in not deleting Rs.24,46,601/- treated as unexplained expenditure on the basis of unreconciled AIR statement. The Appellant submits the addition is unjustified and requires to be deleted."

03. Vide application dated 28th September, 2019, the assessee further raised two additional grounds of appeal which are as under:-

"13) Without prejudice to Ground number 8 above, the Appellant submits that, in the alternative, the said data line costs (telecommunication expenses) of Rs. 1,46,12,448/ be also reduced from the Total Turnover of the eligible units as well.

14) Without prejudice to Ground number 10 above, the Appellant submits that, in the alternative, the said expenditure amounting to Rs. 97,70,36,684/- incurred in foreign exchange be also reduced from the Total Turnover of the eligible units as well."

04. Brief facts of the case shows that assessee is a company being subsidiary of CapGemini US LLC, USA engaged in the business of providing information and technology services.

05. Assessee filed its return of income on 7 October 2010 declaring income of ₹113,19,82,875/-. As the assessee has entered into several international transactions, reference was made to the Learned Additional Commissioner of Income-Tax, Transfer Pricing, 1(3), Mumbai (Learned Transfer Pricing Officer/ TPO) for determination of arm's length price of those transactions.

06. Assessee in form no. 3CEB reported following ten international transactions:-

Sr. No.	International Transaction	Total value of transactions A.Y. 10-11	Method selected
1.	Receipts for providing software services	20,682,507,653	TNMM
2.	Licensing of intellectual Property	3,24,67,533	CUP
3.	Payment of headquarters' fees under the service agreement	1,33,11,791	TNMM
4.	Bank guarantee charges paid	3,680,456	TNMM
5.	Payments of training charges to Cap Gemini group entities	4,33,17,856	TNMM
6.	Allocation of various costs to Assessee	4,78,91,274	TNMM
7.	Purchase of software and e-training licenses from overseas third party vendors under globally negotiated contract	12,788,843	TNMM
8.	Professional fees paid to group entities	57,,285,144	TNMM
9.	Reimbursement of expenses incurred by various Cap Gemini Entities on behalf of assessee	21,22,74,369	
10.	Reimbursement of out of pocket expenses incurred by Assessee on behalf of Cap Gemini Group entities	170,8,285,067	

07. The learned Transfer Pricing Officer accepted the arm's length price of all other transactions except Reimbursement of expenses incurred by various CapGemini Entities on behalf of assessee amounting to

₹170,82,85,067/-. The learned TPO noted that assessee company has provided software services to its various associated enterprise for an amount of ₹ 2,682,507,653/-. For providing the services, assessee has entered into a Master Service agreement with its associated enterprises on 1 April 2008. As per article 2 of the agreement, assessee is entitled to charge 112% of the total amount of cost. He also noted that for purposes of article 2 total amount of costs shall exclude those cost incurred on related projects performed by assessee directly for clients outside the group. Therefore, he directed assessee to compute the margin after considering pass-through cost as the cost base. Such expenditure is amounting to ₹ 1,708,285,067/–. He examined the working and found that if the above reimbursement of expenditure is considered in cost base, the margin derived by the assessee as a percentage of operating cost is 19.45% and if the reimbursement is considered as pass through cost, the margin derived by the assessee is 21.48%. Therefore, assessee was asked to explain the nature of reimbursement. Assessee explained that the reimbursement are mainly software license cost incurred by Associated Enterprises on behalf of assessee, communication cost and travel and conveyance, lodging expenses incurred by Associated Enterprises in relation to assessee's business activities. The learned Transfer Pricing Officer considered that these expenses pertain to

the assessee, which were incurred in connection with the execution of projects and pertain to employees who travelled abroad. Therefore, he held that the contention of the assessee that these are pass through cost is not correct. According to him, the assessee should have earned markup at the rate of 12% on these expenses. Accordingly, he proposed an adjustment of ₹20,49,93,848/- being 12% on the total cost of ₹170,82,85,067/- as transfer pricing adjustment as per order under section 92CA(3) of the Act dated 31st December, 2013.

08. Accordingly, the draft assessment order was passed on 13th March, 2014 where several additions were made and total income was determined at ₹144,06,06,540/-.

09. Assessee did not file any objection before the learned DRP against the draft assessment order and therefore final assessment order under section 143(3) read with section 144C(13) of the Act was passed on 26th May, 2014. Learned Assessing Officer over and above the transfer pricing adjustment made following additions;

i. Disallowance out of leave encashment expenditure of ₹4,69,170/-.

ii. Disallowance under section 14A of the Act of ₹8,54,430/-

iii. Addition on account of government grant of ₹92,65,500/-

iv. An addition of ₹24,46,601/- on account of difference of income as per 26AS.

v. Assessee has also claimed deduction under section 10A of the Act which was computed by the learned Assessing Officer at ₹313,99,02,883/- against the claim made by the assessee of ₹323,04,97,000/-.

vi. Book profit of the assessee was also enhanced by disallowance under section 14A of the Act of ₹ 8,54,430/-.

010. The assessee aggrieved with the above order-preferred appeal before the learned CIT (A), who passed an order on 8 February 2016 allowing the appeal of the assessee partly. Therefore, the assessee is aggrieved with that order and has preferred this appeal raising several grounds as per grounds of appeal.

011. The learned Authorized Representative submitted a chart covering all the grounds of appeal along with two case laws compilation one containing transfer pricing issue and second containing issue other than transfer pricing. As the transfer pricing study report filed by the assessee before the lower authorities was not available on record,

the assessee filed the same at the direction of the coordinate bench by letter dated 17 February 2022.

012. Coming to ground no. 1 to 5 of the appeal, learned authorised representative submitted that the only issue involved in this appeal is that the reimbursement out of pocket expenses incurred by the assessee on behalf of the CapGemini Group entities amounting to ₹170,82,85,067/- can be considered as part of the cost basis or not. He submitted that the learned Transfer Pricing Officer has held that it is required to be added in the cost basis of the assessee. He referred to the paper book, wherein at page no. 106, the Master Service Agreement dated 1 April 2008 between the assessee and 71 Associated Enterprises was entered into. He further referred to article 1, which provides that the group company's shall award assessee an amount of revenue representing 112% of the total amount of cost and expenses incurred by assessee. He referred to page no. 114 of the Paper Book which is a letter dated 7th November, 2013 addressed to the Transfer Pricing Officer wherein it was explained that the reimbursement of expenditure are of the nature of travel expenses, accommodation expenses, visa expenses, communication expenses, meal expenses and travel related, insurance expenses which are incurred by the assessee only on behalf of its associated enterprises and not on its own account. Therefore, these expenses are reimbursed by

Associated Enterprises on cost-to-cost basis. However, these expenses are not on account of the assessee they are not expenses of the assessee and hence, they did not enter 'cost base' of the assessee for charging software development fees to associated enterprises. Therefore, no markup is required to be charged on these expenses. He further referred to letter dated 14 November 2013, which is placed at 117 of the Paper Book where once again the nature of the expenses is explained in detail. He also referred to page no. 254 of the Paper Book wherein before learned TPO also the assessee explained the details of nature of expenditure. It was also contested that assessee has been incurring such out of pocket expenses on behalf of its Associated Enterprises for past several assessment year right from Assessment Year 2002-03 and such reimbursement are always at cost without any markup. The Revenue has always accepted the same at arm's length. This is for the first time the Revenue has held that assessee should have charged markup of 12% on out of pocket expenses. In view of this, before us, he submitted that [1] the adjustment is proposed in the form of markup on out of pocket expenses for the first time since Assessment Year 2002-03. He referred to transfer pricing orders in case of the assessee for earlier years and submitted that even on the Principle of consistency the adjustment is unwarranted. He relied upon several judicial precedence. [2] That out

of pocket expenses is incurred on behalf of its Associated Enterprises only for administrative convenience. These expenses are not incurred by the assessee for providing services and therefore it cannot add to the cost base for charging markup. [3] Recovery of out of pocket expenses on cost-to-cost basis from a customer is standard IT practices. Therefore, no markup on reimbursement of expenses should be charged. [4] assessee do not take any further functions, employ any further assets or carry further risk with respect to reimbursement of expenditure. Therefore, it cannot be considered for transfer pricing adjustment as reimbursement of expenditure on behalf of Associated Enterprises does not result into any value added services and therefore no markup is chargeable on the same. [5] The Para no. 2.93 and 7.36 of the OECD guidelines also supports the case of the assessee, which has a persuasive value. [6] That Master Service agreement entered between assessee and its associated enterprise for provision of software development services is broadly drafted to remunerate assessee with a markup of 12% on its cost. For this proposition, only those cost that are consumed in the value added services provided by assessee to its associated enterprises could only be considered. As out of pocket expenses are incidental to the services provided by assessee do not include any service element, should not be considered for markup. [7] To show the nature of

expenses he referred to submissions made before the learned and CIT – A at paragraph number 3 and submitted that these expenses are travel expenses, accommodation expenses, visa expenses, local conveyance, communication expenses, and per diem expenses incurred. He also referred to the breakup of a sum of ₹ 1,708,285,067/– [8] stated that payment towards these expenses were made by assessee only for administrative convenience [9] he relied on several judicial precedents to support his case.

013. He alternatively submitted that even if out of pocket expenses incurred by the assessee are treated as part of cost base of the assessee, even then the operating margin earned from software development activity is 19.45%, whereas the arithmetic mean of the margins of the comparables is only 8.69%. Therefore, even otherwise no adjustment on the same is warranted.

014. Coming to ground no. 6 and 7, which are related to computation of deduction under section 10A of the Act, he submitted that assessee owned and operated 13 software units during the year under consideration. Assessee claimed deduction with respect to several units however it did not claim deduction u/s 10 A for certain units. The deduction was not claimed u/s 10 A in respect of Chennai units as there was a loss incurred of ₹ 64,594,565/–. The loss of that unit was set of against the normal taxable

business income of the assessee for the year. He submitted that the Revenue authorities have reduced the loss of Chennai unit amounting to ₹6,45,94,565/- from the deductions claimed by the assessee in respect of profits of other eligible units. He submitted that above issue is squarely covered in favour of the assessee by the decision of Hon'ble Supreme Court dated 16th December 2016 for Assessment Year 2005-06 in assessee's own case where the decision of the Hon'ble Bombay High Court is upheld. In view of this, he submitted that the loss of Chennai unit could not be reduced from the income eligible for deduction under section 10A of the Act.

015. Coming to ground no. 8 and 9 which are with respect to the computation of deduction under section 10A of the Act, where the Revenue authorities have held that data line cost[Tele communication expenditure] amounting to ₹146124486/- should be reduced from the export turnover of eligible units. He submitted that the above issue is covered in favour of the assessee by the decision of Hon'ble Bombay High Court in assessee's own case vide its order dated 9th July 2014 for Assessment Year 2005-06.

016. Coming to ground no. 13, which is without prejudice to the exclusion of data line cost, assessee pressed that if the data line cost is excluded from export turnover same

should also be reduced from the total turnover also relying on the decision of Hon'ble Supreme Court in case of CIT vs. HCL Technologies Limited 404 ITR 719.

017. Coming to ground no. 10 and 11, the learned Authorized Representative submitted that the expenditure in foreign exchange have been reduced from the export turnover of the eligible units amounting to ₹97,70,36,684/- despite the issue is squarely covered in favour of the assessee by the decision of the co-ordinate bench in assessee's own case for Assessment Year 2008-09 and 2009-10.

018. Coming to ground no. 12, he submitted that the lower authorities have confirmed the addition of ₹24,46,601/- on the basis of difference in form no. 26AS. He referred to several pages of the AIR statement, which are placed before us. He further referred to the letter dated 11 March 2014 submitted during the course of assessment proceedings as well as the letter submitted to Axis Bank. He submitted that assessee has not at all entered into any of those transactions, which have been shown in the form No. 26AS. He submitted that the credit card holders was assessee's employees till March, 2010 and the payment made to the hotel are also not made by the assessee, the addition cannot be made in the hands of the assessee.

019. Coming to the ground No. 14 he submitted that the expenditure amounting to ₹97,70,36,684/- incurred in

foreign exchange, if reduced from the export turnover should also be reduced from the total turnover in view of the decision of Hon'ble Supreme Court in the case of CIT vs. HCL Technologies Ltd. In view of this, he submitted that the orders of the lower authorities are not sustainable.

020. The learned CIT departmental representative, countering argument of the learned Authorized Representative on ground no. 1 to 5 of the appeal on transfer pricing issues, the learned CIT Departmental Representative heavily supported the orders of the lower authorities. He referred to page nos. 106 to 110 of the paper book filed by the assessee where the service agreement is placed. She referred to article 1 and article 2 of that agreement, and submitted that assessee should have charged 112% of its cost. The expenditure incurred by the assessee should also have been included for working out the markup on such services. She submitted that there is no difference between the cost incurred by the assessee for its Associated Enterprises and cost incurred by assessee on its own. With respect to the argument of the learned Authorized Representative that there is no value addition or additional function performed by the assessee for reimbursement of expenditure, she submitted that there is no requirement of any value added cost to be included as there is no distinction in the agreement and only cost is mentioned. He further referred to paragraph no. 2.4 of

the order of the learned CIT (A) to support his contention. She submitted that merely because in earlier years a particular aspect is not examined, it could not be stated it cannot be examined during the subsequent years. He submitted that principle of res-judicata does not apply to income tax proceedings.

021. With respect to other grounds of appeal, she relied upon the order of the lower authorities. In rejoinder of the learned Authorized Representative once again reiterated the arguments advanced earlier.

022. We have carefully considered the rival contentions and perused the order of the lower authorities. We have also considered and perused the paper book filed by the assessee containing 271 pages as well as chart of the issues. The assessee has also relied on two case laws compilation [1] related to transfer pricing and [2] related to non-transfer pricing issues. We have also considered them.

023. The ground no. 1 to 5 of the appeal is with respect to the transfer pricing adjustment with respect to reimbursement of out of pocket expenses incurred by the assessee amounting to ₹170,82,85,067/- where the ld TPO has included in cost base of the assessee and made an adjustment of 12 % thereof. Facts shows that assessee has entered into a Master Service Agreement with 71 Associated Enterprises on 1 April 2008.

According to that agreement, the assessee was to provide information and technology services to the other 71 group entities and assessee operates as a risk free service provider of IT services to all those Associated Enterprises. For rendering those services, assessee would recover from Associated Enterprises total amount of cost plus a markup of 12% there on. Naturally, the cost base shall include the total amount of cost incurred by assessee 'for the provision of services' to the Associated Enterprises. Assessee says that it operates as offshore service provider rendering software services to its Associated Enterprises. It says that at the time of implementation and testing of the software the assessee's employee may travel on site to provide support services to the team of Associated Enterprises. For this purposes, the assessee incur certain expenditure such as travelling etc. which are only on behalf of its Associated Enterprises and not on its own account. These expenses are reimbursed by the Associated Enterprises to the assessee on cost-to-cost basis. It stated that assessee engaged in providing these services to its Associated Enterprises since 2002 and is incurring those expenses, in past, Revenue has accepted that on this reimbursement of expenditure, no markup is required to be charged. However, this year Revenue has changed its stand. Therefore, the only issue involved is whether these expenses are out-of-pocket expenditure incurred by the assessee on behalf of its AE or

expenditure incurred by the assessee 'for provision of the services'. If this expenditure is out-of-pocket expenditure, the assessee is justified in not charging any markup thereon. However if these expenditure are to be incurred 'for provision of services' to the associated enterprises then in that case the markup is required to be charged. The practice of the assessee is continuing for last several years and in past years, the learned transfer-pricing officer has accepted the argument of the assessee that no markup is required to be charged on these expenses. Assessee has produced before us the transfer pricing orders passed in case of assessee from assessment years 2002 – 2003 till 2009 – 10. In none of these orders, the learned TPO has held that the pass through cost or reimbursement incurred by the assessee should have been included in its cost base. On looking at the Master Service agreement, there is no clarity on the above aspect that what cost to be considered in cost base. However, it has been submitted by the assessee that it is operating margin from software development services 19.45%, even if the out-of-pocket expenses incurred by the appellant on behalf of its associated enterprise are also treated as part of the cost base of the appellant. The margins so computed are also higher than the arithmetic mean of the margins of the comparable companies computed at 8.69% selected by the assessee. To examine this alternative argument it is necessary to

examine the order passed by the learned transfer pricing Officer u/s 92CA (3) of the act that whether the learned transfer pricing officer has objected to the any of the comparable companies selected by the assessee. On going through the transfer pricing officer's order, we do not find that learned transfer-pricing officer has disputed any of the comparable selected by the assessee. Therefore, the set of comparable selected by the assessee for computation of the arm's-length price deserves to be accepted as it has become final for the AY . On going through the same, we find that the computation of the margin considering the reimbursement as cost base is 19.45%, which is also accepted by the learned transfer-pricing officer. Therefore, there cannot be any dispute on the same. It is also fact that margin of the comparable companies selected by the assessee, which has become final, now is 8.69%. This argument was raised by assessee before the learned CIT – A at page number 11 of the order of the learned CIT – A, however it was not at all considered. Therefore, we do not find any reason to sustain addition on account of adjustment of markup on pass through cost claimed by the assessee. Accordingly ground number 3 of the appeal of the assessee is allowed which deletes the transfer pricing adjustment of ₹ 204,993,848 made. In view of this, ground number 1, 2, 4-5 of the appeal are also treated as allowed.

024. With respect to ground number 6 that whether the loss incurred by eligible unit u/s 10 A at Chennai wherein loss of ₹ 64,594,565 can be set-off against the profits of other eligible units or not. We find that identical issue has been decided by the honourable Bombay High Court in the case of the assessee in ITA number 2501 of 2011 dated 30 April 2014 wherein the order of the coordinate bench dated 25th of may 2011 for assessment year 2006 – 2007 is upheld. While deciding the above issue the honourable High Court also considered its own decision in case of Hindustan Unilever Ltd versus Deputy Commissioner Of Income Tax (2010) 325 ITR 102. The issue also reached before the honourable Supreme Court in assessee's own case for assessment year 2005 – 06 in CA number 8498 of 2013 [known as CIT V Yokogawa India Limited][391 ITR 274] wherein it was decided in favour of the assessee. The learned departmental representative could not controvert the above fact. In view of this ground number 6 and 7 of the appeal are allowed and the learned assessing officer is directed to allow the loss of Chennai unit accordingly.

025. Ground number 8 and 9 are with respect to the question whether the telecommunication expenses of eligible units amounting to Rs 1,46,12,448/- should be reduced from the export turnover of the eligible unit. The assessee has claimed that the above issue is also covered in favour of the assessee by the decision of the honourable Bombay

High Court and the coordinate benches in assessee's own case for several years. We find that the honourable Bombay High Court in ITA number 2501 of 2011 dated 30 April 2014 in paragraph number 5 – 7 has considered the above issue. The honourable High Court in paragraph number 7 leaving aside the wider controversy or a larger question held that assessee is in business of software development and the charges, which are claimed to have been incurred, are in relation to the business of software development within India. Therefore, there could not be said to be cost deductible from the export turnover for the purposes of Section 10 A of the act. Therefore, ground number 8 and 9 of the appeal of the assessee is allowed directing the learned assessing officer to not to reduce the above sum from the export turnover of the eligible units. This is also covering the additional ground raised by the assessee in ground number 13 wherein the equal treatment is required to be given to the above expenditure in view of the decision of the honourable Supreme Court in case of CIT versus HCL technologies Ltd 404 ITR 719. Accordingly, the learned assessing officer is directed to give the treatment of dental and cost i.e. telecommunication expenditure of Rs 1, 46,12,448 for the purpose of computation of export turnover as well as total turnover. Accordingly, ground number 8, 9, and 13 of the appeal are allowed.

026. Ground number 10 and 11 relates to the consideration of the foreign exchange expenditure while computing deduction u/s 10 A of the act. During the year assessee has incurred an expenditure in foreign currency of ₹ 977,036,684/– which has been reduced from the export turnover of the assessee while computing deduction u/s 10 A of the act. Appellant has also raised an additional ground wide ground number 14 stating that without prejudice to ground number 10 the assessee submits that the said expenditure amounting to ₹ 977,036,684/– incurred in foreign exchange be also reduced from the total turnover of the eligible units as well. For this proposition the assessee relied on the decision of the honourable Supreme Court in case of CIT versus HCL technologies Ltd 404 ITR 719 wherein it has been held that The formula for computation of the deduction under section 10A of the Act would be as follows :

i. If the deductions on freight, telecommunication and insurance attributable to the delivery of computer software under section 10A of the Act were allowed only in the export turnover but not from the total turnover, it would give rise to an inadvertent, unlawful, meaningless and illogical result which would cause grave injustice to the assessee which could have never been the intention of the Legislature. Such deduction shall be allowed from the total

turnover in the same proportion as well. The same principle of interpretation as followed in the case of expenses of freight, telecommunication etc., would apply to expenses on technical services provided outside India, otherwise the formula of calculation would be futile.

027. Therefore, in view of the above decision of the honourable Supreme Court we direct the learned assessing officer to give the treatment to the expenditure while computing export turnover and the total turnover of the eligible unit. Accordingly, ground number 10, 11 and ground number 14 of the appeal are allowed.

028. Ground number 12 of the appeal is with respect to the addition of ₹ 2,446,601/– made by the learned assessing officer for the reason that during the course of the assessment proceeding the assessee was provided by the AIR/CIB details and asked to reconcile the same with the entries in the books of accounts. The AO found that there is credit card payment of ₹ 2,401,929/– to access bank Ltd. The assessee has denied having entered into any such transaction stating that the credit cardholder appearing in the AR report Mr. Basu was assessee's employee and can't any does not have any credit card issued by that bank. Another payment of ₹ 44,672/– was

also made to Rama international Pune, assessee also denied the same transaction. The learned assessing officer therefore made the above addition stating that assessee is not supported any documentary evidences to prove the fact that above transactions are not entered into by the assessee company. On appeal before the learned CIT – A he set-aside this issue back to the file of the learned assessing officer with a direction that it is necessary that the AIR data be verified by the assessing officer as well as the assessee by crosschecking with the external sources. This was decided because of the reason that assessee was not given enough time to verify the above transactions from internal as well as external records and further learned AO did not verify the same from external sources. Assessee is aggrieved with that direction. We find that assessee has denied any such transactions entered into with the bank. Assessee has also written to the bank and subsequent reminders also. In view of this we find that there is no infirmity in the direction of the learned CIT – A to give opportunity to the assessee as well as direction to the learned assessing officer to verify the claim of the assessee from external sources. Naturally, if the assessee has not entered into such transaction, the learned AO should have examined the above claim of the assessee of consistent denial through external sources. The assessee has also given the name of employee whose credit card transactions are

found with the bank. Further, with respect to another party also assessee denied having entered into any such transactions. In view of this, we direct the learned assessing officer to carry out detailed examination of the above transactions whether they have been entered into by the assessee or not. If it is found that assessee has not entered into such transactions, the additions deserve to be deleted. In the result ground number 12 of the appeal of the assessee is allowed with above directions.

029. In the result, Appeal of assessee is allowed.

Order pronounced in the open court on 12.05.2022.

Sd/-	Sd/-
(VIKAS AWASTHY)	(PRASHANT MAHARISHI)
(JUDICIAL MEMBER)	(ACCOUNTANT MEMBER)

Mumbai, Dated: 12.05.2022
Sudip Sarkar, Sr.PS
Copy of the Order forwarded to :

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

BY ORDER,

True Copy//

Sr. Private Secretary/ Asst. Registrar
Income Tax Appellate Tribunal, Mumbai