

**IN THE INCOME TAX APPELLATE TRIBUNAL  
MUMBAI BENCHES "H", MUMBAI**

**BEFORE SHRI JOGINDER SINGH (JUDICIAL MEMBER)**

AND

**SHRI ASHWANI TANEJA (ACCOUNTANT MEMBER)**

I.T.A. No. 916/Mum/2014

(Assessment Year : 2010-11)

Mr. Nimish J Shah G-601, Arshie Complex Off Yari Road, Versova, Andheri (W Mumbai 400 061	vs	Dy.CIT 20(2), Mumbai
		PAN : AMPPS0040R
(Appellant)		(Respondent)

Appellant by	Sheetal Jain / Shri Hitesh Kothari
Respondent by	SHRI S.K. Mishra

Date of hearing : 18-08-2016

Date of pronouncement : 24-08-2016

**ORDER**

**Per ASHWANI TANEJA, AM**

This appeal has been filed by the assessee against the order passed by the Commissioner of Income-tax (Appeals)[hereinafter called CIT(A)] dt 29-11-2013 passed against the order u/s 154 dt 14-2-2011 for A.Y. 2009-10 on the following grounds:

*“1. The learned C.I.T.(A) 31 has erred in confirming addition/s 69C of Rs. 6,17,862 for the reasons stated in order without appreciating full facts and which is far from Natural Justice equity and fair play*

*2 The learned C.I.T. (A) 31 has erred in Confirming disallowance of Rs. 52,785 from the Depreciation for the reasons stated in order without appreciating full facts.*

*3. The learned C.I.T. (A) 31 has erred in Confirming disallowance of Rs. 4,53,458 from*

*the expenses being 30% of the Total expenses for the reasons stated in order without appreciating full facts."*

2. Detailed arguments were made by both the sides and have been considered while disposing of this appeal.

**Ground 1:** In this ground, the assessee has challenged the action of the Ld.CIT(A) in confirming the addition u/s 69C of Rs.6,17,862. It is noted from the perusal of the orders of lower authorities that this addition was made by the Assessing Officer on the basis of AIR information on the ground that assessee could not substantiate the source of credit card expenses. It is noted that the assessment order was passed exparte u/s 144 for want of proper representation from the assessee and in absence of proper details and documentary evidences. However, at the stage of first appeal, the assessee submitted sufficient evidences to explain the sources of the expenses incurred through credit card. The Ld.CIT(A) sent these details and evidences to the Assessing Officer for remand report. The CIT(A) considered the remand report but addition by the Assessing Officer was upheld on the ground that the sources of these expenses could not be substantiated.

3. With the assistance of the Ld.Counsel, it was noted by us that during the year under consideration, the assessee derived income from salary, income from house property as well as income from business. The gross total income returned by the assessee during the year was amounting to Rs.39,03,585. It is further noted by us that aggregate amount of payment made by the assessee towards usage credit card amounting to Rsa.6,17,862 through various cheques as per details given below:-

Dt of payment	Amount (Rs.)	Cheque No.	Bank Name and Account Number
08-Apr-08	44,739	159285	ABN Amro Bank - 855804
06-May-08	28,831	583308	ICICIBank – 001101011816

03-Jun-08	33,455	583317	ICICIBank – 001101011816
08-Sep-08	11,556	583324	ICICIBank – 001101011816
03-Oct-08	66,288	154595	ABN Amro Bank – 855804
04-Nov-08	103,674	564701	ABN Amro Bank – 855804
04-Dec-08	83,486	564710	ABN Amro Bank – 855804
06-Jan-09	26,892	564715	ABN Amro Bank - 855804
13-Jan-09	80,000	637116	HSBC Bank
04-Feb-09	45,440	196382	ABN Amro Bank – 855804
07-Mar-09	93,500	196389	ABN Amro Bank - 855804

It is noted from the above details that entire payments have been made through cheques from the bank accounts of the assessee. With the assistance of Ld.Counsel it was noted by us that these bank accounts were duly disclosed by the assessee in his balance-sheet also. These payments have been made from the regular bank accounts of the assessee. These facts were not disputed by the Ld.DR or even by the lower authorities. Under these circumstances, we find that the assessee had duly disclosed the source of the amount paid to the credit card agencies. The payments were undisputedly made from the regular bank accounts of the assessee. Under these circumstances, we fail to understand how addition could be made in this regard, that too, u/s 69C of the Act which permits addition of only those expenses which are not recorded in the books of account. In this case, the payments have undisputedly been made from regular bank accounts of the assessee. We find no reason or justification for the addition made by the Assessing Officer and, therefore, the same is directly to be deleted. This ground is allowed.

**4. Grounds 2 & 3 :** In grounds 2 & 3, the assessee has contested the action of the lower authorities in making adhoc disallowance on account of depreciation and expenses @20% and 30% respectively. It was fairly stated by the Ld.Counsel that complete details and documentary evidences could not be

furnished to fully substantiate the expenses. But the disallowance made was on the higher side. The Ld.DR supported the orders of the lower authorities in this regard.

5. After considering the facts and circumstances of the case, we find that disallowance of depreciation @20% is justified, whereas the disallowance of expenses @30% is on higher side and since the Assessing Officer has himself made disallowance of depreciation @20%, in our view, the same parameter should be followed for disallowing the expenses also and, therefore, the disallowance of expenses is restricted to 20%. The Assessing Officer is directed to restrict the disallowance to 20% of the expenses. The assessee gets relief accordingly. Thus, ground 2 is dismissed and ground 3 is partly allowed.

6. As a result, this appeal is partly allowed.

*Order pronounced in the court on this 24<sup>th</sup> day of Aug, 2016.*

Sd/-	sd/-
(JOGINDER SINGH)	(ASHWANI TANEJA)
JUDICIAL MEMBER	ACCOUNTANT MEMBER

Mumbai, Dt :24<sup>th</sup> Aug, 2016

Pk/-

Copy to :

1. The appellant
2. The respondent
3. The CIT(A)
4. The CIT
5. The Ld. Departmental Representative for the Revenue, H-Bench

(True copy)

By order

ASSTT.REGISTRAR, ITAT, MUMBAI BENCHES