

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

**BEFORE SHRI D. KARUNAKARA RAO, ACCOUNTANT MEMBER AND
SHRI SANJAY GARG, JUDICIAL MEMBER**

**ITA No.5181/M/2012
Assessment Year: 2008-09**

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| M/s. ANS Law Associates, 41-A, Film Center, 38, Tardeo Road, Tardeo, Mumbai – 400 034 PAN: AAHFA6664R | Vs. | Assistant Commissioner of Income Tax – 11(2), Room No.479, Aayakar Bhavan, M.K. Marg, Mumbai – 400 020 |
| (Appellant) | | (Respondent) |

Assessee by : Shri Kirit N. Mehta, A.R.
Revenue by : Shri Vivek Batra, D.R.

Date of Hearing : 08.10.2014
Date of Pronouncement : 05.12.2014

ORDER

Per Sanjay Garg, Judicial Member:

The present appeal has been preferred by the assessee against the order dated 08.06.12 of the Commissioner of Income Tax (Appeals) [(hereinafter referred to as CIT(A)] relevant to assessment year 2008-09.

2. The assessee has taken the following grounds of appeal:

"1. The Order of the Learned C.I.T. (A) is contrary to the law, facts and circumstances of the case.

2. **Addition of Rs. 4,49,440/- on account of AIR Information**

On the facts and circumstances of the case, the learned CIT(A) has erred in upholding the addition of an amount of Rs.4,49,440/- on account of wrong AIR Information in the name of Allied Digital Services Ltd.

3. **Disallowance of Rs.1,80,000/- on account of Partner's Conveyance Allowance**

On the facts and circumstances of the case, the learned CIT(A) has erred in upholding the disallowance of Rs.1,80,000/- on account of conveyance allowance without giving any cogent reasons for disallowing said expenses.

4. **Disallowance of Rs. 30,510/- on account of Car and Telephone expenses**

On the facts and circumstances of the case, the learned CIT(A) has erred in upholding the disallowance of Rs.30,510/- being 1/5th of the expenses of Rs.1,52,551/- incurred on account of depreciation on car and telephone expenses by assuming that personal element in use of car and telephone particularly in mobile phone is always there.

5. **LEAVE**

The Appellant craves leave to alter, amend or delete any of the above grounds of appeal and / or to add any fresh ground(s) of appeal at or before the hearing of the appeal."

Ground No.1

3. Ground No.1 is relating to addition of Rs.4,49,440/- on account of AIR information. The assessee is a registered partnership firm of advocates and solicitors. The AIR information showed that the assessee had received professional/technical fees from various persons aggregating to Rs.1,39,15,584/- which the Assessing Officer (hereinafter referred to as the AO) required the assessee to reconcile. The assessee reconciled major portion of the amount but could not reconcile the amount of Rs.4,49,440/- allegedly received from Allied Digital Services Ltd. The assessee stated before the AO that it had never received above amount. But the AO did not agree with the contention of the assessee and made the addition.

4. In appeal before the Ld. CIT(A), the assessee submitted bank statements

of its all accounts. It was further submitted that only Rs.1,00,000/- was received during the year under consideration from Allied Digital Services Ltd. and a confirmation from the said party in this respect was also filed. It was stated before the Ld. CIT(A) that AIR information might be erroneous on account of quoting wrong PAN or wrong submission. The Ld. CIT(A), however, held that since the assessee had failed to reconcile the receipts from Allied Digital Services Ltd., hence the AO was justified in making the addition. He also observed that the confirmation of Rs.1,00,000/- did not tally with the dates of receipts mentioned in the AIR information.

5. We have heard the Ld. representatives of both the parties and have also gone through the records. It is the case of the assessee that it had received only Rs.1,00,000/- from Allied Digital Services Ltd. However, as per the AIR information, the assessee had received Rs.4,49,440/- from the said party. There is no reference of amount of Rs.1,00,000/- in the AIR information, rather, the detail of amount has been given as Rs.3,00,000/- on 02.01.08 and Rs.1.49 lakh on 24.03.08.

6. It has been held time and again by this Tribunal that the additions made solely on the basis of AIR information are not sustainable in the eyes of the law. If the assessee denies that he is in receipt of income from a particular source, it is for the AO to prove that the assessee has received income as the assessee cannot prove the negative. Reliance can be placed in this respect on the decision of the Tribunal in the case of “DCIT vs. Shree G. Selva Kumar” in ITA No.868/Bang/2009 decided on 22.10.10 and another case in the case of “Aarti Raman vs. DCIT” in ITA No.245/Bang/2012 decided on 05.10.12.

6.1 Representatives of both the parties have agreed before us that the issue be restored to the file of the AO for consideration afresh in this respect. We

accordingly restore this issue to the file of the AO to consider the reply of the assessee as well as confirmation from Allied Digital Services Ltd. vis-à-vis the AIR information and decide the issue in accordance with the law.

Ground No.2

7. Ground No.2 is relating to disallowance of Rs.1,80,000/- on account of partner's conveyance allowance. The AO after going through the partnership deed noted that there were no provisions for granting of conveyance allowance to partners in the said deed. He also found that the vehicle and fuel expenses have been separately debited in the profit and loss account. He therefore disallowed the conveyance allowance and Ld. CIT(A) confirmed the said disallowance.

8. We have considered the rival submissions of the Ld. representatives of the parties. The Ld. A.R. has submitted that in fact the amount in question was not the conveyance allowance rather the same was reimbursement of the actual expenses incurred by the partners in the ordinary course of business. It has been further submitted that the firm owns one car only and hence the outside conveyance as and when required was used by the partners. The expenses were very reasonable.

On the other hand, the Ld. D.R. has relied upon the findings of the lower authorities.

9. After considering the overall submissions and facts and circumstances of the case, we restore this issue to the file of the AO to examine it afresh in the light of the submissions made by the Ld. A.R. and the evidences in the shape of vouchers etc. in this regard.

Ground No.3

10. Ground No.3 is relating to disallowance of Rs.30,510/- on account of depreciation of car and telephone expenses. The AO noted that the assessee had claimed depreciation on car of Rs.52,713/- and telephone expenses of Rs.99,838/- respectively. He held that the personal use of car and telephone was not ruled out. He therefore disallowed 1/5th of the said expenses which were worked out at Rs.30,510/-.

11. The Ld. CIT(A), after considering the facts and circumstances of the case, held that the personal element in the use of car and telephone, particularly the mobile phone can not be ruled out. He therefore held that the disallowance made by the AO was justified.

12. From the record, it has been found that the lower authorities have disallowed only 1/5th of the amount. Taking into consideration of the facts and circumstances of the case, we find that the same is a quite reasonable disallowance. Hence, we confirm the finding of the lower authorities on this issue.

13. In the result, the appeal of the assessee is partly allowed for statistical purposes.

Order pronounced in the open court on 05.12.2014.

Sd/-
(D. Karunakara Rao)
ACCOUNTANT MEMBER

Sd/-
(Sanjay Garg)
JUDICIAL MEMBER

Mumbai, Dated: 05.12.2014.

* 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.