

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

**BEFORE SHRI R.C. SHARMA, ACCOUNTANT MEMBER AND
SHRI SANJAY GARG, JUDICIAL MEMBER**

**ITA No.5125/M/2013
Assessment Year: 2009-10**

M/s. Kroner Investments Limited, Essar House, 11, Keshavrao Khadye Marg, Mahalaxmi, Mumbai – 400 034 PAN: AAACK5037E	Vs.	DCIT – 5(2), Aayakar Bhavan, Mumbai - 400020
(Appellant)		(Respondent)

Assessee by : Shri Vijay Mehta, A.R.

Revenue by : Shri Asghar Zain, D.R.

Date of Hearing : 21.01.2015

Date of Pronouncement : 10.04.2015

ORDER

Per Sanjay Garg, Judicial Member:

The present appeal has been preferred by the assessee against the order dated 20.03.2013 of the Commissioner of Income Tax (Appeals) [(hereinafter referred to as CIT(A)] relevant to assessment year 2009-10.

2. The dispute raised by the assessee in this appeal is relating to the addition of Rs.51,46,606/- made by the Assessing Officer (hereinafter referred to as the AO) on account of interest received from M/s. Essar Oil Ltd. on the basis of AIR information. When the AO asked the assessee to explain in this respect, the assessee submitted that it was having no information available with it regarding receipt of such an interest amount from M/s. Essar Oil Ltd. The AO therefore made the addition on the basis of AIR information.

2. In appeal before the Ld. CIT(A), the assessee submitted that it was holding 3317600 non convertible debentures of M/s. Essar Oil Ltd. in earlier years. The assessee had not earned any income on those non convertible debentures during the previous year relevant to assessment year under consideration. The said debentures were sold by the assessee long time back in A.Y. 2005-06. No such interest was ever received by the assessee from the M/s. Essar Oil Ltd. as was pointed out in the AIR information. The Ld. CIT(A), however, did not agree with the contention of the assessee and observed that the AIR information is generated from the Income Tax software which is directly linked with PAN number of the concerned assessee. Since there was an AIR information and the assessee could not reconcile the said receipts of interest, he therefore held that the addition made by the AO was correct. The assessee has, thus, come in appeal before us.

3. The Ld. A.R. of the assessee, before us, has relied upon the acknowledgement of return of income for A.Y. 2005-06 to show that the assessee had sold 3317600 non convertible debentures of M/s. Essar Oil Ltd. in that year. The Ld. A.R. has further contended that after the sale of said debentures the assessee had not received any interest income as has been alleged by the AO on the basis of AIR information.

4. We find that addition in this case has been made solely on the basis of AIR information and without any corroborative evidence regarding the receipt of any interest by the assessee from the said M/s. Essar Oil Ltd. The assessee has specifically denied the receipt of such an interest income. The Revenue has not made any enquires to find out whether the AIR information was correct or not. 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 law. If the assessee denies that it 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.

5. Ld. 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 law.

6. In the result, the appeal of the assessee is hereby allowed for statistical purposes.

Order pronounced in the open court on 10.04.2015.

**Sd/-
(R.C. Sharma)
ACCOUNTANT MEMBER**

**Sd/-
(Sanjay Garg)
JUDICIAL MEMBER**

Mumbai, Dated: 10.04.2015.

* 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.