

आयकर अपीलीय अधिकरण, मुंबई न्यायपीठ “बी” मुंबई
IN THE INCOME TAX APPELLATE TRIBUNAL “B” BENCH, MUMBAI
BEFORE SHRI MAHAVIR SINGH, JM AND SHRI RAJESH KUMAR, AM
श्री महाविर सिंग, न्यायिक सदस्य एवं श्री राजेश कुमार, लेखा सदस्य के समक्ष

ITA NO.507/Mum/2013
(निर्धारण वर्ष / Assessment Year: 2009-10)

M/s Maya Entertainment Ltd 23 Shah Indl Estate, Off Veera Desai Rd, Andheri (w) Mumbai-400053	<u>बनाम/</u> Vs.	Asstt. Commissioner of Income-tax-11(1), Room No.467, 4 th floor, Aayakar Bhavan, M K Marg, Mumbai-400020
(अपीलार्थी /Appellant)		(प्रत्यर्थी / Respondent)

ITA NO.1157/Mum/2013
(निर्धारण वर्ष / Assessment Year: 2009-10)

Asstt. Commissioner of Income- tax-11(1), Mumbai-400020	<u>बनाम/</u> Vs.	M/s Maya Entertainment Ltd, Mumbai-400053
(अपीलार्थी /Appellant)		(प्रत्यर्थी / Respondent)

ITA NO.7098/Mum/2013
(निर्धारण वर्ष / Assessment Year: 2007-08)

M/s Maya Entertainment Ltd, Mumbai-400053	<u>बनाम/</u> Vs.	Asstt. Commissioner of Income-tax-11(1), Mumbai-400020
(अपीलार्थी /Appellant)		(प्रत्यर्थी / Respondent)

ITA NO.813/Mum/2014
(निर्धारण वर्ष / Assessment Year: 2007-08)

Asstt. Commissioner of Income- tax-11(1), Mumbai-400020	<u>बनाम/</u> Vs.	M/s Maya Entertainment Ltd, Mumbai-400053
(अपीलार्थी /Appellant)		(प्रत्यर्थी / Respondent)

स्थायी लेखा सं./PAN : AABCM7192B		
(अपीलार्थी /Appellant)	:	(प्रत्यर्थी / Respondent)

अपीलार्थी की ओर से / Assessee by	:	Shri S C Tiwari
प्रत्यर्थी की ओर से/Respondent by	:	Shri Suman Kumar

सुनवाई की तारीख /Date of Hearing	:	9.2.2017
घोषणा की तारीख /Date of Pronouncement	:	28.2.2017

आदेश / ORDER

PER RAJESH KUMAR, A. M:

These cross-appeals are directed against the orders passed by the Id. CIT(A), Mumbai and they relate to the assessment years 2007-08 and 2009-10. Since the issues urged in these appeals are identical in nature, they were heard together, clubbed together and are being disposed of by this common order, for the sake of convenience.

ITA NO.7098/Mum/2013

2. Grounds of appeal taken by the assessee are as under:

"1- *The I.CIT(A) erred in law and on facts and in the circumstances of the case in confirming the disallowance of depreciation of Rs.14,35,200/- in respect of software purchased from two parties aggregating to Rs.47,84,000/- alleging the purchase to be bogus.*

2. *The I.CIT(A) erred in law and on facts and in the circumstances of the case in confirming the treatment of prepaid expenses as prior period expenses;*

2.2. *The I.CIT(A) erred in law and on facts and in the circumstances of the case in confirming the disallowance of prepaid expenses of Rs.21,64,800/- in respect of commission and brokerage which was paid*

in advance in the FY 2005-06 amounting to Rs.27,06,000/-, and out of which Rs.5,41,200/- was allowed in assessment year 2006-07;

3. The order of the Commissioner (Appeals) being contrary to law, evidence and facts of the case should be set aside, amended or modified."

3. Facts of the case are that the assessee filed return of income on 29.10.2007 declaring NIL income. The assessee company is engaged in the business of production and sale of television software, rendering technical services and imparting training courses in advance cinematic. During the course of assessment proceedings, the AO found that the assessee has purchased two computer-software from different parties i.e. M/s Saptagiri Impex Pvt Ltd and M/s Satguru Trading Pvt Ltd for a consideration of Rs.23,92,000/-each aggregating to Rs.47,84,000/- on which the assessee claimed depreciation at the rate of 30% being ½ of 60%, the rate applicable for computers, as the assets were put to use for less than 180 days) at Rs.14,35,200/-. Vide order sheet entry dated 16.11.2009, the AO called upon the assessee to produce the confirmations from the suppliers. The AO also issued noticed u/s 133(6) to these parties. The Id. AR of the assessee responded to the notice by submitting that within one week it was not possible to produce confirmations from these parties. However, the copy of invoices, PAN was furnished before the AO. The AO ,after considering the reply of the assessee, came to the conclusion that the assessee made bogus purchases from these parties for the reasons that the notices issued u/s

133(6) were returned unserved and income tax inspector after visiting the given addresses reported back that these parties were not available at the given addresses, non filing of no confirmations from these suppliers and thus, the assessee has failed to discharge onus cast upon it and finally added back the depreciation of Rs.14,35,200/-.

4. In the appellate proceedings, the FAA dismissed the appeal of the assessee by observing and holding as under :

"4.2 I have perused the facts in this case. After issuing notices u/s 133(6) and after deputing the Inspector for spot verifications, the AO asked the appellant to file confirmations. In the circumstances, the appellant cannot now take the plea that natural justice has been violated. In the absence of any confirmation, the AO has rightly held that the purchase were bogus. This ground of appeal is, therefore, dismissed"

Aggrieved by the order of the Id.CIT(A), the assessee is in appeal before us.

5. The Id. AR vehemently submitted before us that the FAA has grossly erred in confirming the order of the AO on this issue as the assessee has purchased software from these two parties actually and payments were also made through banking channels. The Id. AR further submitted that the assessee has filed all the requisite details such as invoice, bank statements and PAN of the parties including the addresses before the AO. The AO also deputed Inspector to visit the suppliers to make further investigation and used report of the Inspector against the assessee without confronting the same to the assessee and therefore the principle of natural justice has been

grossly violated in framing the assessment by the AO. The Ld AR, in support of his argument, strongly relied on the decision of the Hon'ble Jurisdictional High Court in the case of H.R. Mehta V/s ACIT in IT APPEAL NO. 58 OF 2001, DATED, June 30, 2016 [2016] 72 taxmann.com 110 (Bombay). Finally, the Id.AR submitted that the purchases being genuine and the payment thereof were paid through banking channels and thus the assessee has discharged onus cast upon it by filing all the necessary documents before the AO and the AO without further verification and confronting the inspector report to the assessee came to the conclusion that the purchases were bogus. The Id. AR further submitted that mere fact that the suppliers could not be served with the notices as they were not available at the given address, it could not be held that the none of suppliers existed. The Id Counsel argued that the assessee has duly discharged its primary onus by filing the necessary invoices, details of payment and bank statements and PAN of the suppliers. The Id. AR further submitted that the Id.CIT(A) has also not considered all these facts on records and hence the order of the Id.CIT(A) should be reversed and the AO should be directed to allow depreciation.

6. On the other hand, the Id. DR strongly objected to the plea put forth by the Id.AR and strongly relied upon the orders of authorities below.

7. We have heard both the parties and perused the material placed before us including the orders of the authorities below and the case law relied upon by the assessee. We find that the assessee has purchased software from two parties during the year on which the assessee claimed depreciation at the rate of 30% for the reasons that the assets were put to use for less than 180 days and the payments for the purchases of softwares were made by account payee cheques and the details thereof were filed before the AO along with the invoices, PAN and bank statements. It has been submitted before the AO that within a week confirmations from these parties could not be supplied as the period was too short and also Inspector deputed by the AO for verification could not be done as these parties were not available at the given addresses and notices issued u/s 133(6) also returned back unserved. Considering all these factual aspects of the matter, we are of the opinion that the assessee has discharged all the onus cast upon it by filing necessary details such as copy of invoices, bank details and payment through cheques including PAN before the lower authorities and the AO thereafter without carrying out any extensive verification came to the conclusion that the purchases were bogus. Moreover, the report of the Inspector was not confronted to the assessee before proceeding to disallow the depreciation claimed by the assessee by treating the purchases as bogus. The opinion formed by the AO that the purchases were bogus was on mere fact that the notices issued to the parties u/s 133(6) were not served and

returned back unserved and the Inspected deputed to verify the facts could not find them on the given addresses cannot be considered as sufficient ground for treating the purchases being bogus one and consequently disallowing the depreciation claimed by the assessee. We find that a similar issue has been decided by the Hon'ble Bombay High Court in the case of H R Mehta (supra) wherein it has been held that once it was established that the payments were made through banking channels it is not fair on the part of the AO to come to the conclusion that the transactions were bogus without confronting the assessee that the material used against him and without allowing the cross-examination by the department to the assessee. In the present case also, the report of the Inspector has been used against the assessee and the assessee was not allowed to rebut the finding of the Inspector. In view of this factual aspect are of the opinion that the order of the Id.CIT(A) deserves to be set aside. Accordingly, we set aside the order of the Id.CIT(A) and direct the AO to allow depreciation as prayed by the assessee.

8. The second issue raised by the assessee is against the confirmation of addition made on account of prepaid expenses which was charged under the head prior period expenses. During the course of assessment proceedings, the AO found that the assessee debited expenses under the head prior period expenses (i) debits relating to earlier years (Note B10 to accounts) amounting to Rs.1,98,159/- and (ii) commission and brokerage amounting to

Rs.21,64,800/- aggregating to Rs.23,62,959/-. Accordingly, a show cause notice was issued to the assessee calling upon the assessee to show cause as to why these expenses should not be disallowed and be added to the total income of the assessee. With reference to the point No.(i), the Id. AR admitted and offered before the AO that an amount of Rs.1,98,159/- should be disallowed. Whereas in respect of point no.(ii) the amount of Rs.21,64,800/-, it was submitted that these are the payments of commission and brokerage made through Suyash International in the previous year 2005-06 of Rs.27,00,000/- out of which Rs.21,64,800/- pertains to the current year i.e. financial year 2006-07 and at the end of the year was shown in the balance sheet as on 31.3.2006 under the head prepaid expenses and claimed the same in the current year as admissible revenue expenses on account of commission and brokerage. However, the AO brushed aside the submissions of the Id.AR citing various reasons that no bills and vouchers were produced and only general vouchers as on 31.3.2006 were produced and consequently added the same to the total income of the assessee as period period expenses. Aggrieved assessee filed appeal before the FAA who vide para 6.2 of the appellate order dismissed the appeal of the assessee by observing and holding as under:

"6.2 I have perused the documentary evidence relied upon by the appellant in is paper book. The invoice of Suyash International is dated 15.10.2005, relating to previous year 2005-06. The payment has also, been made in FY 2005-06. Therefore, I am in agreement with the AO, there is no nexus between the prepaid expenses and pervious

year 2006-07. In the circumstances, this round of appeal is dismissed."

9. We have heard both the parties and perused the material placed before us including the orders of the authorities below on this point. We find that the assessee has made payments to Suyash International towards introducing the clients Ragdoll Ltd, Health Farm Pinewood Studios, Iver Health Bucks, SLO ONH, UK on 15.10.2005 as per invoice and also filed network acknowledgement, message delivered at page 66 and 67 of the paper book. We find merit in the argument of the Id. AR that part of the expenses incurred pertaining to next year and were not claimed in that year but separated and shown under the head prepaid expenses as on 31.3.2006" which were reversed in the financial year 2006-07 and charged to the profit and loss account under the head prior period expenses. The Id. AR vehemently pointed out that these in fact are not prior period expenses but the expenses which related to the current year but incurred in the previous year. We find from the facts before us that the assessee has incurred and paid commission and brokerage expenses which were rightly accounted for by the assessee by debiting partly in the financial year 2005-06 and showing the balance under the head prepaid expenses which were duly charged to the profit and loss account though under wrong head "prior period expenses". The depiction of expenses in the profit and loss account under wrong head would not disentitle the assessee from claiming the expenses when the

expenses pertain to the current year. Accordingly, we are inclined to set aside the order of the Id.CIT(A) and direct the AO to allow the claim of the assessee of commission and brokerage expenses etc of Rs. 21,64,800/-.

10. Grounds of appeal no.3, 4 and 5 are general in nature and do not require any adjudication.

ITA No.813/Mum/2014

11. Grounds of appeal raised in this appeal are as under :

1. *"On the facts and in the circumstances of the case and in law, whether the Ld. CIT(A) was justified in deleting the disallowance of Rs.36,03,439/- made on account of lease rent paid to the subsidiary;*

2. *On the facts and in the circumstances of the case and in law, whether the Ld. CIT(A) was justified in deleting the disallowance of Rs.5,42,65,010/- made on account of the assessee postponing he recognition of the revenue and violating the matching principle of accountancy"*

12. During the course of assessment proceedings, the AO noticed that the assessee had advanced loan of Rs.5.50 crores to its 100% subsidiary company M/s Dorian Leasing and Infotech Pvt Ltd in financial year 2005-06. The said loan was used in the current financial year to purchase the immovable property at Malad (W), Mumbai-64 which was leased out by the subsidiary company to assessee for annual rent of Rs.95,23,800/- and the assessee company received interest of Rs.59,20,361/- from the subsidiary company during the current year on the said loan. The assessee company has also paid interest to the tune of Rs.26.66 lacs during the financial year

2006-07 on the loan of Rs.5.51 crores taken from the banks against the mortgage of the property. The AO vide order sheet entry dated 31.8.2009 called upon the assessee to explain the transactions which was responded and replied by the assessee vide letter dated 24.11.2009 by submitting that the premises in which the office of the assessee was located was owned by the subsidiary company which was owned by M/s Raheja Group prior to its acquisition by the assessee. The said Raheja Group transferred shareholding in Dorian Leasing and Infotech Pvt Ltd. to the assessee and the assessee thereafter took the office space on lease from the said subsidiary company. It was out of pure business exigency and business consideration that the lease of the office premises was taken. However, the AO doubted the transaction as sham and accordingly disallowed the difference between the rent paid and interest received and added Rs. 36,03,439/- to the total income of the assessee being difference between the rental of Rs.95,23,800/- and the interest received from the said subsidiary company Rs.59,20,361/-.

13. In the appellate proceedings, the Id.CIT(A) deleted the addition after considering the submissions and contentions of the assessee by observing and holding as under :

"I have considered the facts and perused the material on record. It is seen that the appellant company has advanced loan of Rs. 5.50 crores to its- 100% subsidiary company M/s. Infotech Leasing and Infotech P.Ltd. on which interest of Rs. 59.20 lakhs was received. It is further seen that the subsidiary company has purchase an immovable property during FY. 06-07 located at Malad (W), Mumbai which was taken by

the appellant on annual lease rental of Rs. 95.23 lakhs. Therefore, the AO was of the view that how the lease rental of Rs. 95.23 lakhs was allowable as the appellant has parted with its own fund and paid lease rental on the property. Accordingly, the AO made disallowance of Rs. 36.03 lakhs being rental amount of Rs. 95.23 lakhs less interest received from subsidiary company at Rs. 50.20 lakhs, treating the transactions as sham transaction. I find the contention -of-the-appellant as-correct thatt1e-ADnas not referred any section under which the said disallowance has been made. The appellant company has taken business decision to purchase Dorian, as it wanted to acquire office space, hence, same could not be altered by the AO. The appellant company was required a office space but that office space could be required only with a rider that the appellant has to acquire the said company to whom the office premise belongs. Therefore, the subsidiary company Dorian had obligation which had to be discharged, hence holding company is bound to discharge the same. I also found that it is not the case of the AO that business premise was not used for by the appellant and that the lease rent paid by the appellant was excessive. It is also not in dispute that the premise was not let out by the subsidiary company to the appellant. It is seen that there are 2 independent transactions which are done at arm's length and lease payments are based on the user of the property and interest received based on Market rate of interest on amount of advance. Merely because, the subsidiary has NIL taxable income, after claiming deduction u/s. 24. It does not mean that the transaction was sham, since the factual position has not been disputed by the AO. I find that there is valid lease agreement between the appellant and the subsidiary company. The interest on loan was received at market rate by the appellant company and the lease rent is also paid on the basis of Leave and Licence agreement prevailing at market rates. Therefore, the transactions cannot be recorded as sham or void. Accordingly, the disallowance of lease rental amounting to Rs.36,03,439/- is without any basis and not in accordance with law, accordingly same is therefore deleted

2.1 As the facts and the issue, in this year, remains the same, I am inclined to follow the decision of my predecessor and allow his ground of appeal”

14. We have heard both the parties and perused the material placed before us including the orders of the authorities below on this issue. We find

that the AO has failed to bring on record any material which proved that the transaction of advancing money, use thereof for the purchase of premises which was in turn leased out to the assessee on rental, assessee receiving interest to the tune of Rs.59,20,361/- on the loan advanced was a sham. The Id. CIT(A) has rightly come to the conclusion that it is the commercial transaction which entered purely out of business exigency and commercial consideration and therefore correctly deleted by the Id.CIT(A). Moreover, the AO has failed to bring on records another angle of the transactions that the interest received by the assessee and rentals paid were not at the market rate and therefore, we are inclined to uphold the order of the Id.CIT(A) by dismissing the appeal of the revenue on this issue.

15. The issue raised in second grounds of appeal is in respect of deleting the disallowance of Rs.5,42,65,010/- as made by the AO on the ground that the assessee postponed the recognition of the revenue thereby violating the matching principle of accountancy.

16. The assessee was engaged in imparting training to the students in cinematic course under the brand name MAAC. Upto financial year ended 31.3.2006, the assessee used to recognize income from training courses on billing basis. However, from the financial year 2006-07 the assessee changed income recognition method to accrual meaning thereby threat only that part of the fee on which the company has actually rendered training to the

students were shown as income. Accordingly, the assessee out of total system's billing of Rs.36.89 crores in the education division (MAAC) during the financial year 2006-07 carried forward 22.60 crores to the ensuing financial years on the analogy that the services were rendered in that year. Accordingly, the AO raised query on the assessee which was replied by the assessee by submitting that revenue recognition has been changed by following AS-9 which provides for recognition of revenue over a period of time to which the said fees pertain and a note was given in the Director's Report mentioning that Rs.22.60 crores system's billing was carried forward to subsequent financial years for the reasons that training/instructions would be imparted in the those financial years. The AO observed that the course fees were received by the assessee as per the agreement entered by and between the assessee and the franchisees. The responsibility of the assessee was to provide course material and update the same from time to time and the expenses on the course material were incurred in the beginning of the courses. Whereas the assessee had an irrevocable right on the fees received. Accordingly came to the conclusion that the fees received by the assessee company should have been offered for taxation in the current year by rejecting the contentions raised by the assessee that recognition of fees in the current year would violate matching principle of accountancy by calculating Rs.5,42,65,010/- as short fall in the fees credited to profit and loss account during the year in the following manner:

From the submission filed, the revenue short-offered by the as company on account of students fees is worked out as under:

<i>I. Students fees credited to P/L A/c</i>	<i>Rs.14,29,44,896</i>
<i>II. Franchisees payment debited to P/L A/c</i>	<i>Rs. 9,03,95,019</i>
<i>III II as a percentage of I (II/I*100)</i>	<i>63.23%</i>
<i>IV. Students Fees Received during the Year-</i>	<i>Rs.29,04,94,661</i>
<i>V. Franchisees share (IV * III) -</i>	<i>Rs.18,36,79,774</i>
<i>VI. Net Fees that should be credited to P/L A/c (IV-V)</i>	<i>Rs.10,68,14,887</i>
<i>VII. Net fees actually credited to P/L A/c (I - II) -</i>	<i>Rs. 5,25,49,877</i>
<i>VIII. Shortfall in the fees credited to P/L A/c (VI-VII)</i>	<i>Rs.5,42,65,010</i>

17. The Id. CIT(A) also called remand report from the AO which states that the assessee has been following the said system in the subsequent year also.

18. We have carefully considered the rival submissions and perused the material placed before us including the orders of authorities below on the point. We find that during the year under consideration the assessee has changed system of revenue recognition qua the course fee received from the students in cinematic training division from billing basis to only to the system which recognized the revenue basis on the training imparted/services rendered. In our opinion, the assessee has every right to change the method of accounting provided the same is consistently following the subsequent years. Moreover, the Id. CIT(A) called for the remand report from the AO which confirmed that the assessee was following the said system of accounting in the subsequent years. We are therefore in agreement with the conclusion drawn by the Id. CIT(A) that the AO was not right in rejecting

the method of accounting followed by the assessee and therefore we uphold the same. Accordingly, the ground taken by the revenue is rejected by upholding the order of the Id. CIT(A) on this issue.

ITA No.507/Mum/13

19. Grounds of appeal taken by the assessee reads as under:

- "1. The Learned CIT CA) erred in law and on facts and in the circumstances of the case in confirming the disallowance of prior period expenses of Rs.1,06,307/- in respect of Foreign Travel on the ground that the liability was ascertained and stood incurred during the Financial Year 2007-08.*
- 2. The Learned CIT CA) erred in not adjudicating the claim of prior period expenses of Rs.3,06,387/- incurred on advertising and marketing.*
- 3. The Learned CIT CA) erred in law and on facts and in the circumstances of the case in confirming the disallowance of prior period expenses of Rs.1,38,537/- in respect of repair and maintenance on the ground that the liability arose in earlier years and was known to the appellant and therefore it could make provision for the same.*
- 4. The Learned CIT CA) erred in law and on facts and in the circumstances of the case in confirming the disallowance of Rs.4,09,175/- in respect of advertisement and marketing expenses holding these expenses to have been incurred in financial year 2005-06, 2006-07 and 2007-08 without appreciating the fact that these expenses were debited to the franchises as recoverable from them and during the previous year relevant to this assessment years it was agreed by the appellant that the franchises need not reimburse the amount of Rs.4,09,175/-. Hence deduction of Rs.4,09,175/- is allowable this year.*
- 5. The Learned CIT CA) erred in law and on facts and in the circumstances of the case in confirming the disallowance of Rs.8,57,781/- as not pertaining to any earlier year without appreciating the. Rs.8,57,781/- is expenditure incurred in earlier ears and debited the franchises as their share of the expenditure. The franchises in the previous year relevant to this assessment year expressed inability to*

pay the same and the appellant on account of commercial expediency agreed to waive the recovery of Rs.8,57,781/- and hence this was expenditure of this year.

6) The Learned CIT CA) erred in law and on facts and in the circumstances of the case in allowing some prior period expenses and disallowing some other prior period expenses when the ground or claim of all the expenses was the same viz. crystallization of the expenses in this year only.

7) Each ground of appeal hereinabove is independent and without prejudice to each other.

8) The appellant craves leave to reserve to itself the right to add, to alter or amend or annul any of the grounds of appeal at or before the time of hearing and to produce "

Additional Ground taken by the assessee vide letter dated 7.10.2014 reads as under :

"Deduction of provision for bad and doubtful debts Rs.85,98,557/-.

1. On the facts and in the circumstances of the case the learned Assistant Commissioner of Income Tax, while computing the business income of the appellant under the normal provisions of the Act, should have allowed deduction of provision for bad and doubtful debts, as provided in section 36(l)(vii) of the Act, in the light of the decision of Honourable Supreme Court in the case of Vijaya Bank V/so CIT reported in 323 ITR 166 which is relied upon by the appellant in this appeal. The said deduction for provision for doubtful debts remained to be claimed by the appellant in the return of income on account of bonafide ignorance of law.

20. The Id. AR submitted before us that the additional ground raised qua deduction in respect of Rs.85,98,557/- vide application dated 7.10.2014 is arising out of the decision of the Hon'ble Apex Court in the case of Vijaya Bank V/so CIT reported in 323 ITR 166 (SC) and therefore, the assessee was

within its right to raise the issue by way of additional ground before this Tribunal since the issue emanated and arose from the order of Id.CIT(A) and therefore should be admitted for adjudication by the Bench. The Id. DR while strongly opposing the admission of additional ground for the reasons that the assessee has neither raised this issue before the AO nor before the Id. CIT(A) and also not before the Tribunal at the time of filing of the appeal.

21. We have heard the rival contentions on the admission of additional ground raised by the assessee. On perusal of the material placed before the Bench, we find merit in the submission of the Id.AR that the issue was cropped out of the judgment of the Hon'ble Supreme Court and the assessee has every right to raise the issue by way of additional ground. Accordingly, we are inclined to admit the additional ground for adjudication and restore the same to the file of AO to decide de-novo as per fact and law by affording the opportunity of being heard to the assessee. Additional ground taken by the assessee is allowed.

22. The issue raised by the assessee in the original grounds of appeal no.1 is against the confirmation of disallowance of prior period expenses of Rs.1,06,307/- on the ground that these pertains to financial year 2007-08 in respect of Foreign Travel on the ground that the liability was ascertained and stood incurred during the Financial Year 2007-08. The prior period expenses as claimed by the assessee are as under:

<i>Travelling foreign expenses</i>	<i>Rs.1,06,307</i>
<i>Mobile expenses</i>	<i>Rs.800</i>
<i>Advertising and marketing expenditure</i>	<i>Rs.3,06,387</i>
<i>Last year salary</i>	<i>Rs.1,700</i>
<i>For postage and telegram</i>	<i>Rs.767</i>
<i>Printing and stationery</i>	<i>Rs.18,606</i>
<i>Repairs and maintenance</i>	<i>Rs. 1,38,537</i>
<i>Business promotion expenses</i>	<i>Rs.20,000</i>
<i>Credit not raising on franchisee</i>	<i>Rs.4,09,175</i>
<i>Petty expenses</i>	<i>Rs.22,392</i>
<i>Room Booking</i>	<i>Rs.2,847</i>
<i>Partnerships shares transfer</i>	<i>Rs.8,57,781</i>
<i>Total</i>	<i>Rs.18,92,499</i>

The AO during the course of assessment proceedings, found that the assessee has debited a sum of Rs. Rs.18,92,499/-under the head prior period expenses in its profit and loss account and issued show cause vide questionnaire dated 29.8.2011 to the assessee to justify the admissibility of prior period expenses which was responded by the assessee vide letter dated 29.10.2011 by filing the details of prior period expenses. The AO after perusing the reply of the assessee came to the conclusion that the assessee could not justify the prior period expenses and therefore disallowed the same u/s 37 of the Act by adding the same to the total income of the assessee.

23. In the appellate proceedings the FAA partly allowed the appeal of the assessee after considering the submissions and contentions as raised by the assessee during the course of hearing before the FAA by observing and holding as under :

"3.3 I have considered the facts and find that the AO has made disallowance of prior period expenses of Rs. 18,92,500/- as the appellant failed to justify the same. However, during the appellate proceedings, the appellant has filed detailed submission in respect of prior period expenses amounting to Rs.18,92,499/- in para 3.2 above. It is seen that most of the expense have been crystallized during the year and therefore incurred during the year, therefore same are allowable as deduction. However, expenses relating to repairs & maintenance amounting to Rs. 1,38,537/-, I find that these were raised in earlier years but the appellant disputed the liability. Hence, same were debited in the current year on settlement of dispute. However, since the liability was arose earlier and it was known to the appellant. Therefore, the appellant could have made provision for the same. Hence, disallowance of such expenditure amounting to Rs. 1,38,537/- is sustained. As regards foreign travel expenses of Rs. 1,06,307/ pertaining to FY. 07-08, of which liability was ascertained and same were stands incurred during the same period. Hence, same cannot be allowed as prior period expenses. Therefore" disallowance made of such amount is upheld. As regards amount of Rs. 4,09,175/- relating, to credit notes in respect of franchisee, I find that these expenditure have been incurred on advertisement and marketing during the FY. 05-06, 06-07 and 07-08. Hence, same have been rightly disallowed by the AO. Accordingly disallowance made by the AO is sustained. Similarly, expenditure on business partners share transfer amounting to Rs. 8,57,781/- are also be .borne by franchisee but they have expressed inability to borne these expenses. Therefore, this liability on account of this expenditure does not pertain to earlier year, hence, disallowance so made is confirmed. In the light 0 above, the disallowance relating to foreign traveling expenses, advertisement and marketing, repairs & maintenance, credit notes raised on franchisee and partnership share transfer is confirmed and balance other .disallowance regarding the expenses mentioned in para 6.2 above are deleted. The AO is directed to recalculate the disallowance accordingly. This ground of appeal is therefore, partly allowed"

24. The Id.AR vehemently submitted before us that the foreign travel expenses were incurred during the financial year 2007-08 but due to dispute as to the amount, the same could not be charged to the profit and loss account and finally charged to profit and loss account during the financial

year 2008-09 when sanctioned on 31.7.2008 after the interference of the higher management. In respect of advertisement and marketing expenses of Rs.3,06,387/-, the Id. AR submitted that the bills were received late which comprises of Rs.77,025/- incurred in the month of June 2006, but not paid by the company as terms and conditions of the contract were not fulfilled and similarly Rs.194,400/- pertains to the earlier years towards advertisement expenses were presented on 1.12.2008 and paid on 9.01.2009. The Id. Counsel submitted that the said expenses crystallized during the year and deserves to be allowed. Similarly, various other expenses were also incurred by the assessee in the earlier years but were crystallized during the year. Similarly, the expenses towards repairs and maintenance Rs.1,38,537/- were crystallized during the year and charged accordingly to the profit and loss account. The said amount was payable to M/s Emerson Network (Power) India. Similarly, as regards the debit notes raised on franchisees Rs.4,09,175/-, the Id. AR submitted that in the financial year 2005-06, 2006-07 and 2007-08 the assessee incurred some expenses on advertisement part of which was to be borne by the franchisees and therefore the assessee issued a debit notes for the amount of share of each franchises. However, due to inability to pay the full amount of such expenses by the franchisees on the ground that they were not doing good business and hence the expenses could not be recovered in full and therefore the amount was charged to the profit and loss account as being incurred wholly and exclusively for the

purpose of business as the same was crystallized during the year. Qua the expenses of business partnership amounting to Rs.8,57,781/-, the assessee incurred these expenses on advertisement and part of which was to be borne by some franchisees. However, when the franchisees failed to meet requirement, the assessee treated these expenses as incurred wholly and exclusively for the purpose of business and charged to profit and loss account during the year accordingly. Finally, the Id. AR prayed before the Bench that all the expenses were incurred wholly and exclusively for the purpose of business and were either crystallized during the year or finally settled during the year and thus pertained to the current year and not to the years to which to which the bills of these expenses were pertained.

25 On the other hand, the Id.DR heavily relied on the orders of authorities below.

26. Heard both the parties and perused the relevant material placed before the bench by the respective parties including the orders of authorities below. It is clear from the orders of authorities below that the expenses were incurred and charged by the assessee to the profit and loss account as the amounts were settled during the year in the case of advertisement expense, foreign travel expenses, repair and maintenance, franchisee. We find that these expenses could not be charged to the profit and loss account as the bills were not settled due to dispute and finally due to interference of higher

authorities of the assessee, the bills were settled during the year which in our opinion were rightly charged to profit and loss account as the final quantification of the amount of expenses took place during the year. In view of these facts, we are of the considered view that the order of the Id.CIT(A) was not correct and is set aside and accordingly and we direct the AO to allow the expenses as pertaining to current year by deleting the disallowance.

ITA No.1157/Mum/2013

27. Only issue raised by the revenue pertains to deletion of disallowance of Rs.36,03,439/- made on account of lease rent paid to the subsidiary.

28. We have already discussed this issue in ITA No.813/Mum/2014 and dismissed the appeal of the revenue on identical ground, hence the decision taken therein would mutatis mutandi apply to this case too. Hence, the appeal of the revenue is dismissed for the reasons stated therein above.

29. In the result, appeal of the assessee bearing ITA No.7098/Mu/2013 is allowed, ITA No.813/Mum/2014 of the Revenue is dismissed, ITA No.507/Mum/2013 is allowed and that of ITA No.1157/Mum/2013 stands dismissed.

Order pronounced in the open court on 28th Feb, 2017.

Sd

sd

(महाविर सिंग /Mahavir Singh)
न्यायिक सदस्य / Judicial Member

(राजेश कुमार /Rajesh Kumar)
लेखा सदस्य / Accountant Member

मुंबई Mumbai; दिनांक Dated : 28.2.2017
SRL,Sr.PS

आदेश की प्रतिलिपि अग्रेषित/Copy of the Order forwarded to :

1. अपीलार्थी / The Appellant
2. प्रत्यर्थी / The Respondent
3. आयकर आयुक्त(अपील) / The CIT(A)
4. आयकर आयुक्त / CIT – concerned
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, मुंबई / DR, ITAT, Mumbai
6. गार्ड फाईल / Guard File

True copy

आदेशानुसार/ BY ORDER,

उप/सहायक पंजीकार (Dy./Asstt. Registrar)
आयकर अपीलीय अधिकरण, मुंबई / ITAT, Mumbai