

आयकर अपीलिय अधिकरण, 'डी' न्यायपीठ, चेन्नई  
IN THE INCOME TAX APPELLATE TRIBUNAL  
'D' BENCH : CHENNAI

श्री एन.आर.एस. गणेशन, न्यायिक सदस्य एवं  
श्री अब्राहम पी. जॉर्ज, लेखा सदस्य के समक्ष।  
[BEFORE SHRI N.R.S. GANESAN, JUDICIAL MEMBER AND  
SHRI ABRAHAM P. GEORGE, ACCOUNTANT MEMBER]

आयकर अपील सं./I.T.A. No. 385/Mds/2017  
निर्धारण वर्ष /Assessment year : 2009-2010.  
& S.P. No. 39/Mds/2017.

M/s. United India Exporters,  
73, Purswalkam High Road,  
Chennai 600 007.

**Vs.**

The Assistant Commissioner of  
Income Tax,  
Business Circle 7,  
Chennai.

[**PAN AAFU 8010G**]  
(अपीलार्थी/Appellant)

(प्रत्यर्थी/Respondent)

अपीलार्थी की ओर से/ Appellant by : Shri. K. Ravi, Advocate  
प्रत्यर्थी की ओर से /Respondent by : Smt S. Vijayaprabha, IRS, JCIT  
सुनवाई की तारीख/Date of Hearing : 09-11-2017  
घोषणा की तारीख /Date of : 27-11-2017  
Pronouncement

**आदेश / ORDER**

**PER ABRAHAM P. GEORGE, ACCOUNTANT MEMBER**

Assessee in this appeal assails an order dated 11.11.2016 of  
Id. Commissioner of Income Tax (Appeals)-10, Chennai. Grounds  
raised by the assessee are on a disallowance of interest of

Rs.7,25,910/, addition for undervaluation of stock Rs.17,99,213/- and disallowance of Rs.3,45,000/- u/s.40(a)(ia) of the Act.

**2.** Facts apropos are that assessee an exporter of film and audio rights had filed a return of income for the impugned assessment year disclosing income of Rs.75,90,460/-. During the course of assessment proceedings, it was noticed by the Id. Assessing Officer that partners of the assessee firm had withdrawn money in excess of their capital contribution. As per the Id. Assessing Officer assessee had taken loans from outside parties and paid interest of Rs.7,25,910/- thereon. Since the partners had not paid interest on their withdrawals, Id. Assessing Officer was of the opinion that interest of Rs.7,25,910/- paid by the assessee to its loan creditors could not be allowed.

**3.** Ld. Assessing Officer also noted that assessee had acquired audio and video rights of various films. As per the Id. Assessing Officer valuation of the digital rights were not correctly valued. Further, as per the Id. Assessing Officer closing stock of theatrical and digital rights were undervalued by Rs.17,99,213/-.

- 4.** Ld. Assessing Officer, also noted that assessee had made various payments without deducting TDS warranting disallowance u/s.40(a)(ia) of the Act.
- 5.** Assessment was thereafter completed by making disallowance of interest Rs.7,25,910/-, addition for undervaluation of stock Rs.17,99,213/- and disallowance of Rs.3,45,000/- u/s.40(a)(ia) of the Act.
- 6.** Aggrieved, assessee moved in appeal before the Id. Commissioner of Income Tax (Appeals). Contention of the assessee viz-a-viz interest disallowance was that partners account had only credit balance in the aggregate. As per the assessee there was no nexus between loans availed by it and drawings made by the partners.
- 7.** Viz-a-viz, addition for undervaluation of closing stock, argument of the assessee was that valuation of theatrical rights had be done as per Rule 9A and 9B of the Income Tax Rules, 1962. As per the assessee for non theatrical rights it had adopted a valuation based on the aging of such rights.

**8.** Viz-a-viz, disallowance made u/s.14A of the Act, one of the arguments of the assessee was that the recipients had paid taxes on such amount and therefore disallowance could not be made considering the amendment to Sec. 40(a)(ia) of the Act through Finance Act No.2012.

**9.** Ld. Commissioner of Income Tax (Appeals) after considering the submissions held that disallowance of interest on account of overdrawing made by the partners was rightly done by the Id. Assessing Officer. As per the Id. Commissioner of Income Tax (Appeals) partners of the assessee firm had over drawn money from the firm without paying any interest, whereas assessee had paid interest on loans taken by it. In so far as issue regarding undervaluation of closing stock was concerned, Id. Commissioner of Income Tax (Appeals) directed the Id. Assessing Officer to examine the contentions of the assessee and recompute the value of the closing stock. Viz-a-viz disallowance u/s.40(a)(ia) of the Act, Id. Commissioner of Income Tax (Appeals) held that assessee could not produce any evidence to substantiate its contention that recipients had paid taxes on such amounts.

**10.** Now before us, the Id. Authorised Representative strongly assailing the order of the Id. Commissioner of Income Tax (Appeals) submitted that detailed submissions made by the assessee on each of the issues, before the lower authorities were not properly considered. As per the Id. Authorised Representative, there was no nexus between the amounts drawn by the assessee partners and interest bearing loans taken by the assessee. In so far as disallowance u/s. 40(a)(ia) of the Act was concerned, submission of the Id. Authorised Representative was that assessee was never given a chance to substantiate its contention that payee had paid taxes on such amounts.

**11.** Per contra, Id. Departmental Representative strongly supported the orders of the authorities below.

**12.** We have considered the rival contentions and perused the orders of the authorities below. In so far as disallowance of interest is concerned, there is nothing on record which would show what was the amount borrowed by the assessee during the relevant previous year on which interest was paid by it. Id. Assessing Officer had not examined the nexus between such borrowed amounts and drawings made by the partners of the assessee. No doubt, drawings made by

partners in excess of his capital contribution can result in pro-rata disallowance of interest on loans borrowed by the assessee. However, in our opinion the facts relating to this issue has not properly examined by the lower authorities.

**13.** Viz-a-viz under valuation of the theatrical and digital rights of films, Id. Commissioner of Income Tax (Appeals) had set aside the order of the Id. Assessing Officer with the following comments:-

*“5.3.2. It is clear from the AR's submission that the AO has not considered the stock valuation in all the items. The appellant's submission that the AO has not appreciated the facts correctly is prima facie acceptable. However, in spite of several opportunities given, the appellant could not submit quantitative analysis and stock valuation. As mentioned above under para 2.1., the appellant did not appear on both the occasions of final hearing posted by the CIT(A). Under the circumstance, the AO is directed to examine the appellant's submission as mentioned above and to re-compute the closing stock valuation as per the provisions of Section 145 and Section 145A of the Income Tax Act, 1961. In view of the above remarks, the appellant's ground on this issue is partly allowed”.*

In our opinion, Id. Commissioner of Income Tax (Appeals) having set aside the issue to the file of the Id. Assessing Officer for considering the submissions of the assessee, grievance raised by the assessee on this is ill convinced.

**14.** Viz-a-viz, disallowance u/s. 40(a)(ia) of the Act, assessee can definitely take refuge to second provision to Sec.40(a)(ia) of the

Act, if it can show that recipients had paid taxes on the amounts received by them from the assessee without deduction of tax.

**15.** Accordingly, we set aside the orders of the lower authorities below on the issues relating to disallowance of interest Rs.7,25,910/- and disallowance of Rs.3,45,000/- made u/s.40(a)(ia) of the Act and remit these back to the file of the Id. Assessing Officer for consideration afresh in accordance with law.

**16.** In the result, the appeal of the assessee is partly allowed for statistical purpose.

**17.** Stay petition having become infructuous is dismissed.

Order pronounced on Monday, the 27th day of November, 2017, at Chennai.

Sd/-

(एन.आर.एस. गणेशन)

**(N.R.S. GANESAN)**

**न्यायिक सदस्य/JUDICIAL MEMBER**

Sd/-

(अब्राहम पी. जॉर्ज)

**(ABRAHAM P. GEORGE)**

**लेखा सदस्य/ACCOUNTANT MEMBER**

चेन्नई/Chennai

दिनांक/Dated: 27th November, 2017

**KV**

आदेश की प्रतिलिपि अग्रेषित/Copy to:

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|--------------------------|------------------------------|-------------------------|
| 1. अपीलार्थी/Appellant   | 3. आयकर आयुक्त (अपील)/CIT(A) | 5. विभागीय प्रतिनिधि/DR |
| 2. प्रत्यर्थी/Respondent | 4. आयकर आयुक्त/CIT           | 6. गार्ड फाईल/GF        |