

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

BEFORE SHRI R.C. SHARMA (AM) AND SHRI RAM LAL NEGI (JM)

**ITA No. 5729/MUM/2015
Assessment Year: 2011-12**

The Income Tax Officer – 16(1)(1), Room No. 436A, 4 th Floor, Aayakar Bhavan, M.K. Marg, New Marine Lines, Mumbai - 400020	Vs.	M/s B R TV., Anand Villa, Plot No. G-38, 15 th Road, Santacruz (West), Mumbai - 400054 PAN: AAAFB0941M
(Appellant)		(Respondent)

Revenue by : Shri Suman Kumar (DR)
Assessee by : Shri Hari S. Raheja (AR)

Date of Hearing: 12/03/2018
Date of Pronouncement: 31/05/2018

ORDER

PER RAM LAL NEGI, JM

This appeal has been filed by the revenue against order dated 02.09.2015 passed by the Ld. Commissioner of Income Tax (Appeals)-4, Mumbai, for the assessment year 2011-12, whereby the Ld. CIT (A) has partly allowed the appeal filed by the assessee against assessment order passed u/s 143(3)(ii) of the Income Tax Act, 1961 (for short 'the Act').

2. Brief facts of the case are that the assessee firm filed its return of income for the assessment year under consideration declaring loss of Rs. 14,55,761/-. The return was processed u/s 143 (1). Since, the case was selected for scrutiny, notice u/s 143 (2) (ii) and 142 (1) were issued and served upon the assessee. In response to the said notices, the authorized representative (AR) filed the details called for by the AO and discussed the case. It was noticed that during the financial year relevant to the assessment year under consideration,

the assessee firm entered into agreements with eight parties for sale of right of old TV Serials, produced by the firm. As per the agreements, the assessee delivered the Films and Tapes and out of the total agreement value of Rs. 1,83,47,000/-, the assessee offered first year of booking income amounting to Rs. 18,59,097/- and the rest of the amount was shown in balance sheet. Accordingly, the AO asked the assessee as to why the entire agreement value should not be brought to tax in the current assessment year. The AR relying on the decision of the Mumbai Bench of ITAT in ITA No. 3632/Mum/2012 dated 14.01.2015 submitted that the rights would comments in respect of each of the films on different dates and accordingly the assessee has offered the remaining income in the subsequent years. The AO rejecting the contention of the assessee made addition of the balance amount of Rs. 1,64,87,903/- to the income of the assessee. The AO also made addition of Rs. 68,400/- u/s 2(24)(x) read with section 36(1)(va) of the Act on the ground that the assessee has not made the deposit of Employees Contribution of Provident Fund within the prescribed time. The assessee challenged the assessment order before the Ld. CIT (A). The Ld. CIT (A) after hearing the assessee deleted both the additions. The revenue is in appeal against the findings of the Ld. CIT (A).

3. The revenue has challenged the impugned order passed by the Ld. CIT (A) by raising the following effective grounds:-

1. *“Whether on the facts and in the circumstances of the case and in law, the Ld. CIT (A) was justified in holding that the whole of the income of Rs. 1,83,47,000/- derived from sale of rights to telecast old TV serials produced by the firm did not accrue to the assessee during the previous year 2010-11 but should be spread over the period of agreement in each case.*

2. *Whether on facts and in circumstances of the case and in law, the Ld. CIT (A) was justified in deleting addition of Rs. 68,400/- to the*

income of assessee for late payment of contribution to Employees Provided Fund”.

4. Before us, the Ld. Departmental Representative (DR) relying on the assessment order passed by the AO submitted that since the assessee firm had discharged its entire obligation by making delivery of the Films and Tapes to the parties concerned, the AO has rightly made the addition in question. Hence, the Ld. CIT(A) has wrongly deleted the addition in question.

5. On the other hand, the Ld. counsel for the assessee submitted that since the Ld. CIT (A) has passed the order in question by following the decision of the ITAT, Mumbai rendered in the case of B.R. Films Vs. ACIT, ITA No. 3632/Mum/2012 for the A.Y. 2008-09, in which the Tribunal has decided the identical issue in favour of the assessee, there is no infirmity in the order of the Ld. CIT (A) to interfere with the same. Therefore, the appeal filed by the revenue is liable to be dismissed being devoid of merit.

6. We have heard the rival submissions and also perused the material on record. Vide the first ground of appeal the assessee has challenged the action of the Ld. CIT (A) in holding that the whole of the income of Rs. 1,83,47,000/- derived from sale of rights to telecast old TV serials produced by the firm did not accrue to the assessee during the previous year 2010-11 but should be spread over the period of agreement in each case. The Ld. CIT (A) has decided the said issue in favour of the assessee holding as under:-

“3.3 I have considered the issue under appeal carefully, I find that these TV Serials namely, Mahabharat, Mahabharat Katha, Vishnu Puraan and Maa Shakti had been given to the 8 Companies for 2 to 6 years, hence entire amount cannot be taxed in one year. Ld. A.O. has mentioned the fact of date of agreement and period of show/telecast for 2 to 6 years, hence entire proceed cannot be presumed to be accrued in this very year. I find that identical issue

was there in the case of B.R. Films Vs. ACIT-11(1) ITA No. 3632/Mum/2012-13 dated 14.01.2015. Respectfully following the decision of Hon'ble ITAT, the A.O. is directed to delete the addition of Rs. 1,64,87,903/-."

7. We notice that the coordinate Bench has decided the identical issue in favour of the assessee in the case of B.R. Films Vs. ACIT(Mum) (supra). Since, the Ld. CIT (A) has decided this issue by following the decision of the coordinate Bench in ITA No. 3632/Mum/2012 (supra), we do not find any infirmity in the order passed by the Ld. CIT (A). We accordingly uphold the order passed by the Ld. CIT (A) and dismiss this ground of appeal of the revenue.

8. Vide Ground No. 2, the revenue has challenged the action of the Ld. CIT (A) in deleting addition of Rs. 68,400/- to the income of the assessee for late payment of contribution to Employees Provident Funds.

9. The Ld. DR relying on the findings of the AO submitted that since the assessee had failed to timely deposit the contribution the Employees Contribution, the AO has rightly made the addition, therefore the finding of the Ld.CIT(A) is erroneous and liable to be set aside.

10. The Ld. CIT (A) has deleted the addition made addition of Rs. 68, 400/- holding as under:-

"5.3 I have considered the issue under appeal carefully, I find that payment of contribution of Provident Fund and ESIC, totaling to Rs. 68,400/- has been deposited by the appellant either in the same F.Y. or before filing return of income on 30.09.2011. Hence, such expenditure cannot be disallowed. Thus, the A.O. is directed to delete the amount of Rs. 68,400/-."

11. As per the findings of the Ld. CIT (A), the assessee has deposited the said amount either in the same F.Y. or before filing return of income on 30.09.2011.

12. Since, the assessee has deposited the entire amount, we agree with the Ld. CIT (A) and hold that such expenditure cannot be disallowed. In our considered view, the Ld.CIT (A) has rightly deleted the addition made by the AO. We accordingly uphold the findings of the Ld. CIT (A) and dismiss this ground of appeal of the revenue.

In the result, appeal filed by the revenue for assessment year 2011-2012 is dismissed.

Order pronounced in the open court on 31st May, 2018.

Sd/-

(R.C. SHARMA)

ACCOUNTANT MEMBER

मुंबई Mumbai; दिनांक Dated: 31/05/2018

Sd/-

(RAM LAL NEGI)

JUDICIAL MEMBER

Alindra, PS

आदेश 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
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, मुंबई /
DR, ITAT, Mumbai
6. गार्ड फाईल / Guard file.

आदेशानुसार/ BY ORDER,

सत्यापित प्रति //True Copy//

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