

**IN THE INCOME TAX APPELLATE TRIBUNAL “SMC” BENCH, MUMBAI
BEFORE SHRI G.S. PANNU, AM AND SHRI PAWAN SINGH, JM**

ITA No.1867/Mum/2018 Assessment Year 2011-12

M/s. Rising Star Entertainment Pvt. Ltd. 802, Ocean View, 8 th Floor, Union Park, Bandra (W) Mumbai-400 050.	Vs.	Income tax Officer-16(1)(5) Room No.704, C-11, Aayakar Bhavan Bandra Kurla Complex, Bandra (E) Mumbai -400 051.
PAN :AAECR 0848 N		
(Appellant)	..	(Respondent)

Appellant by	Shri S. Sriram
Respondent by	Shri S.K. Bepair- Sr.DR

Date of Hearing	07/08/2018
Date of Pronouncement	07 /08/2018

ORDER

Per Pawan Singh , Judicial Member:

1. This appeal by assessee is directed against the order of Id. Commissioner of Income-tax(Appeals)-7, Mumbai [Id. CIT(A)] dated 15/01/2018 for Assessment Year 2011-12, which in turn arises from assessment order dated 29/03/2015 passed u/s. 143(3) r.w.s. 147 of the Income tax Act, 1961(the Act).
2. The brief facts of the case are that the assessee is a company engaged in production of feature films. No return of income was filed by the assessee, the Assessing Officer on the basis of statement from AS-26 came to know that the assessee has received a sum of Rs.3,94,250/- from Reliance Media Works Pvt. Ltd. Hence, the case of the assessee was re-opened by issuing notice u/s. 148. The assessment was completed on 29/3/2015 u/s. 143(3)

- r.w.s. 147 of the Act. The Assessing Officer while passing assessment order besides other additions made an addition of Rs. 10.00 lakhs on account of unsecured loans, addition of Rs.3,77,382/- being 20% of expenses incurred in cash, addition of Rs.11,25,000/- on account of cash deposit in bank account and addition Rs.38,812/- u/s 68 being 10% of expenses on account of electricity, office repair and maintenance and bank charges.
3. On appeal before CIT(A), action of Assessing Officer in re-opening as well as in making various additions was sustained. Further aggrieved by the order of the Id. Commissioner of Income tax (Appeals) assessee has filed present appeal before us.
 4. At the outset of hearing, the Id. AR for assessee submits that he is not pressing Ground No.1 and 6. Considering the submission of the Id. AR for the assessee Ground No.1 and 6 of the appeal are dismissed as not pressed.
 5. Ground No.2 relates to addition of Rs.10.00 lakhs on account of unsecured loan. The Id. AR of the assessee submits that the assessee has taken unsecured loan from M/s. Unisys Info Solution Pvt. Ltd. The assessee could not produce supporting documents before the Assessing Officer, however, before Id CIT(A) the assessee produced sufficient documentary evidence in form of Memorandum of Settlement (MOS) dated 13/10/2016 between the assessee and creditor M/s. Unisys Info Solution Pvt. Ltd. The

assessee proved the identity of the party, credit worthiness of the party and genuineness of transaction.

6. On the other hand, the Id. DR for the revenue supported the orders of authorities below. The Id. DR further submits that the assessee neither proved identity of the party, nor credit worthiness of the party nor genuineness of the transaction. The assessee failed to substantiate its contention; therefore addition was confirmed by the Id. CIT (A).
7. We have considered the rival submissions and perused the material placed before us. The Assessing Officer made addition of Rs.10.00 lakhs on his observation that the assessee has not produced any supporting evidence, before the CIT(A) the assessee contended that it entered into MOS with M/s. Unisys Info Solution Pvt. Ltd. which pertains to some dispute between the parties, acknowledging the transaction. The contention of the assessee was not accepted by the Id. CIT(A), holding that MOS pertains to some dispute between the parties. They do not deal with any loan transaction. The Ld. CIT(A) concluded that the assessee failed to prove identity of the creditor, credit worthiness of the creditor and genuineness of the transaction and hence confirmed the action of the AO. Before us, Id. AR has placed on record Memorandum of Settlement (MOS) dated 13/10/2016 allegedly executed between M/s. Unisys Info solutions Pvt. Ltd. and the assessee (Page 75-77 of the PB). A perusal of this

- Memorandum of Settlement reveals that it does not bear signature of First party i.e., M/s. Unisys Infosolutions Pvt. Ltd., therefore the contents of this MOS has no sanctity. Moreover, the MOS does not show that there was any loan transaction between the assessee and said party during the Financial Year relevant to Assessment Year 2011-12. Considering the factual matrix of the case we do not find any merit in the submission of Id.AR for the assessee. The Id.AR accordingly failed to prove the unsecured loan transaction of Rs.10.00 lakhs between the assessee and M/s. Unisys Infosolutions Pvt. Ltd. Hence, Ground of appeal No.1 raised by the assessee is dismissed.
- 8.** Ground No.3 relates to addition on account of cash deposit of Rs.11.25 lakhs. The Ld.AR submits that the assessee was having sufficient cash with them. Cash was deposited from earlier withdrawals. The Ld. AR further submits that he has placed on record the details of cash in hand and has filed the same vide page No.47 to 54 of the Paper book.
- 9.** On the other hand the Ld. Departmental Representative for the rev supported the order of lower authorities. The Ld. AR further submitted that the assessee failed to prove the source of cash deposits in bank account in Indian Overseas Bank and Ing Vysya Bank.
- 10.** We have considered the rival submissions and perused the material available on record. The Assessing Officer made an addition on his

observation that no documentary evidence was furnished by the assessee about the cash withdrawal from other bank account of the assessee. During the first appellate stage the Ld. CIT(A) also observed that no explanation or submission has been made by the assessee. Before us, the assessee has filed cash flow statement, (Page-47 to 54 of the Paper Book) however, the assessee has claimed that the withdrawal of cash are from Ing Vysha Bank and The Federal Bank. The ld. AR For the assessee has certified that the statement of cash in hand was furnished before the assessing officer. We have seen that the assessing officer and the ld CIT(A) has not given any finding on the documentary evidences furnished by the assessee. Considering the relevancy of the cash flow statement this ground of appeal is restored to the file of assessing officer to verify the facts and grant appropriate relief to the assessee. In the result this ground of appeal is allowed for statistical purpose.

- 11.** Ground No.4 relates to disallowance of 20% of cash expenses. The ld. AR submits that AO made the addition on adhoc basis. The ld. AR prayed for deleting the entire addition. On the other hand the ld. DR submits that assessee has not given any explanation about cash expenses which exceeded Rs.20,000/-.
- 12.** We have considered the rival submission of the parties and have gone through the orders of authorities below. During the assessment, the AO

noted that the assessee has made cash expenses of Rs.18,86,909/-. The assessee was asked to explain and substantiate the expenses incurred in cash. The assessee filed its reply dated 23/03/2015. In the reply the assessee contended that some of the cash expenses did not exceed Rs.20,000/-, paid in one day to one person and the same should not be added. It was further contended that some of the cash expenses were paid to more than one person like wages paid to spot boys, petrol and diesel expenses. It was also contended that some of the payments were made to sundry creditors. The AO after considering the submission of the assessee disallowed 20% of the cash expenses claimed by the assessee on his observation that the claim of the assessee is not fully verifiable. The Id. CIT(A) confirmed the action of the Assessing Officer on his observation that the order of AO is a speaking one. Before us, the Id. AR for the assessee submits that the disallowance was made on ad hock basis. We have noted that the assessee has placed on record the details of expenses incurred by the assessee at page No. 58 to 74 of the paper book. We have noted that the assessing officer as well as the Id CIT(A) has not disputed the genuinity of the expenses incurred by the assessee, therefore we do not find any justification in disallowing the expenses incurred by the assessee. Hence, the ad hock disallowance made by the lower authority is deleted. The assessing officer is directed accordingly.

13. Ground No.5 relates to disallowance of 10% of various expenses incurred in cash. The Ld. AR for the assessee submits that the AO made adhoc disallowance without specifying any specific reason. On the other hand the ld. DR supported the order of lower authorities.
14. We have considered the submission of both parties and gone through the material placed before us. During the assessment the Assessing Officer noted that the assessee has claimed following expenses:-

<i>Expenses</i>	<i>Amount(Rs.)</i>
<i>Electricity Expenses</i>	<i>79,460/-</i>
<i>Office Expenses</i>	<i>10,238/-</i>
<i>Repairs and Maintenance Expenses</i>	<i>19,668/-</i>
<i>Bank Charges</i>	<i>2,68,517/-</i>
<i>Total</i>	<i>3,88,121/-</i>

15. The assessee was asked to submit detail of expenses. On perusal of the detail of expenses furnished by the assessee, the AO noted that expenses are made in cash and authenticity of the expenses is not verifiable. Therefore, 10% of such expenses were disallowed. The Ld. CIT(A) confirmed the action of the AO holding that no explanation was furnished during the appellate proceedings. Before us, the ld. AR for the assessee submits that the disallowance was made on ad hock basis. We have noted that the assessee has placed on record the details of expenses incurred by the assessee at page No. 30 to 46 of the paper book. We have noted that the expenses claimed by the assessee are general expenses which are usually incurred in the business activity, therefore we do not find any justification in disallowing the expenses incurred by the assessee. Hence, the ad hock

disallowance made by the lower authority is deleted. The assessing officer is directed accordingly.

16. In the result, appeal filed by the assessee is partly allowed.

Order pronounced in the open court on 07.08.2018.

Sd/-
(G.S. PANNU)
ACCOUNTANT MEMBER
Mumbai; Dated: 07/08/2018
Jv.Sr.PS.

Sd/-
(PAWAN SINGH)
JUDICIAL MEMBER

Copy of the Order forwarded to :

- 1.Appellant /अपीलार्थी
2. Respondent /प्रत्यर्थी
- 3.The concerned CIT(A)/संबद्ध अपीलीय आयकर आयुक्त,
- 4.The concerned CIT /संबद्ध आयकर आयुक्त
- 5.DR "SMC " Bench, ITAT, Mumbai /विभागीय प्रतिनिधि, खंडपीठ,आ.अ.न्याया.मुंबई
- 6.Guard File/गार्ड फाईल

आदेशानुसार/ **BY ORDER,**
उप/सहायक पंजीकार **Dy./Asst. Registrar**
आयकर अपीलीय अधिकरण, मुंबई /ITAT, Mumbai.