

IN THE INCOME TAX APPELLATE TRIBUNAL
"C" BENCH : BANGALORE

BEFORE SHRI B.R BASKARAN, ACCOUNTANT MEMBER AND
SMT. BEENA PILLAI, JUDICIAL MEMBER

ITA No.2633/Bang/2017

Assessment year : 2008-09

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| E Krishnappa Prop : M/s E.K Entertainers & E.K Land Developers, No.1, Adakamaranahalli, Makali Post.21 st KM, Tumkur Road, Bengaluru-562 123. PAN – AFFPK 2791 A. | Vs. | The Income-tax Officer, Ward-2(2)(2), Bengaluru. |
| APPELLANT | | RESPONDENT |

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| Appellant by | : | Smt. Pratibha R, Advocate |
| Respondent by | : | Dr. P.V Pradeep Kumar, Addl. CIT (DR) |

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| Date of hearing | : | 06.08.2019 |
| Date of Pronouncement | : | 07.08.2019 |

ORDER

Per B.R Baskaran, Accountant Member

The appeal of the assessee is directed against the order dated 17-08-2017 passed by Ld CIT(A)-2, Bengaluru and it relates to the assessment year 2008-09. The assessee is aggrieved by the decision of Ld CIT(A) in confirming the addition of Rs.90.10 lakhs relating to revenue collections and disallowance of expenses of Rs.110.00 lakhs.

2. The assessee is engaged in the business of production of films under the name and style M/s E K Entertainers. He is also engaged in the business of development of lands in the name of E.K land developers. Both the above said issues relate to the business of production of films.

3. The revenue carried out a Survey operation in the hands of the assessee on 18-07-2007. During the course of survey operations, the assessee had declared income of Rs.631.95 lakhs for AY 2008-09. However, in the return of income, the assessee declared only Rs.424.36 lakhs. On examination of details, the AO noticed that there was a difference of Rs.90.10 lakhs in the "Collection account", i.e., the collection was shown less. Hence the assessee was asked to reconcile the difference.

4. The assessee submitted that during the course of survey operations on 18-07-2007, he had admitted income of Rs.631.95 lakhs, which included collections for the period from the date of survey to 31.3.2008 also, which was estimated at Rs.2.00 crores. It was submitted that the actual collection has fallen down and hence there was shortfall in the income from Collections to the tune of Rs.90.10 lakhs. However, the assessee did not furnish Demand and Collection Register before the AO to substantiate his explanations. Hence the AO made addition of Rs.90.10 lakhs to the total income of the assessee.

5. The AO further noticed that the assessee has claimed expenses to the tune of Rs.110.00 lakhs, which included expenses of

Rs.50.00 lakhs towards wall posters and Rs.10.00 lakhs towards Silver jubilee celebrations. Since the assessee did not furnish vouchers, the AO disallowed the above said amount of Rs.110.00 lakhs. The AO also observed that the assessee has not deducted TDS from the above said expenses and hence the provisions of sec.40(a)(ia) will also apply.

6. Before Ld CIT(A), the assessee furnished reconciliation statements to substantiate his claim of shortfall in collections. However, the Ld CIT(A) observed that lower declaration of income is not attributable to lower collections. The Ld CIT(A) also confirmed the disallowance of expenses of Rs.110.00 lakhs also u/s 40(a)(ia) of the Act. With regard to the disallowance made for non-production of vouchers, the Ld CIT(A) did not give any decision.

7. We heard the parties and perused the record. We shall first take up the issue of addition of Rs.90.10 lakhs on account of shortfall in collections revenue. We notice that the assessee has furnished reconciliation statement before the Ld CIT(A), but the first appellate authority has not examined it. We also notice that the assessee has failed to furnish the Demand and Collection Register before the AO to substantiate its claim, even though he has filed a reconciliation statement on the basis of above register before the Ld CIT(A). Under these set of facts, we are of the view that this issue requires fresh examination at the end of the AO. Accordingly, we set aside the order passed by Ld CIT(A) on this issue and restore the same to the file of the AO for examining it afresh. We also direct the assessee to produce Demand and Collection Register before the

AO and/or other documents to substantiate its claim of shortfall in the collections.

8. With regard to the disallowance of expenses, the Ld A.R submitted that the assessee has claimed expenses to the tune of Rs.1,08,30,057/- only under the head "Post Production expenses". However, the AO has adopted a round sum of Rs.110.00 lakhs for making disallowance. She further submitted that many of the expenses do not attract TDS provisions. She submitted that the assessee may be given an opportunity to produce the relevant vouchers before the AO.

9. We heard Ld D.R and perused the record. We notice that the AO had disallowed the expenses to the tune of Rs.110.00 lakhs on account of non-production of vouchers and also by applying the provisions of sec.40(a)(ia) of the Act. We were shown that the post production expenses claimed by the assessee were only Rs.108.30 lakhs only. The Ld A.R has sought an opportunity to produce the relevant vouchers and also submitted that many of the expenses do not attract TDS provisions and hence disallowance u/s 40(a)(ia) is not warranted.

10. In view of the above, we are of the opinion that this issue also requires examination at the end of AO. Accordingly, we set aside the order passed by Ld CIT(A) on this issue and restore the same to the file of the AO for examining it afresh.

11. After affording adequate opportunity of being heard, the AO may take appropriate decision in accordance with law.

12. In the result, the appeal of the assessee is treated as allowed for statistical purposes.

Order pronounced in the Open Court on **7th August, 2019.**

Sd/-
(Beena Pillai)
Judicial Member

Sd/-
(B.R Baskaran)
Accountant Member

Bangalore,
Dated, 7th August, 2019.

/ vms /

Copy to:

1. The Applicant
2. The Respondent
3. The CIT
4. The CIT(A)
5. The DR, ITAT, Bangalore.
6. Guard file

By order

Asst. Registrar, ITAT, Bangalore.

1. Date of Dictation
2. Date on which the typed draft is placed before the dictating Member
3. Date on which the approved draft comes to Sr.P.S
4. Date on which the fair order is placed before the dictating Member
5. Date on which the fair order comes back to the Sr. P.S.
6. Date of uploading the order on website.....
7. If not uploaded, furnish the reason for doing so
8. Date on which the file goes to the Bench Clerk
9. Date on which order goes for Xerox & endorsement.....
10. Date on which the file goes to the Head Clerk
11. The date on which the file goes to the Assistant Registrar for signature on the order
12. The date on which the file goes to dispatch section for dispatch of the Tribunal Order