

IN THE INCOME TAX APPELLATE TRIBUNAL  
AMRITSAR BENCH, AMRITSAR

BEFORE SH. B.R. BASKARAN, ACCOUNTANT MEMBER AND  
SH. N.K.CHOUDHRY, JUDICIAL MEMBER

**ITA No.327(Asr)/2017**  
Assessment Year:2012-13

Best Film Corporation  
31, 2<sup>nd</sup> Floor  
Sant Ishar Singh Nagar  
Pakhawal Road  
Ludhiana

[PAN:AAKFB 1288K]

**(Appellant)**

Vs.

Dy. CIT  
Central Circle-II  
Jalandhar

**(Respondent)**

Appellant by : Sh. Ashray Sarna (Ld. CA)  
Respondent by: Sh. Sandeep Chauhan (Ld. CIT- DR)

Date of hearing: 29.08.2019  
Date of pronouncement: 09.10.2019

**ORDER**

**PER N.K.CHOUDHRY, JM:**

The instant appeal has been preferred by the Assessee against the order dated 21.03.2017 impugned passed by the Ld. CIT(A)-5, Ludhiana u/s 250(6) of Income Tax Act, 1961 (hereinafter called as the 'Act') whereby the Ld. CIT(A) partly affirmed the assessment order passed u/s 153(C)/143(3) of the I.T. Act.

**2.** The brief facts of the case are that on the basis of search and seizure operation u/s 132 of the Act carried out on 5.12.2012,

statutory notices u/s 142(1) & 153A of the Act were issued to the assessee, in pursuance to which the assessee had filed its return of income declaring net income of Rs.11,33,290/- vide ITR dated 19.02.2015 which was subsequently revised on dated 07.03.2015 by declaring the returned income of Rs.24,73,790/- which was processed by the Assessing Officer and the Assessing Officer framed the assessment by determining the income of the assessee at Rs.82,43,678/- against the returned income of Rs.24,73,791/- and consequently, made an addition of Rs.57,69,887/- i.e. Rs.37,27,522/- qua difference between the minimum guarantee of overseas theatrical rights declared by the assessee in the return of income as per agreement found during the course of search and Rs.20,42,365/- qua disallowance of expenses claimed by the assessee on *ad hoc* and *estimation* basis. The assessee challenged the said additions before the Ld. CIT(A) who vide its order dated 21.03.2017 though sustained the addition of Rs.37,27,522/- on account of difference between the minimum guarantee of overseas theatrical rights as mentioned in the agreement found during the course of search, however, deleted the addition of Rs.20,42,365/- on account of disallowance of expenses claimed by the assessee on *ad hoc* and *estimation* basis.

**3.** The assessee, being aggrieved against the affirmation of addition of Rs.37,27,522/- stated above, preferred the instant appeal on the following grounds.

*“1. That the order passed by the Worthy CIT(A), Ludhiana dated 21.03.2017, is against the law and facts of this case.*

*2a). That the Worthy CIT(A), Ludhiana was erred in law and facts in upholding the addition of Rs.37,27,522/- ignoring the fact that assessee received only Rs.70,72,478/- against the minimum*

*guarantee of Rs.1,08,00,000/- as mentioned in the agreement found during the search.*

*2b). That the Worthy CIT(A), Ludhiana erred in law and facts in upholding addition of Rs.37,27,522/- by relying upon the agreement found & seized during search without any corroborative material which proves that assessee received the consideration more than that declared in return of income.”*

**4.** Having heard the parties at length and perused the material available on record. The assessee is aggrieved against the addition of Rs.37,27,522/- made by the Assessing Officer qua suppression of receipts in this case. An agreement (MOU) was executed between M/s Dream World Entertainment and the Assessee qua overseas theatrical rights for overseas territories (except UK) for the Movie “Dharti” by virtue of which the assessee was supposed to get total consideration amount of Australian Dollars Rs.2,40,000/- at a minimum rate of 45 per Dollar thereby totaling to Rs.1,08,00,000/-. The assessee claimed during the assessment proceedings that picture was flop and collection of the film was not up to the satisfaction of the distributor so distributor paid only Rs.70,72,478.06 only and deducted the balance amount as rebate and discount. Further the money received from sale of overseas theoretical rights for overseas territories amounting to Rs.47,97,116/- and Rs.22,76,362.06 was credited in the respective accounts of the respective persons. The assessee also submitted the confirmation in the shape of e-mail received from the second party of the MOU i.e. M/s Dream World Entertainment. Both the authorities below observed that as per agreement the assessee was supposed to get minimum guaranteed amount of Rs.1,08,00,000/- (Indian Rupees) and full amount to be paid by 15<sup>th</sup> April, 2011 and mode of payment has not been prescribed in the MOU

and in the MOU it is nowhere mentioned that in case of loss, the minimum guarantee amount would be reduced. With regard to the confirmation through e-mail by the second party, it was observed by the authorities below that e-mail confirmation from the distributors/second party is a self serving document having no evidentiary value.

The assessee claimed before us that though as per agreement the minimum guarantee amount has been prescribed, however as the picture was flop and collection of the film was not upto the satisfaction of the distributor/second party, therefore, second party paid only Rs.70,72,478.06/- and deducted the balance amount as rebate and discount as per mutual understanding. We have analyzed the orders passed by the authorities below specifically the impugned herein, the Ld. CIT(A) has observed that in the agreement the mode of payment has not been mentioned and therefore there was no bar of payment of cash or any other mode if the amount was received through any other mode, it was not necessary that the evidence regarding the same would be found during the search. The Ld. CIT(A) further observed that the assessee could have received the payment overseas and utilized it then and there or it may have received payment in some other account which did not come to the knowledge of the Department at the time of search. Further the point regarding the claim of rebate and loss is also not found acceptable since the assessee has not shown, firstly the total box office collection from the exhibition of the film overseas and secondly no proof/document has been filed to show that it had made the legal claims against the distributor for recovery of the pending amount and the enforcement of the MOU dated 3<sup>rd</sup> Feb., 2011. The Ld. CIT(A) further observed that

the receipts from the film have to be taken at least to the extent of minimum guarantee amount assuming that there was no overflow profit which was to be shared in the ratio of 60:40.

In our considered view, the observation of the Ld. CIT(A) based on no documents or material, as the assessee has claimed that the parties to the agreement have mutually agreed for receiving the amount lower than the minimum guarantee amount and therefore, question of filing any legal claim against the distributor for recovery of the remaining amount Rs.37,27,522/- does not arise. Both the authorities below sidelined the e-mail confirmation from the second party and held that the said confirmation has no evidentiary value as it is only a self serving document. In our view, the confirmation from the second party was the best source to find out the exact figure which the assessee has received and which in the instant case the second party has replied by the sending email and there is nothing on record that the Assessing Officer has ever tried to summon the second party in order to confirm the veracity of transaction and/or e-mail. No doubt legal agreement has its own value and the legal actions depends upon the agreement/MOU, however, there is no bar to side line and/or amend and/or novation of agreement by way of written or otherwise orally for reaching to the just conclusion of the ultimate object(s) of the agreement, which in the instant case appears to be held orally. Even there is nothing on record to suggest that the assessee has received any other amount except Rs.70,72,478/- out of Rs.1,08,00,000/- and therefore, we are unable to find any substantive material to sustain the addition of Rs.37,27,522/-, consequently the addition under challenge is liable to be deleted, hence stands deleted.

**5.** In the result, the appeal filed by the Assessee stands allowed.

Order pronounced in the open Court on 09/10/2019.

Sd/-  
(B.R.BASKARAN)  
ACCOUNTANT MEMBER

Sd/-  
(N.K.CHOUDHRY)  
JUDICIAL MEMBER

Dated:09/10/2019.

/PK/ Ps.

Copy forwarded to:

1. The Appellant
2. The Respondent
3. The CIT
4. Then CIT(Appeals)
5. SR DR, I.T.A.T. Amritsar
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By Order