

**In the Income-Tax Appellate Tribunal,
Delhi Bench 'G', New Delhi**

**Before : Shri Amit Shukla, Judicial Member And
Shri B.R.R. Kumar, Accountant Member**

**ITA No. 1330/Del/2017
Assessment Year: 2012-13**

Vistaar Media Works Ltd., D-3, P3B, District Centre, Saket, New Delhi PAN- AACCV9099H (Appellant)	vs.	DCIT, Circle 26(2), New Delhi. (Respondent)
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Appellant by	None
Respondent by	Sh. N.K. Bansal, Sr. DR

Date of Hearing	19.09.2019
Date of Pronouncement	14.10.2019

ORDER

Per Amit Shukla, J.M.:

The aforesaid appeal has been filed by the assessee against the impugned order dated 26.10.2016 passed by the Id. CIT(A)-13, New Delhi for the quantum of assessment passed u/s. 143(3) of the IT Act for the assessment year 2012-13.

2. In the grounds of appeal, the assessee has raised following issues :

1. *That on the facts and circumstances of the case and in the Law, the CIT(A) has grossly erred in confirming the assessment of income at Rs.4,15,37,295 as made by the Assessing Officer (AO').*

2. *That on the facts and circumstances of the case and in the Law, the CIT(A) has grossly erred in confirming the addition of Rs.1,49,27,775 as made by the AO on account of undisclosed receipts.*

3. *That on the facts and circumstances of the case and in the Law the CIT(A) has grossly erred in confirming the addition of Rs. 2,22,82,245 as made by the AO on account of interest.*

4. *That on the facts and circumstances of the case and in the Law the CIT(A) has grossly erred in confirming the addition of Rs. 2,50,00,000 as made by the AO on account of advance received.*

5. *That on the facts and circumstances of the case the assessee was prevented by sufficient cause from undertaking compliance before the lower authorities pursuant to a situation of difficulty beyond the control of assessee.*

3. At the outset, it is seen that the assessee was served notice through registered post sent on 22.07.2019 fixing the date for hearing on 30.07.2019. Thereafter, the case was adjourned and again notice through RPAD was sent on 02.08.2019 fixing the date on 19.09.2019. However, none appeared on behalf of the assessee. Accordingly, the case is being decided exparte after considering the submissions made by the DR and after perusing the material on record. It is also pertinent to note that even before the CIT(A), the assessee did not attend the hearing and same has been decided exparte, which is evident from para 5 of the impugned order, wherein the Id. CIT(A) has mentioned that various notices issued to the assessee remained un-complied with.

4. The assessee company is engaged in the business of buying, exchanging and selling media and advertising space, across a multitude of media platforms.

5. In so far as addition of Rs.1,49,27,775/-, the Assessing Officer noted that the assessee has shown business income of Rs.18,50,000/- whereas in 26AS, statement revealed that the amount credited were Rs.1,67,77,775/- and accordingly, there was difference of Rs.1,49,27,775/- as per the income shown in the profit and loss account. Before the Id. Assessing Officer, in response to notice, the assessee did not furnish any explanation and Note 2C of the audited accounts dealing with the revenue recognition mentioned as under:

"C. REVENUE RECOGNITION

The company has entered into strategic agreements ("P&A Agreements") for financing of Print & Advertisement expenses ("P&A Expenses) of films produced by reputed producers.

These "P&A Agreements" entitles the company to recover the "P& A expenses" from the "Exploitation Proceeds" of the said film on Last in First Out basis, before recoupment of production cost by the producer of the film. In addition to recovery of "P&A Expenses", the company is entitled to get an agreed share of the "Overflow Exploitation Proceeds" as per the respective "P&A Agreements"

The "P&A Expenses" incurred for various projects is considered as revenue expenditure for that period. Recoveries against a particular "P&A

Agreement" would be considered as revenue from the said agreement, in the period of realization."

The Id. Assessing Officer observed that the assessee has not furnished any P & A agreement for financing of print and Advertisement expenses and P & A expenses incurred for various projects. Left with no option, the Assessing Officer has added the difference of Rs.1,49,27,775/-.

6. Further, the Assessing Officer noted that the assessee had debited an amount of Rs.2,22,82,245/- as interest under the head 'finance cost', which was paid to Religare Finvest Ltd. @ 20% per annum. The assessee has raised unsecured loan in the shape of inter corporate deposits and the balance outstanding as on 31.03.2012 was Rs.11,65,02,452/-. Out of these loans the assessee had advanced loans and advances to various parties and the balance outstanding as on 31.03.2012 was at Rs.8,70,58,837/-. Further, trade receivables of Rs.2,38,11,917/- was also outstanding. The Assessing Officer noted that no income/interest has been shown on the amounts advanced and thus, they were interest free advances. The Assessing Officer then noted that on one hand, huge expenditure has been incurred on account of interest which amounted to Rs.2,22,82,245/- and on the other hand, the assessee has given interest free loans and advances. Thus, there was diversion of interest bearing

fund for none business purpose. Again in response to show cause notice, no reply was filed. Accordingly, the Assessing Officer made the addition of Rs.2,22,82,245/-.

7. Lastly, the assessee company had advanced Rs. 2,50,00,000/- for printing and advertisement which was received from Vistaar Films Ltd. However, in response to show cause notice as to why the same should not be treated as income, the assessee has not furnished any explanation. The Assessing Officer made the addition after observing as under :

“As per audited accounts for the year ended 31/03/2012, the assessee company has shown advance of Rs.2,50,00,000 for print and advertisement in Schedule 7 under the head 'Other current liabilities'. The assessee filed letter dated 26/12/2014 stating that advance of Rs.2.50 crores was received from M/s Vistaar Films Ltd. The assessee was asked vide letter dated 12/01/2015 to furnish the explanation regarding nature of Advance of Rs 2.50 Crores received from Vistaar Films Ltd . The assessee was also asked to show cause as to why the same may not be treated as Income of the assessee. The assessee could not furnish any explanation about that. As per Note 2C of the audited accounts for the year ended 31.03.2012, quoted in Para 2 above, the company has entered into strategic agreements for financing of Print & Advertisement expenses of films produced by reputed producers. These "P&A Agreements" entitles the company to recover the "P& A expenses" from the "Exploitation Proceeds" of the said film on Last in First Out basis, before recoupment of production cost by the producer of the film. In addition to recovery of "P&A Expenses", the company is entitled to get an agreed share of the "Overflow Exploitation Proceeds" as per the respective "P&A Agreements the company has not furnished complete information alongwith documentary evidence and the case is getting barred by limitation on 31/03/2015, I

have no other alternative but to complete the case on the basis of material available on record. In view of the above, the amount of Rs.2.50 crore is held to be revenue from operations and not an advance and added to income of the assessee.”

8. In the statement of facts filed along with the appeal, the assessee had stated as under :

1) *Reconciliation of receipts as per profit and loss account with 26AS statement of RS. 1,49,27,775/- - During the year under reference, the assessee has earned business income of Rs. 18,50,000/- whereas 26AS statement reflects amount credited as Rs. 1,67,77,775/- having a difference of Rs. 1,49,27,775/- as compared to income as per profit and loss account and 26AS statement. This is due to that the TDS has been deducted by the other parties in the name of the company on the amount which does not form part of income of the company. Reasons are as below-*

a) Amount received from shahid Kapoor (Rs. 1,30,00,000/-) - The party has deducted TDS on recovery of expenses. This has been netted out in Schedule 14 of the profit and loss account.

b) One 97 Communications Ltd. (Rs. 27,57,500/-) - This does not form part of income as the company has raised invoice on behalf of M/s Mausam Films Ltd. and accordingly have accounted for in its balance sheet. The same has been adjusted in the related company account in the books of the assessee.

2) *Interest disallowed of Rs. 2,22,82,245/- - At the outset it is submitted that the company since its inception has been incurring losses and its accumulated losses as on 31st March 2012 is Rs. 13,94,39,149/-. It is submitted that it had a share capital of Rs. 5,00,000/- which has been completely eroded by the accumulated losses of the company. Therefore, for the purpose of the carrying on its business and meeting its day to day expenses, the company had taken inter-corporate loan at different interest rates from M/s Religare Finvest Ltd. and as on 31st March 2012 the outstanding loan balance is Rs. 11,65,02,452/-. It is submitted that the company during the subject AY has incurred the expenses aggregating to Rs. 3,16,53,971/- and its income was just Rs. 18,50,000/- to bridge the gap*

between the expenditure and income, the company continued to borrow funds and has thus incurred interest expenditure of Rs. 2,22,82,245/- on which tax has been duly deducted by the company.

3) Advance of Rs. 2,50,00,000/- treated as income - The company has received an advance from M/s Vistaar Films Ltd. which was to be adjusted against the print and advertisement expenses incurred on behalf of the remitter and accordingly the same was shown as advances received in the balance sheet."

9. The ld. CIT(A) has confirmed the additions on the ground that no supporting evidences have been filed neither any explanation has been offered.

10. After hearing the ld. DR and on perusal of the relevant findings given in the impugned order, we find that in so far as the addition of Rs.1,49,27,775/-, i.e., undisclosed receipts, the assessee in the statement of facts filed before the CIT(A) has contended that the amount of Rs.1,30,00,000/- comprises of reimbursement of expenses. However, neither any details were furnished before the Assessing Officer nor before the CIT(A). Further the amount of Rs.27,57,500/- has been adjusted in the related company account in the books of assessee, but no evidence has been filed. In absence of any rebuttal of the said findings, we do not find any reason to interfere and accordingly, the order of the ld. CIT(A) is confirmed.

11. Similarly, with regard to disallowance of interest of Rs.2,22,82,245/-, it was contended by the assessee that the company has been incurring loss and the share capital of the company stood eroded by the accumulated losses. Therefore, the assessee had taken inter corporate loan from M/s. Religare Finvest Ltd. for the purpose of carrying on the business and meeting its day-to-day expenses. However, no explanation has been offered why interest free loans of Rs.8,69,32,404/- were given and what connection it had for the business purpose. If the interest bearing fund has been diverted for advancing interest free loans, for which no justification has been given, then such a diversion of loan for non-business purpose has been rightly confirmed by the Id. CIT(A).

12. Lastly, with regard to addition of Rs.2.50 crores, it was stated that the advances received from M/s. Vistaar Films Ltd. were to be adjusted against print and advertisement expenses incurred on their behalf. No confirmation or agreement has been filed by the assessee in support of this contention. In any case, printing and advertisement expenses were supposed to be recovered from the exploitation of proceeds of the films. Hence, there being no

explanation with regard to the nature of receipts, the finding of the ld. CIT(A) given in this regard order does not call for any interference and hence, is confirmed.

13. In the result, the appeal of the appellant assessee is dismissed.

Order pronounced in the open court on 14/10/2019.

Sd/-

(B.R.R. Kumar)
Accountant Member

Sd/-

(Amit Shukla)
Judicial member

Dated: 14TH Oct., 2019

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Copy of order forwarded to:

(1) *The appellant*

(3) *Commissioner*

(5) *Departmental Representative*

(2) *The respondent*

(4) *CIT(A)*

(6) *Guard File*

By order

*Assistant Registrar
Income Tax Appellate Tribunal
Delhi Benches, New Delhi*