

**IN THE INCOME TAX APPELLATE TRIBUNAL
MUMBAI BENCH "A", MUMBAI**

**BEFORE SHRI MAHAVIR SINGH, JUDICIAL MEMBER AND
SHRI M. BALAGANESH, ACCOUNTANT MEMBER**

ITA NOS. 4965 TO 4967/MUM/2017

A.Ys : 2008-09 TO 2010-11

Anticlock Films Private Limited, vs. ACIT, Circle-16(1), Mumbai.
D-107, Karan CHS, Off Yari Road, (Respondent)
Andheri (W), Mumbai 400 061.
PAN : AAGCA7557F (Appellant)

Appellant by : Ms. Asifa Khan
Respondent by : Shri S. Michael Jerald

Date of Hearing : 30/09/2019
Date of Pronouncement : 04/10/2019

ORDER

PER MAHAVIR SINGH, JUDICIAL MEMBER

These three appeals by the assessee are arising out of the separate orders of Commissioner of Income Tax (Appeals)-4, Mumbai in Appeal Nos. CIT(A)-4/IT-69/ACIT-16(1)/2015-16, CIT(A)-4/IT-70/ACIT-16(1)/2015-16 and CIT(A)-4/IT-71/ACIT-16(1)/2015-16 dated 21.03.2017, 21.03.2017 and 22.03.2017 respectively. The Assessment was framed by the Asst. Commissioner of Income Tax, Circle 16(1) Mumbai (in short ACIT/ITO/AO) for AYs 2008-09 to 2010-11 vide orders dated 05.03.2015 under section 143(3) r.w.s 147 of the Income-tax Act, 1961 (hereinafter 'the Act').

2. Common issues have been raised in these three appeals of assessee regarding disallowance of business expenses and addition of advance received. The assessee has raised identically worded grounds, except quantum, in all these three years, and the grounds as raised in assessment year 2008-09 in ITA No. 4965/Mum/2017 reads as under :-

"1. On the facts and circumstances of the case and in law, the Ld CIT(A)-4 has erred in confirming the Order of the Assessing Officer disallowing the valid business expenses of Rs.3,41,30,637/-.

2. On the facts and circumstances of the case and in law, the Ld CIT(A)-4 has erred in confirming the Order of the Assessing Officer in adding advance received by the assessee amounting to Rs.3,58,23,970/-.

3. On the facts and circumstances of the case and in law, the Ld CIT(A) has erred in confirming the AO's action assessing the income at Rs.3,58,23,970/- against the declared loss of Rs.3,41,30,637/- by the Assessee.

4. On the facts and circumstances of the case and in law, the learned CIT(A) erred in dismissing the appeal without appreciating the facts and evidence submitted by the assessee.

5. On the facts and circumstances of the case and in law, the learned CIT(A) has dismissed the appeal stating the reasons given by confirming AO's action of taking the income at Rs.3,58,23,970/- as against loss disclosed by the Assessee at Rs.3,41,30,637/- are insufficient and contrary to the facts and evidence on record.

6. On the facts and circumstances of the case and in law, the Ld CIT(A) has erred in confirming the AO's action raising demand of Rs.2,30,19,830/-."

3. The learned counsel for the assessee before us narrated the facts that assessee is a private limited company engaged in production of film. In response to statutory notices issued by the Assessing Officer, assessee submitted all the details sought by the Assessing Officer like cash books, bank

summary, ledger, profit and loss account, balance sheet and vouchers, etc. The Assessing Officer noted that none attended on the appointed date and on the basis of the evidences available, he made an *ex parte* assessment. Similarly, the assessee filed various details before the CIT(A), i.e. copies of ledger accounts, invoices, which are now filed before us in paper book consisting of pages 1 to 218 (i.e. assessee paper book no. 1) and pages 1 to 246 (i.e. assessee paper book no. 2). In view of this fact, the learned counsel for the assessee stated that neither the Assessing Officer nor the CIT(A) has gone into the details of these expenses, and without going into the same, valid business expenses were disallowed in all the three years. It was also argued that without going into the nature of advances received by the assessee on account of production of film, the advances were also added as income. The learned counsel for the assessee took us through the assessment order and the order of CIT(A). For reference sake, we are reproducing the para 3.2 of CIT(A)'s order wherein addition in regard to disallowance of expenses and addition of advance received was confirmed as under :-

“3.2 I have considered the findings of the Assessing Officer and rival submission of appellant, carefully. I find that appellant has failed to substantiate the expenditure claimed in Profit and Loss account, in spite of various opportunities given by the Assessing Officer to the appellant. On 16/12/2014, appellant was asked to prove the genuineness of expenditure debited in Profit and Loss account and furnish details in specified formats. However, no such explanation was submitted nor was details filed on 13/01/2015 and thereafter on 03/02/2015. When no such evidences were submitted before the Assessing Officer and genuineness of expenditures were not demonstrated before the Assessing Officer, or in appellate proceedings that expenses are genuine one, such argument cannot be accepted. Assessee has failed to explain as to why it has not submitted required details, verifiable evidences and proper explanation of genuineness of claim of expenditure, hence, no relief can be granted in appellate proceeding on the basis of

general arguments. Further, there is no proper explanation as to how while filing return of income on 30/09/2008, there was loss of Rs.1,39,09,690/- and later on while filing revised return on 26/02/2010 how this loss was converted into more loss of Rs.3,41,30,637/-. Since there is no proper explanation and assessee has caused hindrance in investigation or scrutiny by Assessing Officer, there is no option left to approve the findings for disallowance of Rs.3,41,30,637/-."

4. When these were confronted to the learned CIT-DR, he fairly agreed that let all the three appeals be set-aside to the file of the Assessing Officer for afresh consideration of all these evidences. To this proposal, the learned counsel for the assessee fairly agreed.

5. We have heard the rival contentions and gone through the facts and circumstances of the case. We noted that the authorities below, i.e. neither the Assessing Officer nor the CIT(A), have gone into the details of the expenses or details of the advance received. In the absence of the same, both the authorities below have passed the order making addition. In our view, the orders of the lower authorities are without going into the details and without discussing the issue and hence, cannot be sustained. We set-aside the orders of the lower authorities, i.e. the Assessing Officer and the CIT(A), in all the three years. Consequently, we remand the matter back to the file of the Assessing Officer in all the three years for framing fresh assessment after allowing reasonable opportunity of being heard to the assessee. Needless to say that the Assessing Officer will allow the assessee full opportunity to file whatever evidences it wants to file. All the three appeals of the assessee are remanded back to the file of the Assessing Officer.

6. In the result, all the appeals of the assessee are allowed for statistical purposes.

Order pronounced in the open court on 4th October, 2019.

Sd/-
(M. BALAGANESH)
ACCOUNTANT MEMBER

Sd/-
(MAHAVIR SINGH)
JUDICIAL MEMBER

Mumbai, Date : 4th October, 2019

SSL

Copy to :

- 1) The Appellant
- 2) The Respondent
- 3) The CIT(A) concerned
- 4) The CIT concerned
- 5) The D.R, "A" Bench, Mumbai
- 6) Guard file

By Order

Dy./Asstt. Registrar
I.T.A.T, Mumbai