

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

**BEFORE SHRI VIKAS AWASTHY, JUDICIAL MEMBER AND
SHRI RAJESH KUMAR, ACCOUNTANT MEMBER**

**ITA No.6790/M/2016
Assessment Year: 2007-08**

**ITA No.6791/M/2016
Assessment Year: 2008-09**

Income Tax Officer- 16(1)(1), Room No.436A, 4 th Floor, Aayakar Bhavan, M.K. Marg, New Marine Lines, Mumbai - 400020	Vs.	M/s. B.R. TV, Anand Villa, Plot No.G-38, 15 th Road, Santacruz West, Mumbai - 400 054 PAN: AAafb0941M
(Appellant)		(Respondent)

Present for:

Assessee by

: Shri Ajey Malik, A.R.

Revenue by

: Shri Hari S. Raheja, D.R.

Date of Hearing : 12.09.2019

Date of Pronouncement : 22.10.2019

ORDER

Per Rajesh Kumar, Accountant Member:

The present appeal has been preferred by the Department against the order dated 16.08.2016 of the Commissioner of Income Tax (Appeals) [hereinafter referred to as the CIT(A)] relevant to assessment year 2007-08.

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2. The Revenue has raised various grounds of appeal which are as under:

“Whether on the facts and in the circumstances of the case and in law, the Ld. CIT(A) has erred in quashing the reassessment proceedings without appreciating that the issue under contention was first discovered in the assessment proceedings for AY 2011-12 and during the original assessment proceedings, no deliberations were made and the income was masked by the assessee under the guise of advances.

Whether on the facts and in the circumstances of the case and in law, the Ld, CIT(A) has erred in holding that the whole of the income of Rs.3.70 crores did not accrue to the assessee during the relevant previous year and was not taxable during this Assessment Year particularly when the assessee is following the mercantile system of accounting.

Whether on the facts and in the circumstances of the case and in law, the Ld. GT(A) has erred in deleting the addition of Rs. 3.11 crore made by the Assessing Officer on account of revenue recognition in spite of the fact that the entire rights were assigned irrevocably during the year of sale itself and the income was not contingent upon any future events.

Whether on the facts and in the circumstances of the case and in law, the Ld. CIT(A) has erred in relying on the order of B. R. Films Vs. ACIT - 11(1), Mumbai (IT A No, 3632/Mum/2012 dated 14-01-2015) especially in view of the fact that in that case the Assignment rights of various films commenced at different times, whereas in this case the commencement of the rights of serials happened in the same year.

The appellant prays that the order of CIT(A) on the above grounds be set aside and that of the Assessing officer be restored.

The appellant craves leave to amend or alter any ground or add a new ground which may be necessary."

3. The only issue raised in the various grounds of appeal is against the deletion of addition of Rs.3.11 crores by Ld. CIT(A) as made by the AO on the revenue recognition in view of the fact that entire rights were assigned irrecoverably during the year of sale itself. The Ld. CIT(A) erred in holding that whole income of Rs.3.70 crores did not accrue to the assessee during the relevant previous year and as such was not taxable during this assessment year in view of the mercantile system of accounting of the assessee. The facts in brief are that during the year under consideration, assessee has entered into an agreement with M/s. Touch Tele Content (India) Pvt. Ltd. on 27.01.2007 and received a consideration of Rs.3 crore for total 139 episodes of serial Mahabharat and Mahabharat Katha. The assessee also entered into an agreement for 52 episodes of the serial Maa Shakti for which it received Rs.70 lakhs for sale of satellite rights cable taxable Terrestrial Dubbing and Subtitling Right, for

a period of 5 years commencing 01.08.2006. Thus the assessee entered into agreements with the above parties to market and exploit 3 serials mentioned above for a consideration of Rs.3,70,00,000/-. Since the assessee is following the mercantile system of accounting, the assessee recognised Rs.58,39,400/- as income during the year and carry forward Rs.3,11,60,600/- as advance in the balance sheet to be recognized in subsequent years . However, according to the AO the entire consideration is assessable during the year as the assessee has received the income irrevocably during the current year. Finally, the AO treated the advance carry forward of Rs.3,11,60,600/- as income during the year in the assessment order dated 07.10.2014 passed under section 147 read with section 143(3)(ii) of the Act.

4. In the appellate proceedings, Ld. CIT(A) decided the issue in favour of the assessee by following the decision of the coordinate bench of the Tribunal in the case of B.R. Films in A.Y. 2010-11 and also the decision of the predecessor CIT(A) in assessee's own case in A.Y. 2011-12 vide order No.CIT(A)-4/Tr.315/Appeal(3)/ITO-11(1)(1)/14-15 dated 02.09.2015.

5. The Ld. A.R., at the outset, submitted that the identical issue has been decided by the Tribunal in favour of the assessee in assessee's own case in ITA No.6092/M/2017 A.Y. 2012-13 vide order dated 04.07.2019. The Ld. A.R. therefore prayed that the appeal of the Revenue deserves to be dismissed in view of the decision of co-ordinate bench of the Tribunal in assessee's own case.

6. The Ld. D.R., on the other hand, relied heavily on the order of AO and grounds of appeal by submitting that the assessee

has sold the leasehold rights of 31 films in the AY 2012-13 and thus there were multiple agreements for selling the rights whereas in the present case , the assessee has sold only 3 serials. The Ld. D.R. submitted that the decision of the co-ordinate bench of the Tribunal in assessee's own case was decided by following the said decision in the case of B.R. Films vs. ACIT in ITA No.3632/M/2012 whereas in the case of the assessee, the rights in the serials were sold irrecoverably for a period of three years and entire consideration was received during the year. The Ld. D.R. therefore prayed that the income should be assessed in the year of receipt and should not be allowed to be spread over the period of agreements.

7. After hearing both the parties and perusing the material on record, especially the decision of the co-ordinate bench of the Tribunal in assessee's own case in ITA No.6092/M/2017 A.Y. 2012-13 (supra), we observe that the identical issue has been decided in favour of the assessee by the co-ordinate bench of the Tribunal and the operative part is reproduced below:

"11. After hearing both the parties and perusing the material on record, we observe that the assessee has shown outstanding of Rs.72,14,845/- as due to artists and technicians which were coming over for more than four years. The Ld. A.R. argued before the Bench that firm has started TV serials namely Pari hu main and Sujata and incurred huge losses due to the fact that the main partner Shri Ravi Chopra was not keeping well and has not been able to attend to his work. The Ld. A.R. submitted that he was finally shifted to United States for treatment. The Ld. A.R. submitted that due to the reason that Shri Ravi Chopra was not looking after the business due to his ailing health and thus these liabilities were made outstanding for long time even the parties to whom these sums were payable have not pressurized for the payments due to long association with the group realizing that the main person was not well. The Ld. A.R. argued even the creditors have not foregone their claims neither has the assessee any attention of not paying the said dues. Since the claims of these technicians and artists have been accepted as alive, the same can not be subjected to be assessed as income of the assessee as has been done by the AO and confirmed by the Ld. CIT(A)."

8. Since the facts in the present case are identical to the facts in the case in A.Y. 2012-13 as decided by the co-ordinate bench of the Tribunal (supra), we, therefore respectfully following the decision of the co-ordinate bench of the Tribunal, dismiss the appeal of the Revenue.

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9. The issue involved in the present appeal is identical to the one as stated above in ITA No.6790/M/2016 for A.Y. 2007-08. Therefore, our finding in ITA No.6790/M/2016 for A.Y. 2007-08 would , mutatis mutandis , apply to this appeal as well. Accordingly the appeal of the Revenue is dismissed.

10. In the result, both the appeals of the Revenue are dismissed.

Order pronounced in the open court on 22.10.2019.

**Sd/-
(Vikas Awasthy)
JUDICIAL MEMBER**

**Sd/-
(Rajesh Kumar)
ACCOUNTANT MEMBER**

Mumbai, Dated: 22.10.2019.

* Kishore, Sr. P.S.

Copy to: The Appellant
The Respondent
The CIT, Concerned, Mumbai
The CIT (A) Concerned, Mumbai
The DR Concerned Bench

//True Copy//

By Order

Dy/Asstt. Registrar, ITAT, Mumbai.