

**IN THE INCOME TAX APPELLATE TRIBUNAL  
MUMBAI BENCHES "F", MUMBAI**

**BEFORE SHRI RAJESH KUMAR (AM) AND SHRI RAM LAL NEGI (JM)**

**ITA No. 4321/MUM/2018  
Assessment Year: 2014-2015**

The ACIT-16(1), Room No. 439, Aayakar Bhavan, M.K. Marg, Mumbai - 20	<b>Vs.</b>	M/s United Home Entertainment Pvt. Ltd., 4 <sup>th</sup> Floor, Peninsula Tower 1, Ganpatrao Kadam Marg, Lower Parel, Mumbai - 400013 PAN: AAACU6668D
<b>(Appellant)</b>		<b>(Respondent)</b>

**ITA No. 4287/MUM/2018  
Assessment Year: 2014-2015**

M/s United Home Entertainment Pvt. Ltd., 3 <sup>rd</sup> Floor, Bldg. No. 14, Solitaire, Corporate Park, Guru Hargovindji Marg, Chakala, Andheri (E), Mumbai - 400093 PAN: AAACU6668D	<b>Vs.</b>	The Asst.CIT-16(1), Aaykar Bhavan, Mumbai - 400020
<b>(Appellant)</b>		<b>(Respondent)</b>

Revenue by : Shri Rajeev Gubgotra (DR)

Assessee by : Shri Naresh Kumar/Jimit Kothari (ARs)

Date of Hearing: 08/08/2019  
Date of Pronouncement: 06/11/2019

**ORDER**

**PER RAM LAL NEGI, JM**

These are the cross appeals filed by the revenue and the assessee respectively, against the order dated 12.04.2018 passed by the Ld. Commissioner of Income Tax (Appeals)-4, Mumbai (for short 'the CIT (A)'), pertaining to the assessment year 2014-15, whereby the Ld. CIT (A) has partly

allowed the appeal filed by the assessee challenging assessment order passed u/s 143 (3) of the Income Tax Act, 1961 (for short the 'Act').

**ITA No. 4321/MUM/2018 (Assessment Year: 2014-15)**

Brief facts of the case are that the assessee company engaged in the business of operating Television Channels, e-filed its return of income for the assessment year under consideration declaring total income of Rs. 26,80,54,150/-. Since, the case was selected for scrutiny, the AO issued notice u/s 143 (2) and 142 (1) of the Act. In compliance thereof the authorized representative (AR) of the assessee attended the proceedings from time to time and filed reply details clarification and explanations. After hearing the AR in the light of the details and explanations furnished by the assessee the AO made following additions.

- (1) Rs. 1,93,057/- on account of the difference of TDS shown as per 26AS and the amount disclose in its return of income.
- (2) Rs. 46,08,458/- on account of capitalization of dubbing cost
- (3) Rs. 61,78,154/- on account of disallowance u/s 40(a)(ia)
- (4) Rs. 5,47,00,000/- on account of disallowance u/s 37
- (5) Rs. 1,01,60,742/- on account of bad debts of group companies and
- (6) Rs. 24,05,664/- on account of interest on Income Tax refund.

2. Accordingly, the AO determined the total income of the assessee at Rs. 33,06,04,930/- (rounded off) under the normal provisions of the Act and Rs. 29,49,21,991/- as per MAT calculation u/s 115JB of the Act. Aggrieved by the assessment order, the assessee challenged the same before the Ld. CIT (A). The Ld. CIT (A) after hearing the assessee confirmed the addition of Rs. 1,93,057/- on account of discrepancy in respect of AIR information, confirmed the addition of 46,08,458/- on account of capitalization of dubbing cost, confirmed the addition of Rs. 61,78,154/- on account of disallowance u/s 40 (a)(ia), confirmed the addition of Rs. 24,05,664/- on account of interest on Income Tax refund, however, deleted the addition of Rs. 5,47,00,000/- made on account of disallowance u/s 37 of the Act. Aggrieved by the impugned order, both revenue and the assessee are in appeal before the Tribunal.

3. The revenue has challenged the impugned order passed by the Ld. CIT (A) by raising the following effective grounds:-

1. *“Whether on the facts, in the circumstances of the case and as per law, the Ld. CIT (A) has erred in deleting the disallowance of Central Support Fees of Rs. 5,47,00,000/- u/s 37 of the Act without appreciating that the assessee has not determined the Central Support Fee on actual basis and the working of the same has been given only on estimated basis.*
2. *Whether on the facts, in the circumstances of the case and as per law, the Ld. CIT (A) has erred in holding that the Revenue has not brought on record any evidence to show that the expenditure done was excessive without appreciating that from A.Y. 2010-11 onwards the assessee itself has adopted a subjective formula for allocating cost which could have been made on actual basis which was evident from the fact that the said formula was worked out by the assessee after the Financial Year got over and the original Service Agreement was modified by an addendum which results in increase of the cost by more than 100% of the initial cost decided upon.”*

4. At the outset, the Ld. counsel for the assessee submitted that this issue is covered in favour of the assessee by the order of the ITAT in assessee's own case for the AY 2008-09 and 2009-10. Since, the Ld. CIT (A) has allowed this ground of appeal by following the decision of the ITAT, there is no merit in the appeal of the revenue. The Ld. counsel further pointed out that there is no material change of facts in the present case, therefore, the order passed by the Ld. CIT (A) may be upheld.

5. On the other hand, the Ld. Departmental Representative (DR) fairly admitted that the ITAT has decided the identical issue in favour of the assessee in assessment year 2008-09 and 2009-10, however, strongly supported the assessment order passed by the AO.

6. We have heard the rival submissions and perused the relevant material on the record. As pointed out by the Ld. counsel for the assessee AO made the similar disallowance to the extent of total amount paid towards 'central support fees' in assessment years 2008-09 and 2009-10. The assessee challenged the

action of the AO before the Ld. CIT(A). The Ld. CIT(A) after hearing the assessee deleted the addition. In further appeal preferred by the department, the coordinate Bench of the ITAT upheld the findings of the Ld. CIT(A). In the present case, the Ld. CIT(A) has deleted the addition by following the decision of the assessee's case ITA No. 3385 and 4414/Mum/2013 for the assessment years 2008-09 and 2009-10. The operative part of the order passed by the Ld. CIT(A) reads as under:

*“10.3 I have carefully considered the facts of the case, oral contentions and written submission of the assessee, discussion of the AO in the assessment order and material available on record. This issue has been recurring in nature in the case of the assessee and have been decided by my Ld. Predecessor and the Hon'ble Tribunal in the Appellant's own case in favour of the Appellant. It is mentioned that whether it is u/s 40A(2)(b) or u/s 37, the AO has to examine whether the payee is a related company u/s 40A(2)(b) and how the expenditure was considered excessive before making the disallowance. It is not the case that the said expenditure was not revenue in nature. It is seen that in the AY 2008-09 and A.Yr 2009-10, the AO had disallowed expenditure to the extent of 50% by invoking provisions of Sec 40A(2)(b). It is also seen that for the A.Yr 2012-13 as well as in 2013-14, the AO had disallowed 50% of such expenditure stating that expenditure was to a related company and was excessive and unreasonable. The Hon'ble ITAT, Mumbai in the assessee's own case for AYr. 2008-09 and A.Yr 2009-10 have deleted the 50% addition made by the AO. It is further not the case that there was any change in the facts of the case or legal position in the year under consideration. No evidence has been brought on record by the AO as to how he considered the expenditure as excessive. The AO has merely followed orders of earlier A.Yrs in holding the expenditure to be excessive and disallowed 50% of such total expenditure. Therefore, respectfully following the decision of Hon'ble ITAT, Mumbai in the appellant's own case for A.Yr. 2008-09 and 2009-10 as also keeping in view principles of consistency, the AO is directed to delete the disallowance of Rs.*

*5,47,00,000/- made by him. This ground of appeal is accordingly allowed.”*

7. As pointed out by the Ld. counsel, in subsequent years the order rendered by the ITAT were followed and the disallowance were deleted. Further, no change of facts in the year relevant to the assessment year under consideration was pointed out by the revenue. The findings of the Ld. CIT(A) are based on the decision of the coordinate Bench rendered in assessee's case for the earlier years. Under these circumstances, we do not find any reason to interfere with the findings of the Ld. CIT(A). We, therefore, uphold the findings of the Ld. CIT(A) and dismiss the sole ground of appeal of the revenue. Accordingly, we direct the AO to delete the addition.

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On the other hand, the assessee has challenged the impugned order passed by the Ld. CIT (A) by raising the following effective ground:-

1. *“On the facts and circumstances of the case and in law, the Assessing Officer has erred in disallowing Dubbing cost of Rs. 46,08,458/-.*  
*The Assessing Officer failed to appreciate that dubbing expenses were incurred wholly and exclusively in connection with the business of the Appellant and being revenue in nature, deductible under section 37(1) of the Act.*
2. *The Assessing Officer erred in making an addition u/s 40(a)(ia) of Programming Cost of Rs. 4,78,474/- and Transmission Cost of Rs. 56,99,680/- on year end provision of Rs. 61,78,154/- on which TDS are not deducted.*
3. *The Assessing Officer erred in adding Rs. 24,05,664/- of interest on income tax refund. The appellant submits that no such interest on refund has been received by it and accordingly such amount could not have been accounted as income.”*

2. Vide ground No. 1 of the appeal, the assessee has challenged the action of the Ld. CIT(A) in confirming the addition made on account of disallowance of

dubbing cost of Rs. 46,08,458/- on the ground that the authorities below have failed to appreciate that dubbing expenses were incurred wholly and exclusively in connection of the business, therefore being revenue expenditure, deductible u/s 37(1) of the Act. Before us the Ld. counsel for the assessee submitted that the ITAT has dealt with this issue in assessee's own case for the earlier assessment years and allowed amortization of the amount of dubbing cost claimed, therefore this issue may be decided accordingly.

3. The Ld. DR admitted that the ITAT has dealt with the identical issue in assessee's own case for assessment year 2012-13 and did not oppose the submissions made by the Ld. counsel.

4. We have gone through the material on record, the assessee had raised the identical issue in the assessment year 2012-13. The authorities below rejected the contention of the assessee, however, the ITAT allowed the alternative claim of the assessee that dubbing cost should be allowed to be amortized over the period of license. The relevant para of the order rendered by the coordinate Bench in assessee's appeal ITA No. 6926/Mum/2016 reads as under:

*"7. We have heard rival submissions and perused material on record including the orders passed by the Tribunal in assessee's own case for earlier assessment years. As could be seen, so far as the issue whether the dubbing cost is to be entirely allowed as a revenue expenditure in a single year, the same has been decided against the assessee by the Tribunal in a series of orders passed in assessee's own case for assessment years 2008-09 to 2011-12. Therefore, it has to be held that claim of deduction of the entire dubbing cost in the impugned assessment year cannot be allowed. However, so far as assessee's alternative claim that the dubbing cost should be allowed to be amortized over the period of license we agree with the contention of the learned Authorities Representative. In fact, the Assessing Officer himself in the impugned assessment order has concluded that the dubbing cost has to be amortized over a period of five years. In view of the above, we direct the Assessing Officer to allow amortization of the balance amount of dubbing cost claimed in the impugned assessment year in the subsequent four assessment years. In*

*view of the above, ground no. 1 is dismissed and ground no. 3 is allowed.”*

5. Since, the coordinate Bench has dealt with the identical issue in assessee's own case aforesaid and directed the AO to allow amortization of the balance amount of dubbing cost claimed in the impugned assessment year in the subsequent four assessment years, respectfully following the decision of the coordinate Bench we direct the AO to allow amortization of dubbing cost in terms of the order dated 18.04.2018 rendered by the coordinate Bench discussed above.

6. Vide ground no. 2, the assessee has challenged the action of the Ld. CIT (A) in confirming the addition u/s 40(a)(ia) of programming cost amounting to Rs. 4,78,474/- and transmission cost of Rs. 56,99,680/- on year and provision of Rs. 61,78,154/- on which the assessee had not deducted the tax at source. The Ld. CIT (A) confirmed the addition made by the AO for the reason that the assessee has failed to provide details regarding the subsequent treatment of the provisions. The Ld. counsel for the assessee submitted before us that the assessee had made an accrual of expenses and no party had been credited as the amounts were not crystallized, invoices had not been received from the parties and as on 31<sup>st</sup> March there was no obligation to pay. Hence, it was not possible to deduct tax on accrual made on estimation basis. The Ld. counsel further relied on the decision of the Mumbai Tribunal in the case of *Mahindra and Mahindra, ITA No. 8597/Mum/2010*.

7. The Ld. counsel further submitted that some portion of the amount has already been disallowed by the assessee u/s 40(a) (i)(ia) of the Act while computing the total income for the year under consideration which resulted in double disallowance to some extent. The Ld. counsel invited our attention to statement showing computation of tax for the AY 2014-15 in which the assessee has made disallowance u/s 40(a)(i) of the amounting to Rs. 49,43,821/- and u/s 40(a)(ia) amounting to Rs. 39,97,942/-. The Ld. counsel further submitted that some of the expenses are not subject to the TDS and there should not be any disallowance of expenses on account of non deduction

of taxes. The Ld. counsel further submitted that the assessee is in a position to produce the documents before the AO for verification. Accordingly, the Ld. counsel for the assessee submitted that this issue may be remitted to the file of AO for deciding the same afresh in the interest of justice.

8. On the other hand, the Ld. DR submitted that the department has no objection in case the issue is sent to the AO for verification and decide the issue afresh.

9. We have perused the material on record in the light of the submissions of the Ld. counsel for the assessee. We notice that the assessee could not furnish the subsequent treatment of the provisions as the same were not readily available. Now the assessee is in a position to furnish the same, hence we are of the considered view that the assessee should be granted an opportunity to furnish the details and documents to substantiate its claim in the interest of justice. Accordingly, we set aside the findings of the Ld. CIT (A) and send this issue back to the AO for deciding the same afresh after taking into consideration, the submissions of the assessee. No other ground was pressed by the assessee.

In the result, appeal filed by the revenue is dismissed and the assessee's appeal is partly allowed for statistical purposes

Order pronounced in the open court on 6<sup>th</sup> November, 2019.

*Sd/-*  
(RAJESH KUMAR)

ACCOUNTANT MEMBER

*Sd/-*  
(RAM LAL NEGI)  
JUDICIAL MEMBER

मुंबई Mumbai; दिनांक Dated: 06/11/2019

*Alindra PS*

**आदेश प्रतिलिपि अग्रेषित/Copy of the Order forwarded to :**

1. अपीलार्थी / The Appellant
2. प्रत्यर्थी / The Respondent.
3. आयकर आयुक्त(अपील) / The CIT(A)-

4. आयकर आयुक्त / CIT
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, मुंबई / DR, ITAT,  
Mumbai
6. गार्ड फाईल / Guard file.

सत्यापित प्रति //True Copy//

आदेशानुसार/ BY ORDER,

उप/सहायक पंजीकार (Dy./Asstt. Registrar)  
आयकर अपीलीय अधिकरण, मुंबई / **ITAT, Mumbai**