



ITA No.6609/Mum/2017
M/s. Glamour Entertainment Private Limited
Assessment Year :2008-09

आयकर अपीलीय अधिकरण “जी” न्यायपीठ मुंबई में।
IN THE INCOME TAX APPELLATE TRIBUNAL
“G” BENCH, MUMBAI

माननीय श्री मनोज कुमार अग्रवाल ,लेखा सदस्य
एवं माननीय श्री रवीश सूद, न्यायिक सदस्य के समक्ष।
BEFORE HON’BLE SHRI MANOJ KUMAR AGGARWAL, AM
AND HON’BLE SHRI RAVISH SOOD, JM

आयकरअपील सं./ I.T.A. No.6609/Mum/2017
(निर्धारण वर्ष / Assessment Year: 2008-09)

ACIT-16(1) Aaykar Bhavan Room No.439, M.K. Road Mumbai -400 020.	बनाम/ Vs.	M/s. Glamour Entertainment P.Ltd. 3 rd Floor, Shamrock Main Avenue Road Santacruz (W), Mumbai- 400 054.
स्थायीलेखासं./जीआइआरसं./PAN/GIR No. AACCG-1659-A		
(□ पीलार्थी/ Appellant)	:	(प्रत्यर्थी / Respondent)

Assessee by	:	S/Shri Ajay R. Singh & Ravindra Poojary-Ld. Ars
Revenue by	:	Mr. N. Padmanabhan-Ld. DR

सुनवाई की तारीख/ Date of Hearing	:	08/01/2020
घोषणा की तारीख / Date of Pronouncement	:	14/01/2020

आदेश / ORDER

Manoj Kumar Aggarwal (Accountant Member)

1. Aforesaid appeal by revenue for Assessment Year [in short referred to as ‘AY’] 2008-09 contest the order of Ld. Commissioner of Income-Tax (Appeals)-4, Mumbai, [in short referred to as ‘CIT(A)’], *Appeal No.CIT(A)-4/Tr-9/ACIT-11(1)/2014-15* dated 14/06/2017 on following grounds of appeal: -

1. On the facts and circumstances of the case and in law, whether the Id. CIT(A) was justified in holding that the assessee had discharged the burden of proof



regarding the genuineness of expenses when the assessee had failed to co-operate during the assessment proceedings as well as remand proceedings.

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

2. We have carefully heard the arguments advanced by both the representatives. We have also perused relevant material on record including documents placed in the paper-book. Our adjudication to the subject-matter of appeal would be as given in succeeding paragraphs.

3. Facts on record would reveal that the assessee being resident corporate assessee stated to be engaged in the business of motion picture production was assessed for year under consideration on *best judgement basis u/s 144* vide order dated 16/12/2010 in view of the fact that the assessee failed to comply with various hearing notices issued by Ld. AO. Consequently, in the absence of any details / documentary evidences to support the expenses of Rs.2113.45 Lacs, Ld. AO made estimated disallowance of 40% against the same. The Ld. AO also noted that the assessee failed to comply with the requirements of Section 285B since it has failed to furnish a statement in Form No. 52A, giving details of payment over Rs.50,000/- made by him during the course of production of films. The perusal of quantum assessment order would reveal that the assessee has been denied set-off of brought forward of losses of Rs.74.31 Lacs also since the said claim could not be verified.

4. Before learned CIT(A), the assessee took a stand that sufficient time was not provided to the assessee to substantiate the claims made by the assessee. It was also alleged that the facts were not properly appreciated by Ld. AO since all the information was available in Form



No. 52A. At the same time, the assessee pleaded for admission of additional evidences against which a remand report was sought from Ld. AO on 16/09/2011. It emanates from impugned order that although various reminders were sent to Ld. AO to submit the report, however, the same was not forthcoming. The last of such reminder was sent on 13/02/2017, which met the same fate and no remand report was furnished despite a lapse of more than 5 years. Ultimately, left with no option, it was observed by Ld. CIT(A) that the assessment based on pure guess work would be bad in law and therefore, the disallowance of 40% as made by Ld. AO, was deleted. Regarding set-off of losses, a direction was issued to Ld. AO to verify the correctness of claim from assessment record and accept the same, it found in order. Aggrieved, the revenue is in further appeal before us.

5. The Ld. Departmental Representative (DR) pleaded that the estimated additions as made by Ld. AO were deleted without carrying out any verifications despite the fact that the assessee failed to appeal before Ld. AO. *Au Contraire*, Ld. Authorized Representative for Assessee (AR), taking us through the documents placed in the paper-book, submitted that the expenditure was well documented and due TDS compliance was made, wherever applicable. It has been submitted that books of accounts were duly audited and accepted by the department in all previous years. The Ld. AR also raised a plea that in compliance of Sec. 285B, Form No. 52A was duly filed by the assessee on 28/08/2007 and complete detail of expenditure was already available on record at the time of assessment proceedings and therefore, there could be no



occasion to make disallowance of 40%. In the above background, Ld. AR sought dismissal of appeal.

6. Upon careful consideration of factual matrix as enumerated above, we find that the assessee was under default by not attending the assessment proceedings which led Ld. AO to frame the assessment on *best judgment basis* u/s 144. It was only before Ld. CIT(A), the assessee chose to submit the documentary evidences and pleaded for admission of the same. Unfortunately, despite multiple reminders, the remand report was not forthcoming even after lapse of more than 5 years. In our considered opinion, the powers of Ld. CIT(A) were co-terminus with that of Ld. AO and Ld. CIT(A) could, himself, proceed with the verification of expenditure. However, *prima-facie* no such exercise appears to be carried out by Ld. CIT(A) who simply chose to delete the primarily considering the fact that remand report was not forthcoming. Such an approach adopted by Ld. CIT(A), in our considered opinion, could not be held to be justified particularly when the assessee chose not to attend the assessment proceedings without any cogent reasons.

7. Keeping in view the entirety of facts and circumstances, we set-aside the conclusion of Ld. CIT(A) and remit back the issue of disallowance of expenditure to the file of Ld. AO for re-adjudication in the light of the documentary evidences submitted by the assessee. The assessee is directed to substantiate the same falling which Ld. AO shall be at liberty to proceed with adjudication on the basis of material on record. The Ld. AR has pleaded that verification should be limited to expenditure incurred by the assessee during the impugned AY only and not beyond that since the expenditure incurred in earlier years and



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reflected in the books of accounts have been accepted by the department. We find the same to be logical one and therefore, direct Ld. AO to restrict verification of expenditure incurred by the assessee during the year under consideration only.

8. So far as the set-off of brought forward losses is concerned, Ld. AO has already been directed to verify the records and grant the same, if found in order. The said directions do not require any further indulgence on our part except to the extent of directions to the assessee to file the requisite details, in support of the same.

9. Resultantly, the appeal stands allowed for statistical purposes.

Order pronounced in the open court on 14th January, 2020.

Sd/-

(Ravish Sood)

न्यायिक सदस्य / **Judicial Member**

Sd/-

(Manoj Kumar Aggarwal)

लेखा सदस्य / **Accountant Member**

मुंबई Mumbai; दिनांक Dated : 14/01/2020

Sr.PS, Jaisy Varghese

आदेशकीप्रतिलिपिअग्रेषित/Copy of the Order forwarded to :

1. अपीलार्थी/ The Appellant
2. प्रत्यर्थी/ The Respondent
3. आयकरआयुक्त(अपील) / The CIT(A)
4. आयकरआयुक्त/ CIT- concerned
5. विभागीयप्रतिनिधि, आयकरअपीलीयअधिकरण, मुंबई/ DR, ITAT, Mumbai
6. गार्डफाईल / Guard File

आदेशानुसार/ BY ORDER,

उप/सहायक पंजीकार (Dy./Asstt.Registrar)
आयकरअपीलीयअधिकरण, मुंबई / ITAT, Mumbai.