



IN THE INCOME TAX APPELLATE TRIBUNAL
"D" BENCH, MUMBAI

BEFORE SHRI SAKTIJIT DEY, JUDICIAL MEMBER AND
SHRI G. MANJUNATHA, ACCOUNTANT MEMBER

ITA no.6931/Mum./2018
(Assessment Year : 2014-15)

Maruti International
32, Rock Garden, New Link Road
Andheri (W), Mumbai 400 058
PAN – AAAPM1823D

..... Appellant

v/s

Income Tax Officer
Circle-16(1)(3), Mumbai

..... Respondent

Assessee by : Shri K. Gopal a/w
Ms. Neha Paranjpe
Revenue by : Shri Ashish Kumar

Date of Hearing – 28.01.2020

Date of Order – 26.02.2020

ORDER

PER SAKTIJIT DEY. J.M.

The captioned appeal has been filed by the assessee challenging the order dated 6th September 2018, passed by the learned Commissioner of Income Tax (Appeals)-4, Mumbai, pertaining to the assessment year 2014-15.

2. The first issue relates to the disallowance of ₹3,14,850, representing expenditure on old films.

3. Brief facts are, the assessee, a partnership firm, is engaged in the business of production, distribution, exhibition and export of feature film. For the assessment year under dispute, the assessee filed its return of income on 27th November 2019 declaring nil income after set-off of loss. During the assessment proceedings, the Assessing Officer noticed that against the profit shown from audio royalty received during the year, the assessee has claimed expenditure of ₹ 3,14,850, relating to old films. When called upon to justify the claim, it was submitted by the assessee that certain expenditure relating to two films were incurred during the year. Therefore, it has been claimed as expenditure in the impugned assessment year. The Assessing Officer, however, did not accept the claim of the assessee. Referring to the provisions of rule 9A, he held that such expenditure can be claimed only in the year of release of the film. Accordingly, he disallowed the amount of ₹ 3,14,850.

4. The learned Commissioner (Appeals) also sustained the disallowance while deciding assessee's appeal on the issue.

5. The learned Authorised Representative submitted, the assessee follows cash system of accounting which has also been accepted by the Assessing Officer. He submitted, there is also no dispute with regard to the genuineness of expenditure claimed. He submitted, rule 9A is an

enabling provision and cannot be resorted to for disallowing assessee's claim of expenditure.

6. The learned Departmental Representative relied upon the observations of the Assessing Officer and learned Commissioner (Appeals).

7. We have considered rival submissions and perused the material on record. As could be seen from the facts on record, the amount of ₹ 3,14,850, claimed as expenditure represents payment made to technicians, junior artist supplier and dress and costumes for two films. It is not disputed that the assessee is following cash system of accounting and the aforesaid expenditure has been incurred during the year under consideration. There is also no dispute regarding the genuineness of such expenditure. That being the case, the expenditure claimed has to be allowed under section 37(1) of the Act. In our considered opinion, both, the Assessing Officer and learned Commissioner (Appeals) were not justified in disallowing the expenditure by taking recourse to rule 9A. Accordingly, the addition of ₹ 3,14,850, is deleted. This ground is allowed.

8. The next issue relates to the addition of ₹ 33 lakh.

9. During the assessment proceedings, the Assessing Officer called upon the assessee to furnish the details of other expenses debited to the Profit & Loss account. On verifying the break-up furnished by the assessee, he found that the amount includes sundry balance written-off amounting to ₹46,90,525. On further verification, he found that the amount of ₹ 33 lakh comprises of an amount of ₹ 25 lakh given to Bharat K. Patel towards advance for film, amount of ₹ 7 lakh to Sumitra Devi Jain towards advance for film and ₹ 1 lakh to Taruna Manish Asopa as advance to employee. After perusing the details furnished by the assessee, the Assessing Officer was of the view that the assessee was unable to demonstrate that such advances were considered as income in the earlier years and further, the assessee has not proved the fact that such advances have not been recovered. Accordingly, he disallowed assessee's claim of write-off of ₹ 33 lakh and added back to the income of the assessee.

10. The learned Commissioner (Appeals) also sustained the addition made by the Assessing Officer.

11. The learned Authorised Representative submitted, the amount of ₹1 lakh was paid to widow of an employee who died while in employment. He submitted, considering the fact that the widow of the

employee was not in a position to repay the amount, the assessee had to write-off the amount. Thus, he submitted, the amount of ₹1 lakh has to be allowed. As regards the balance amount of ₹ 32 lakh representing advance to two parties for film, the learned Authorised Representative submitted, these relate to two film projects which were ultimately abandoned. Therefore, the assessee was unable to recover the advances given. He submitted, given an opportunity, the assessee would furnish all documentary evidences to support its claim. Thus, the learned Authorised Representative requested for restoring the issue relating to the addition of ₹ 32 lakh to the Assessing Officer for fresh adjudication.

12. The learned Departmental Representative relied upon the observations of the Assessing Officer and learned Commissioner (Appeals).

13. We have considered rival submissions and perused the material on record. As regards the amount of ₹1 lakh given to Taruna Manish Asopa, it has been submitted before us that the amount was paid to widow of an employee who died during employment. Thus, the assessee was unable to recover the amount on humanitarian ground. We find the aforesaid submission of the assessee convincing, hence, acceptable. Therefore, the amount of ₹ 1 lakh out of the total addition

made of ₹ 33 lakh is hereby deleted. As regards the balance amount of ₹ 32 lakh, it has been submitted that the amount represents advances given towards two film projects which ultimately got abandoned. However, the aforesaid contention of the assessee appears to have neither been taken either before the Assessing Officer or before the first appellate authority, or, documentary evidences to support the aforesaid claim have been furnished. Therefore, considering the submissions of the learned Authorised Representative that given an opportunity the assessee would furnish documentary evidences to prove the aforesaid claim, we are inclined to restore the issue relating to the addition of ₹ 32 lakh to the Assessing Officer for fresh adjudication after providing reasonable opportunity of being heard to the assessee. Grounds are partly allowed.

14. In the result, appeal is partly allowed.

Order pronounced in the open Court on 26.02.2020

Sd/-
G. MANJUNATHA
ACCOUNTANT MEMBER

Sd/-
SAKTIJIT DEY
JUDICIAL MEMBER

MUMBAI, DATED: 26.02.2020

Copy of the order forwarded to:

- (1) *The Assessee;*
- (2) *The Revenue;*
- (3) *The CIT(A);*
- (4) *The CIT, Mumbai City concerned;*
- (5) *The DR, ITAT, Mumbai;*
- (6) *Guard file.*

Pradeep J. Chowdhury
Sr. Private Secretary

True Copy
By Order

Assistant Registrar
ITAT, Mumbai