

**IN THE INCOME TAX APPELLATE TRIBUNAL “C” BENCH, MUMBAI  
BEFORE SHRI SHAMIM YAHYA, AM & SHRI AMARJIT SINGH, JM**

आयकर अपील सं/ I.T.A. No.2416/Mum/2017  
(निर्धारण वर्ष / Assessment Year:2013-14)

Contour Entertainment Inc. C/o Rashmi Modi & Co. Chartered Accountants, 7, Vallabhji Kanji Building, 173/175, Princess Street, Opp. Corporation Bank, Princess Street, Marine Lines, Mumbai-400002.	<b>बनाम/</b> Vs.	DCIT(IT) 2(1)(1) Air Building, Mumbai.
स्थायी लेखा सं./जीआइआर सं./PAN/GIR No. : AA ECC3711D		
(अपीलार्थी /Appellant)	..	(प्रत्यर्थी / Respondent)
Assessee by:	None	
Revenue by:	Shri V. Sreekar (DR)	

सुनवाई की तारीख / Date of Hearing: 09/01/2020  
घोषणा की तारीख /Date of Pronouncement: 02/03/2020

**आदेश / ORDER**

**PER SHAMIM YAHYA, AM:**

This appeal by the assessee is directed against the order of the Assessing Officer dated 23.01.2017 passed to pursuant directions of the Dispute Resolution Panel ('DRP' for short) u/s 144C(13) of the Income Tax Act, 1961 and pertains to A.Y.2013-14.

**2. The grounds of appeal as read: -**

*1. On the facts and in the circumstances of the case and in law, the Appellant submits that the Appellant be granted an opportunity of being heard as the Authorized Representative of the Appellant did not appear before the Learned Assessing Officer in the assessment proceedings.*



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*The Appellant submits that an opportunity of being heard be given.*

*2. On facts and in the circumstances of the case and in law. the Learned Dispute Resolution Panel. Mumbai erred in not considering the additional evidence filed by way of Paper book in proper perspective and relied mainly on the remand report sent by the Learned Assessing Officer and approving all the additions proposed in the draft assessment order dated 24.03.2016 passed u/s 144 C (1) of The Income Tax Act. 1961.*

*3. On the facts and in the circumstances of the case and ii) law, the Learned DR1. Mumbai and Assessing Officer have erred in stating that the Appellant Company has not offered profit to the extent of Rs.3, 11,82,465/- in A.Y. 2013-14. (i.e. second financial year not being the last financial year in which project is completed) based on target profit 15% of the project revenue noted in the agreement entered into between the Appellant company, and ADLABS Entertainment Ltd.*

*4. On the facts and circumstances of the case and in law, the Learned DRP, Mumbai and Assessing Officer have erred in not considering the fact that the Appellant consistently followed cash basis of accounting for the project.*

*5. On the facts and circumstances of the case and in law, the Learned DRP. Mumbai and Assessing Officer have erred in not considering the additional cost incurred by the Appellant company on account of time overrun in the completion of project due to delay in the project completion.*

*6. On the facts and circumstances of the case and in law, the Learned DRP. Mumbai and Assessing Officer have erred in not considering the loss incurred on fluctuation in the actual exchange rate vis a vis the payments made based on the predetermined exchange rate as per the agreement.*

*7. On the facts and circumstances of the case and in law, the Learned DRP, Mumbai and Assessing Officer have erred in concluding that because the profit shown is less than the target profit of 15% of the project revenue and therefore, made the following additions on adhoc basis.*

*i) On the facts and circumstances of the case and in law, the Learned DRP. Mumbai and Assessing Officer have erred in making adhoc addition of Rs.3,03,43,717/, being 30% of production labour charges of Rs. 10,11,45,724/,*

*ii) On the facts and circumstances of the case and in law, the Learned DRP, Mumbai and Assessing Officer have erred in*



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*making adhoc addition of Rs. 16,14,692/-, being 15% of production labour charges of Rs. 1,07,64,619/,*

- iii) *On the facts and circumstances of the case and in law, the Learned DRP. Mumbai and Assessing Officer have erred in making adhoc addition of Rs. 74,83,350/-, being 10% of sub-contracting charges of Rs. 7.48.33,5061,*
  - iv) *On the facts and circumstances of the case and in law. the learned DRP, Mumbai and Assessing. Officer have erred in making adhoc addition of Rs. 8,23,822/, being 20% of lodging and boarding charges of Rs. 41,19,111/-.*
  - v) *On the facts and circumstances of the case and in law. the Learned DRP. Mumbai and Assessing Officer have erred in making the Adhoc addition of Rs. 1.29,461/- . being 20% of employee meal charges of Rs. 6,47,305/.*
8. *The Appellant craves leave to add to. amend. alter or delete all or any of the foregoing grounds of appeal."*

**3.** Brief facts of the case are the assessee company is incorporated in the USA. The company is engaged in India to provide service of fabrication, production, installation, programming, training and attraction i.e. show system equipment's elements and components for the project of ADLABS Entertainment Ltd. (ADLABS) called Dream park- Wrath of God show at Khalapur, near Mumbai, India on Turnkey Basis as per the agreement entered into between the Assessee and ADLAB Entertainment Ltd with the effective date as of 17th - September-2011.

1.2 The Company has filed its return of income for assessment year 2013-14 on 7th September, 2013 declaring a total income of Rs.1,08,75,660/-. The Assessee Company follows cash basis of accounting for preparation of Financial Statements for the project in India.



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1.3 During the course of assessment proceedings, the AO asked for various details and documents to substantiate the various expenses incurred and also to substantiate the lower profit shown in the return of income as compared to the percentage fixed as per the aforesaid agreement entered into between the Assessee Company and ADLABS. The assessee representative though not duly authorized filed the copies of returns of income filed by the assessee company for the AY. 2012-13 to A.Y. 2014-15 along with the audited financial statements for the project and tax audit reports. He also handed over the soft copies of the accounting data for all these years. He also filed certain details of the expenses and also a copy of the aforesaid agreement between the assessee company and ADLABS. The AO also issued a notice u/s 133(6) of the Income Tax Act, 1961 (IT Act) to ADLABS to cross check the agreement details and other details.

1.6 The details about the work executed by the assessee company with reference to the agreement and details about the cost variation were submitted by ADLABS in response to the notice issued u/s 133(6) as stated in the draft order passed u/s 144 C (1) r.w.s 144 dated 24.03.2016.

1.7 On the basis of available details submitted by the representative of the assessee company and details submitted by ADLABS in response to notice issued u/s 133(6) and in the absence of any necessary documents produced for the verification, or/and in the absence of documents available on records for the verification and as no



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authorized representative was attending the scrutiny proceedings, the AO resorted to the provisions of section 144 and estimated that the assessee had not offered the profit to the extent of Rs.3,11,82,465/- to tax as per the fixed percentage of the profit of 15% as per the agreement by considering the aggregate of the profits shown by the assessee company in AY 2012-13, 2013-14 and 2014-15.

1.8 However, he made the addition of Rs. 4,03,95,042/ - to the Returned Income of Rs.1,08,75,659/- in the Draft order passed by him u/s 144C(1) r.w.s 144 of IT Act, 1961 by making the disallowance of the following expenses on adhoc basis for the want of details of the expenses and the proof of the expenses incurred by the assessee company:

Sr. No.	Expense	Amount of Expense (Rs.)	% of Adhoc disallowance	Amount of disallowance (Rs.)
1	Production Labour Charges	10,11,45,724	30	3,03,43,717/-
2	Travelling and Conveyance	1,07,64,619/-	15	16,14,692/-
3	Sub-Contracting Charges	7,48,33,506/-	10	74,83,350/-
4	Lodging and Boarding Charges	41,19,111/-	20	8,23,822/-
5	Employee meal charges	6,47,305/-	20	1,29,461/-
<b>Total</b>				4,03,95,042/-

4. Upon the assessee's objection, the DRP noted that the assessee has filed the additional evidence also. The same were remanded to the Assessing Officer.



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5. Thereafter, the DRP proceeded to confirm the action of Assessing Officer by concluding as under:-

*“3.2.10. We have gone through the remand report sent by the AO and agree with his observation that inter office invoices of Rs.16.6 crores out of Rs.19.6 crores regarding various charges do not support the appellant's claim as they were merely denoting the man-hours and rate of the persons deployed without any substantiation even in the Remand proceedings. The AR was asked by the AO to co-relate them with the expenses claimed but he expressed his inability to do so. What we find is that the AO has only disallowed 30% of the Production Labour Charge, 15 % of the Travelling and conveyance, 10% of sub-contracting charges, 20% of loading & Boarding charges and 20% of Employees Meal charges totaling to Rs. 4.03 crores which comes to around 20% of expenses overall. We do not find that such a disallowance is excessive or unreasonable.*

*3.2.11 It may be appropriate to mention here that in similar situation while dealing with the claim of revenue expenditure, the onus has always been held to be on the assessee to lead evidence. It is trite law that the onus of proving a claim lies on the person making such a claim. As per the provisions of sec. 37 of the Income Tax Act, an expenditure is allowable if and only if it is wholly and exclusively laid out for the purposes of business. Mere payment by itself would not entitle an assessee to the deduction of a particular expenditure unless the same is proved to be paid for commercial considerations. It has been held in the case of Chemaux P. Ltd. Vs. CIT 109 ITR 705 (Bom) that if the assessee fails to place sufficient material, the Tribunal (and by implication A.O.) would be justified in giving a finding that the payment is not a revenue expenditure. In the absence of the same, A.O. was Justified in following the principles (though not cited) laid down in the case of Jaipur Electro Pvt. Ltd. V. CIT 223 ITR 535 (Raj.) and CIT vs. National Rayon Commercial Co. Ltd. 193 ITR 744 (Born.) for disallowing a part of the expenditure.*

*3.2.12 In the case Jayshree Tea Industries Ltd. Vs. CII 272 hR 193 (Cal), It has been held that even if the payment is made under a contract or agreement, it is not allowable if the expenditure is not incurred and exclusively for the purpose of business. In the case at hand, the appellant has failed to adduce sufficient evidence in respect of these expenses. In order to claim that an expenditure falls within the ambit of sec. 37(1) of the I. T. Act, the burden of proving the necessary facts is on the assessee as held by the Hon'ble Supreme Court in the case of CIT Vs. Calcutta Agency Ltd. 19 ITR 191 (SC) and Lakshimaratan Cotton Mills Co. Ltd. Vs. CII 73 ITR 634 (SC).*



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*3.2.13 In yet another case of L.H. Sugar Factory & Oil Mills (P) Ltd. Vs. CIT 125 ITR 293(SC), it was held that where an assessee claims a deduction, the onus is on him to prove all material facts on record to substantiate his claim. Hon'ble Gujarat High Court in the case of CIT Vs. Chandravilas Patel 164 ITR 102 (Gui) held that mere production of vouchers in support of the claim for deduction of the expenditure would not prove the claim made by the assessee and it is his duty to prove the payment especially when the AO doubts the genuineness of the same. What we find from the records is that it is a case where the appellant has failed to adduce/sufficient evidence before the AO in order to prove the genuineness of the claim made."*

6. Against the above order, the assessee is in appeal before us. We have heard ld DR and perused the records. We find that the disallowance in the various heads of the expenditure has been done totally on ad hoc basis. The assessee had submitted the details and vouchers. In the remand proceeding, the AO reported that he could not make the cross verification from third parties due to paucity of time. This makes it further clear that the disallowance has been done without proper verification. We further note that in the first place AO has held that the assessee has not offered to profit to the extent of 3,11,82,465/- @ 15% as per the agreement by considering the aggregate profit shown by assessee company in the assessment years, 2012-13, 2013-14 & 2014-15. However, the AO had made the additions of Rs.4,03,95,042/- by making the disallowances under various expenses on ad hoc basis. This is a contradictory order showing that there is no proper application of mind. Assessee has also been at fault in not properly co-operating in the assessment. Accordingly, in the interest of justice we remit the issue raised in this appeal to the file of the AO. The AO is directed to considering the



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same afresh after giving the assessee proper opportunity of being heard.

In the result, this appeal filed by the assessee stands allowed for statistical purposes.

Order pronounced in the open court on 02/03/2020

**Sd/-**  
**(AMARJIT SINGH)**  
न्यायिक सदस्य/JUDICIAL MEMBER

**Sd/-**  
**(SHAMIM YAHYA)**  
लेखा सदस्य / ACCOUNTANT MEMBER

मुंबई Mumbai; दिनांक Dated : 02/03/2020

Vijay Pal Singh/Sr. PS

**आदेश की 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.

**आदेशानुसार/ BY ORDER,**

सत्यापित प्रति //True Copy//

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