

**IN THE INCOME TAX APPELLATE TRIBUNAL "SMC", BENCH MUMBAI  
BEFORE SHRI VIKAS AWASTHY, JUDICIAL MEMBER  
&  
SHRI G. MANJUNATHA, ACCOUNTANT MEMBER**

**ITA No.6496/Mum/2018  
(Assessment Year: 2014-15)**

Akshaye Khanna 12-A, Sumangal, 13 B.G.Kher Marg Malabar Hill Mumbai-400 006	Vs.	ITO-16(1)(1) Room No.439A, 4 <sup>th</sup> Floor Aaykar Bhawan, M.K.Road Mumbai-400 020
<b>PAN/GIR No.AAGPK4677B</b>		
<b>(Appellant)</b>	..	<b>(Respondent)</b>

Revenue by	Ms. R.Kavitha, DR
Assessee by	Shri Ajay Sekhri, AR
<b>Date of Hearing</b>	<b>20/02/2020</b>
<b>Date of Pronouncement</b>	<b>04/03/2020</b>

**आदेश / O R D E R**

**PER G.MANJUNATHA (A.M):**

This appeal filed by the assessee is directed against order of the Id. Commissioner of Income Tax (Appeals)-4, Mumbai, dated 21/09/2018 and it pertains to the A.Y 2014-15.

2. The assessee has raised the following grounds of appeal:

1. *On the facts and circumstances of the case and in law, Ld Commissioner of Income Tax (Appeals) -4 [hereinafter referred to as "Ld CIT (A)"] erred in confirming the action of Ld AO in disallowing a sum of Rs.15,78,830/- on account of expenditure on Motor Car, repair & maintenance, interest on car loan and depreciation on motor car.*
2. *On the facts and circumstances of the case and in law, Ld Commissioner of Income Tax (Appeals) -4 [hereinafter referred to as "Ld CIT (A)"] erred in confirming the action of Ld AO in disallowing a sum of Rs.13,97,559/- on account of expenditure pertaining to Speed Boat and depreciation on Speed Boat and boat trailer.*
3. *That the order of Ld.AO is bad in law and on facts.*

*4. The Appellant craves leave to add or amend the foregoing grounds of appeal.*

3. The brief facts of the case are that the assessee is a film Actor, filed his return of income for AY 2014-15 on 26/07/2014, declaring total loss of Rs.29,54,260/-. The case was selected for scrutiny and during the course of assessment proceedings, the Ld. AO noted that the assessee has claimed various expenditure amounting to Rs.55,90,975/-, but no receipts from business has been offered to tax. The Ld. AO, further noted that out of total expenditure debited into the profit and loss account amounting to Rs.55,19,975/-, a sum of Rs.18,11,252/- has been suo-moto disallowed, as personal expenses. Therefore, he called upon the assessee to explain as to why, total expenditure debited under various heads of expenses shall not be disallowed. In response, the assessee has stated that although, there is no receipts from business or profession for the year under consideration, but he had incurred various expenses in order to maintain its office and other business establishments, therefore, it is incorrect to say that expenditure incurred for the purpose of business is personal in nature and it cannot be allowed as deduction. The Ld. AO after considering relevant submissions of the assessee and also taken note of the fact that the assessee has not received any income from profession, has disallowed total expenditure claimed under various heads of expenses, including motor car expenses, depreciation on motor car and speed boat, repairs and maintenance expenses and other expense.

4. Being aggrieved by the assessment order, the assessee preferred an appeal before the Ld.CIT(A). Before the Ld.CIT(A), it was submitted that the Ld. AO was incorrect in disallowed total

expenditure claimed under various heads of expenses, which are wholly and exclusively incurred for the purpose of business, without appreciating the fact that whether or not any income is generated from the profession, but certain expenditure necessarily have to be incurred to maintain the business or profession of the assessee. The assessee further submitted that although, there is no receipt from the business for the year under consideration, but the assessee earned substantial professional receipts in preceding financial year and in subsequent financial year. Therefore, it is incorrect to disallow various expenditure incurred for the purpose of business only for the reason that there is no business receipts for the year under consideration. The Ld.CIT(A) after considering relevant submissions of the assessee and also, by following his predecessor Ld.CIT(A) order, observed that although, the assessee claims to have involved in profession, but no evidence has been furnished to prove that in fact, he is involved in any professional activity of film production, script writing or preparation for acting etc. Therefore, he opined that there is no error in findings recorded by the Ld. AO in disallowances of total expenditure claimed under the head income from business or profession and accordingly, rejected ground taken by the assessee. Aggrieved by the Ld.CIT(A) order, the assessee is in appeal before us.

5. The Ld. AR for the assessee, at the time of hearing submitted that the Ld.CIT(A) was erred in not appreciating correct facts, while confirming additions made by the Ld. AO towards disallowances of total expenditure debited into profit and loss account under various heads of expenses, even though the assessee has filed necessary evidences to prove that the assessee is involved in the profession of

film production and acting and the expenditure debited under various heads of expenses have to be necessarily incurred for the purpose of business or profession of the assessee. The Ld. AR, further submitted that it is a recurring issue, where the Ld. AO has made similar disallowances in earlier years and the matter has reached to the Tribunal. The Tribunal after considering necessary facts has held that the assessee is engaged in the profession of film production and acting and expenditure incurred under various heads of expenses, including depreciation on motor car and speed boat is incurred wholly and exclusively for the purpose of profession of the assessee. Further, the Tribunal after considering fact that the assessee has made suo-moto disallowances of certain expenses has deleted additions made by the Ld. AO towards various expenses. The Ld. AR, further submitted that a similar addition has been made by the Ld. AO for AY 2013-14, where the Ld. AO has made 25% disallowances of certain expenses, but the Ld. CIT(A) has restricted such disallowances to 20% of said expenses. For the year under consideration, the assessee has made suo-moto disallowances of 30% of certain expenses and 100% of certain expenses depending upon the facts and nature of expenses. Therefore, further disallowances towards other expenses is incorrect.

6. The Ld. DR, on the other hand, supporting order of the Ld.CIT(A) submitted that the Ld. AO, as well as the Ld.CIT(A) has brought out clear facts to the effect that the assessee has failed to file necessary evidences to prove that he is involved in the profession of film production and acting and also to prove that expenditure debited under various heads of expenses are wholly

incurred for the purpose of profession. Therefore, there is no reason to interfere with the findings of the Ld.CIT(A).

7. We have heard both the parties, perused the material available on record and gone through orders of the authorities below. The fact with regard to no professional receipts for the year under consideration, from the profession of film acting and film production is not disputed for the assessee. But, the claim of the assessee before the lower authorities was that whether or not any receipts from profession, but he needs to incur certain expenses to keep its profession alive. Although, the assessee has debited various expenditure to the profit and loss account, but depending upon nature of expenses, he has made suo-moto disallowances of 30% & 100% on certain expenses. The Ld. AO has disallowed 100% expenditure debited under various head of expenses, only on the ground that there is no business receipts for the year under consideration. It is an admitted and settled position of law that any expenditure incurred for the purpose of business of the assessee and debited into profit and loss account have to be necessarily allowed, irrespective of the fact that whether, there is receipt of income or not from the profession. This principle has been laid down by the Hon'ble Supreme Court, in the case of CIT vs Rajendra Prasad Mody (1978) 115 ITR 519. But, fact remains that whether, expenditure incurred by the assessee under various heads of expenses are necessarily have to be incurred for the purpose of business or not has to be seen in the given facts of the case, more particularly, when there is no professional receipts for the year under consideration. Admittedly, for the year under consideration, there is no professional receipts from his profession. The assessee has

earned professional income from preceding, as well as subsequent financial year. Further, the assessee on its own made suo-moto disallowances of certain expenses considering the nature and type of expenses and accordingly, made disallowances of an amount of Rs.18,11,252/- out of total expenditure incurred for the purpose of profession of Rs.54,61,636/- and such percentage of disallowances various from 30% to 100%. In preceding financial year relevant to AY 2012-13, the Ld. AO has made similar disallowances. However, the matter reached to the Tribunal, the Tribunal has deleted additions made by the Ld. AO towards expenses by observing that the assessee has been using speed boat and other motor vehicles for the purpose of his profession and accordingly, necessary expenditure incurred for maintenance of vehicles and motor boat, including depreciation needs to be allowed. Further, Ld.AO has made similar disallowances of 25% of various expenditure for AY 20103-14 and the Ld.CIT(A) has restricted such disallowances to 20% of total expenses and the revenue has accepted the findings of Ld.CIT(A). For the year under consideration, the assessee himself has made suo-moto disallowances of 30% to 100% of certain expenses. Therefore, we are of the considered view that when, the Ld. AO has made 25% disallowances of expenses in preceding year, was erred in disallowed 100% expenses for the year under consideration, without there being any change in facts for the impugned assessment year. Therefore, we are of the considered view that suo-moto disallowances made by the assessee towards certain expenses is in accordance with the findings of the Tribunal for AY 2012-13 and accordingly, there is no reason for the Ld. AO to deviate and made 100% disallowances of expenses without there being any change in facts and circumstances for the impugned

assessment year. Hence, considering the facts and circumstances of this case and consistent with view taken by the co-ordinate bench in earlier years, we direct the Ld. AO to delete additions made towards disallowances of expenditure, over and above suo-moto disallowances made by the assessee in his statement of total income.

8. In the result, appeal filed by the assessee is allowed.

Order pronounced in the open court on this 04 /03/2020

**Sd/-**  
**(VIKAS AWASTHY)**  
JUDICIAL MEMBER

**Sd/-**  
**(G. MANJUNATHA)**  
ACCOUNTANT MEMBER

Mumbai; Dated 04/03/2020  
Thirumalesh Sr.PS

**Copy of the Order forwarded to :**

1. The Appellant
2. The Respondent.
3. The CIT(A), Mumbai.
4. CIT
5. DR, ITAT, Mumbai
6. Guard file.

सत्यापित प्रति //True Copy//

BY ORDER,

(Asstt. Registrar)  
ITAT, Mumbai