

IN THE INCOME TAX APPELLATE TRIBUNAL
'C' BENCH : BANGALORE
BEFORE SHRI. B.R. BASKARAN, ACCOUNTANT MEMBER
AND
SMT. BEENA PILLAI, JUDICIAL MEMBER

ITA No.839/BANG/2015 ITA No.170/BANG/2016
Assessment Year : 2006 – 07 & 2007-08

The Asst. Commissioner of Income Tax, Circle-2(3)(1), Bengaluru.	Vs.	Sri Sudeep Sanjeev, No.359, 17 th Cross, 26 th Main, J.P Nagar, Bengaluru-560 078. PAN – AMMPS 5150 K
APPELLANT		RESPONDENT

Appellant by	:	Smt. R Premi, JCIT (DR)
Respondent by	:	Shri R Ramakrishna, C.A

Date of Hearing	:	04-11-2020
Date of Pronouncement	:	-11-2020

ORDER

PER BEENA PILLAI, JUDICIAL MEMBER

Present appeals has been filed by revenue against common order dated 04/03/2015 passed by Ld.CIT(A)-4, Bangalore. Common issue involved in the present appeal is against quashing of reassessment proceedings by Ld.CIT(A) on the basis of change of opinion.

2. Revenue has challenged the reassessment been quashed for both years under consideration by Ld.CIT(A), on the ground that,

assessee did not produce any evidence to claimed expenses towards the production cost incurred during the years under consideration and failed to substantiate the difference in the production cost adopted in the return of income filed and Form 52A filed in spite of opportunity of being heard granted to assessee.

3. As the issues raised in both years under consideration by revenue are identical and on same facts, both parties do not have any objection in the appeals being disposed off by way of common order.

4. We note that, original assessment order for assessment years 2006-07 and 2007-08 was completed by Ld.AO on 30/12/2008 and 30/12/2009 respectively. Subsequently, notice under section 148 was issued on 13/10/2010 for both years. Summons under section 131 was issued which was received by assessee after the date of hearing and assessee filed a brief note on the nature of business copy of the return filed in response to notice under section 142(1) of the Act. The Ld.AO completed the assessment based on materials available on record. Ld.AO completed the assessment by making addition being, difference between the production cost incurred by assessee as per income tax return and that declared in Form 52A.

5. Aggrieved by the addition made by Ld.AO, assessee preferred appeal before Ld.CIT(A).

6. Ld.CIT(A) upon verification of the facts, noted that, there was no failure on part of assessee to fully and truly disclose all material facts necessary for original assessment. He submitted that form 52A is a mandatory requirement as per section 285B, wherein, an assessee is to file statement regarding any payment made in respect of production of a cinematograph, film that exceeds Rs.50,000/-. Assessee submitted that, return has been filed based on expenditure claimed as per profit and loss account which is higher than what is disclosed in Form 52A. He thus submitted that, the amount disclosed in form 52A already stands subsumed in the production cost disclosed in profit and loss account.

7. Ld.CIT(A) on considering the submissions of assessee observed as under:

5. The facts of the case are very clear that the AO was in possession of both Profit & Loss account and Form 52A in the original proceedings. He has also thoroughly examined the expenditure claimed vis-à-vis P&L account as well as Form 52A of the assessee and made his disallowances in the original assessment. Hence, I have no hesitation in applying the above mentioned Apex Court's decision whose ruling comes in the nature of binding precedent. Respectfully following the Hon'ble Court, it is held that the AO has reopened the assessment on the basis of change of opinion' and thus the same cannot be sustained in first appeal. Reassessment proceedings stand quashed and hence there is no necessity to go into the merits of the case.

6. The facts are identical in this year too and the reasons recorded by the AO are as under :-

"During the course of Audit by the C&AG on 'taxation of assesses engaged in film and television activities', it was pointed out by the Audit Party that during the A. Y. 2007-08 also the film 'Shantinivas', the expenditure incurred was shown as Rs. 1,44,65,8451- as against Rs. 55,75,2901- shown in the Form

52A. Hence, to examine such a huge variation, the assessment for the A. Y. 2007-08 is also reopened u/s. 147 of the I.T.Act."

7. Following my decision in the earlier year, the reassessment is quashed accordingly."

8. Aggrieved by the order passed by Ld.CIT(A) revenue is in appeal before us now for both years under consideration.

9. Ld.Sr.DR submitted that Ld.CIT(A) erred in quashing the reassessment by holding that, there is a change of opinion. She submitted that, Ld.AO while passing original assessment order did analysed the issue and therefore no opinion was expressed by him. He submitted that, it was based on audit objection that, the reopening notices were issued to assessee for years under consideration.

10. On the contrary, Ld.AR submitted that, during original assessment proceedings, assessee filed all details called by Ld.AO as per notice issued under section 142(1). She submitted that, Ld.AO after verifying details filed by assessee passed assessment order under section 143(3). He submitted that, additions made in original assessment orders were subject matter of challenge before this *Tribunal*. He submitted that this *Tribunal* by order dated 14/03/2014 and 10/02/2016 disposed off the appeals for years under consideration that arose out of Original assessment order passed under 143(3). It has been submitted that for assessment year 2006-07 issue regarding expenditure claimed has been remanded to Ld.AO for fresh consideration.

11. For assessment year 2007-08, Ld.AR submitted that, assessee did not claim any expenses under production cost

pertaining to film 'Shanthi Niwas'. He referred to page 81- 82 of paper book, wherein, said amount has been claimed and shown as work in progress.

12. He thus placed reliance on order observations of Ld.CIT(A). Even otherwise, Ld.AR submitted that, declaration under section form 52A is a statement by assessee in respect of production cost that exceeds Rs.50,000/-, due to any person on behalf of assessee. He submitted that, the statement under Form 52A is used by the Department to check inflation of expenditure by film a producer, and to enable to get information about recipient of payment for necessary action for their case. It was thus submitted by Ld.AR that, reopening has been rightly quashed by Ld.CIT(A) as details stated in form 52A regarding payments paid/payable to the recipients already would be subsumed in the expenditure claimed in the profit and loss account.

13. We have perused submissions advanced by both sides in light of records placed before us.

14. On perusal of the records we note that as the appeal was pending before the Ld.CIT(A) for years under consideration, the assessment was reopened vide issuance of notice dated 28/09/2010. The reasons recorded reveal that, reopening notice was issued to assessee due to discrepancy pointed out in audit objection between cost of production incurred as per the return of income and as per form 52A.

15. We note that following were the difference noted by audit team:

Expenditure claimed	AY:2006-07 (in Rs.)	AY: 2007-08(in Rs.)
As per ROI	1,17,87,687/-	1,44,65,845/-
As per Form 52A	52,10,142/-	55,75,290/-
Difference	65,77,545/-	88,90,555/-

16. Ld.AR drew our attention towards form 52A placed at page 54-56 for assessment year 2006-07 and 76-77 for assessment year 2008-09. It is submitted that, for assessment year 2006-07 and 2007-08 cost of production was considered as work in progress which is clear from the statement of affairs for 31/03/2007 placed at page 81-82 of paper book. He also drew our attention to page 83, being the statement of affairs for year-end 31/03/2008 wherein, the said production cost is claimed as expenditure. In the written submission placed at page 41-52 of paper book, Ld.AR has submitted that this *Tribunal* has remanded the matter back to Ld.AO for fresh adjudication on the issue of disallowance which includes the alleged addition made in reassessment proceedings.

17. We note that section 285 B of the Act requires any person carrying on production of cinematographic film during the whole or any part of the financial year to file the statement before Ld.AO within 30 days from the end of such financial year or within 30

days from the date of completion of the production of the film whichever is earlier.

18. The statement is necessarily to contain the payments that exceeds Rs.50,000/- in the aggregate made by such person to eat such person engaged by him in such production.

19. From the statement is referred to by Ld.AR placed in paper book at page 54-56, 76-81, it is clear that form 52 relevant for financial year 2005-06 and 2006-07 relevant to assessment year under consideration was filed by assessee before Ld.AO on 09/01/2008 being the year in which the production of the film was completed. We therefore, do not find any infirmity in the observations of Ld.CIT(A), as the reassessment was initiated based on change of opinion.

20. On merits we note that, there is no dispute regarding compliance under section 285B, within the relevant period. It is an admitted position that, production cost claimed by assessee for assessment year 2006-07 is remanded by this *Tribunal* to Ld.AO for fresh consideration. Assessee placed the copy of the order passed by this *Tribunal* for assessment year 2006-07 at pages 97-101 of paper book. For assessment year 2007-08, we note that, assessee has not claimed production cost as expenditure which is clear from page 82 of paper book. We note that production cost has been considered as work in progress.

We therefore do not find any merit in the appeals filed by revenue for years under consideration.

Accordingly grounds raised by revenue stands dismissed.

In the result appeals filed by revenue stands dismissed.

Order pronounced in the open court on 27th Nov, 2020

Sd/-
(B.R BASKARAN)
Accountant Member
Bangalore,
Dated, the 27th Nov, 2020.
/Vms/

Sd/-
(BEENA PILLAI)
Judicial Member

Copy to:

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

By order

Assistant Registrar, ITAT, Bangalore

		Date	Initial	
1.	Draft dictated on	On Dragon		Sr.PS
2.	Draft placed before author	-11-2020		Sr.PS
3.	Draft proposed & placed before the second member	-11-2020		JM/AM
4.	Draft discussed/approved by Second Member.	-11-2020		JM/AM
5.	Approved Draft comes to the Sr.PS/PS	-11-2020		Sr.PS/PS
6.	Kept for pronouncement on	-11-2020		Sr.PS
7.	Date of uploading the order on Website	-11-2020		Sr.PS
8.	If not uploaded, furnish the reason	--		Sr.PS
9.	File sent to the Bench Clerk	-11-2020		Sr.PS
10.	Date on which file goes to the AR			
11.	Date on which file goes to the Head Clerk.			
12.	Date of dispatch of Order.			
13.	Draft dictation sheets are attached	No		Sr.PS