

**IN THE INCOME TAX APPELLATE TRIBUNAL
KOLKATA 'B' BENCH, KOLKATA
(Virtual Court)**

(Before Sri J. Sudhakar Reddy, Accountant Member & Sri Aby T. Varkey, Judicial Member)

**I.T.A. No. 913/Kol/2019
Assessment Year: 2012-13**

DCIT, Circle-8(1), Kolkata.....Appellant

Vs.

**M/s. Rising Sun Films Private Limited.....Respondent
[PAN: AADCR 7118 J]**

Appearances by:

Smt. Ranu Biswas, Addl. CIT, appeared on behalf of the Revenue.

Sh. Shatanik Chakrabarty, A/R, appeared on behalf of the Assessee.

Date of concluding the hearing : January 27th, 2021

Date of pronouncing the order : February 3rd, 2021

ORDER

Per J. Sudhakar Reddy, AM:

This is an appeal filed by the Revenue is against the order of the Learned Commissioner of Income Tax (Appeals)-3, Kolkata, [hereinafter the "CIT(A)"], passed u/s. 250 of the Income Tax Act, 1961 (the 'Act'), dated 15.02.2019 for the Assessment Year 2012-13.

2. There is a delay of 4 (four) days in filing of the appeal. The Revenue has filed a petition for condonation. After perusing the same, we are convinced that the Revenue was prevented by sufficient cause from filing of the appeal in time. Hence, we condone the delay and admit the appeal of the Revenue.

3. The assessee is a company and is a Producer of video programme, Ad films and feature films. It filed its return of income on 29.09.2012 declaring total loss of ₹4,57,84,649/- for the AY 2012-13. The AO completed the assessment u/s 143(3) of the Act on 25.03.2015 after selection of this case for limited scrutiny, and determined the total income at ₹6,79,35,382/- inter alia making an addition of ₹2,05,85,184/- on the ground that the assessee has failed to declare his full income from production of feature

film "Shoe Bite" under agreement dated 21.11.2007 with UTV Motion Pictures (Mauritius) Ltd. (UTV) and also an addition of ₹15,65,549/- as bogus sundry creditors being amount payable to Shabnam Parvez Khan. Aggrieved, the assessee carried the matter in appeal. The first appellate authority deleted both these additions after calling for the remand report from the AO. Aggrieved, with this action of the Id. CIT(A), the Revenue is in appeal before us.

4. We have heard Smt. Ranu Biswas, Addl. CIT, Id. Sr. D/R on behalf of the Revenue. Mr. Shatanik Chakrabarty, appearing for the assessee sought a pass over on the ground that Sh. Nageswar Rao, the Counsel for the assessee was on his legs before the High Court. As this is the last case on board, no pass over could be granted.

4.1. Mr. Shatanik Chakrabarty submitted that, they may be given an opportunity to submit written submissions. The Bench permitted filing of written submissions. He heard the Id. Dr. D/R.

5. On a careful consideration of the facts and circumstances of the case, we hold as follows.

5.1. On the first issue of addition of ₹2,05,85,184/-, we find that the assessee had entered into an agreement dated 27.11.2007 with UTV Motion Pictures (Mauritius) Ltd. (UTV) for production of a feature film titled "Shoe Bite". This agreement contemplated a stage-wise payment for the works to be done by the assessee. These stage-wise payments are as follows:

"₹0.95 crores on signing of the agreement for Pre Production of the film.

₹1.90 crores 3 weeks prior to start of the shoot of the film.

₹0.95 crores within 1 week of commencement of the shoot of the film.

₹0.95 crores after completion of 30 shooting days of the film.

₹1.90 crores after completion of 60 shooting days of the film.

₹0.95 crores on completion of the shooting production of the film.

₹0.95 crores on completion of the dubbing of the film.

₹0.95 crores on delivery of the 1st censor copy of the film."

5.2. On completion of the shooting production of the film, there was a dispute between UTV Motion Pictures (Mauritius) Ltd. (UTV) and the 20th Century Fox USA with respect to intellectual property rights relating this feature film "Shoe Bite". Because of this dispute, there was no further progress in this project. The assessee had declared income up to the stage of completion of the shooting production of the film. The AO was of the view that the income receivable by the assessee on the completion of dubbing of the film and on the delivery of the first censor copy of the film should also be considered as income of the assessee company, though his works were not even started. A small portion of the shooting production amounting to ₹15,85,184/- was not completed. The assessee has not recognised income on this unfinished works. The Id. CIT(A) called for remand report and thereafter concluded that as per the contract, the income accrued on the completion on a definite land mark in each stage of production and that the entire receipt does not accrue a signing of the contract. Therefore, he held that income relating to those activities which have either not been completed by the assessee or which have not been initiated at all, will not accrue.

5.3. He further, held that the comment of the AO that the assessee has claimed all the expenses, while the entire revenue was not offered to tax, is factually incorrect. On facts, he records that the assessee has not claimed expenses relating to dubbing, post production and production of first censor copy. Thus, he held that even going by the matching principle, the income recognised by the assessee during the year is correct.

6. We find no infirmity in this factual finding of the Id. CIT(A). The income to the extent contract work is done has been recognised by the assessee. Thus, we uphold the order of the Id. CIT(A) on this issue and dismiss this ground of the Revenue.

7. Ground no. 2 is on the deletion of the addition of ₹15,65,549/- on account of bogus sundry creditors. The Id. CIT(A) has recorded the fact that Shabnam Parvez Khan has issued a confirmation letter, a copy of which is extracted at page 16 of his order. The Id. CIT(A) further records a finding of fact that the assessee has furnished copies of bills, as well as ledger accounts which were sent to the AO and that the AO has not commented adversely. Thus, on facts, he held that Shabnam Parvez Khan performed work of a casting coordinator and that proper bills have been raised on the assessee company. He held that this is a genuine transaction and deleted the addition. We find no

infirmary in this factual finding of the Id. CIT(A). Hence, we do not interfere in this order. Thus, we dismiss this ground of the Revenue.

8. In the result, the appeal filed by the Revenue is dismissed.

Kolkata, the 3rd February, 2021.

Sd/-
[Aby T. Varkey]
Judicial Member

Dated: 03.02.2021

Bidhan (P.S.)

Copy of the order forwarded to:

1. ***DCIT, Circle-8(1), Kolkata.***
2. ***M/s. Rising Sun Films Private Limited., 201 Concord CHS, N.S. Road No 10, JVPD Scheme, Juhu Circle, Mumbai-400 049.***
3. CIT(A)-3, Kolkata. (sent through mail)
4. CIT-
5. CIT(DR), Kolkata Benches, Kolkata. (sent through mail)

True copy

By order

Assistant Registrar
ITAT, Kolkata Benches