

(IN THE INCOME TAX APPELLATE TRIBUNAL, SURAT BENCH, SURAT
BEFORE SHRI PAWAN SINGH, JUDICIAL MEMBER AND
DR. ARJUN LAL SAINI, ACCOUNTANT MEMBER
ITA No.24/SRT/2019 (AY 2009-10)
(Hearing in Virtual Court)

Seven Eagle Production, 5/6, Paras Shopping Centre, Near.Gajera Circle, Katargam, Email:srshethtax@gmail.com Surat – 395004. PAN: ABFFS 0860 C	Vs.	The Assistant Commissioner of Income Tax, Circle-3(2), Surat.
Applicant		Respondent

Assessee by	Shri Sapnesh Sheth – CA
Revenue by	Shri Ritesh Mishra – CIT(DR)
Date of hearing	09.09.2021
Date of pronouncement	09.09.2021

Order under section 254(1) of Income Tax Act

PER PAWAN SINGH, JUDICIAL MEMBER:

1. This appeal by assessee is directed against the orders of ld.Commissioner of Income Tax(Appeals)-3, Surat dated 12.12.2018, which in turn arises in the assessment order passed under section 143(3) r.w.s 147 of Income –tax Act (Act), for the assessment year (AY) 2009-10. The assessee raised the following grounds of appeal:

- “1. *On the facts and circumstances of the case as well as law on the subject, the learned Commissioner of Income-tax (Appeals) has erred in passing ex-parte order without providing reasonable opportunity of hearing to assessee.*
2. *On the facts and circumstances of the case as well as law on the subject, the learned Commissioner of Income-tax (appeals) has erred in confirming the action of assessing officer in reopening assessment by issuing notice u/s 148 of the I.T.Act, 1961.*
3. *On the facts and circumstances of the case as well as law on the subject, the learned Commissioner of Income Tax (Appeals) has erred in confirming the action of assessing officer by disallowing expenses of Rs.4,37,29,666/- u/s 40(a)(ia) of the I.T. Act on account of alleged non deduction of TDS.*
4. *It is therefore prayed that above disallowances made by assessing officer and confirmed by Commissioner of Income-tax (Appeals) may please be deleted.*

5. *Apellant craves leave to add, alter or delete any ground(s) either before or in the course of hearing of the appeal.”*
2. Brief facts of the case are that during the relevant period under consideration, the assessee was engaged in the production of commercial films. The assessee filed return of income for assessment year 2009-10 on 29.09.2010 declaring total loss of Rs.5.36 Crore. The case was selected for scrutiny and the assessment was completed under section 143(3) of the on 12.12.2011 and the total income was assessed at loss of Rs.5.30 Crore. Subsequently, the assessment was reopened under section 147. Notice under section 148 was served on the assessee by affixation on 31.03.2016. In response to the notice under section 148, the assessee filed its reply on 28.10.2016 stating therein that the return filed originally on 29.09.2010 be treated return in response to the said notice. The assessing officer after serving statutory notices under section 143(2) and 142(1) and supplying reasons recorded, proceeded for re-assessment. During the assessment the assessee was asked to submit the details of tax deducted at sources on the payments of various expenses of Rs. 4.37 Crore, as mentioned in para 6.1 of the assessment order. The assessee filed its reply as recorded in para 6.2 of the assessment order. In the reply the assessee stated that the firm is engaged in the production of commercial films and incurred various expenses & accumulated under “ project under progress” from the period from 01.04.2006 to 31.03.2009 was transferred to profit and loss account on release of film in FY 2008-09 relevant to AY 2009-10. The assessee also furnished income tax return, computation of income and

audited balance sheet with all details. The assessee also stated that during the period from 31.03.2006 to 31.03.2009 the assessee made various payments and deducted tax as sources (TDS) under various section wherever applicable. The assessee further stated that the partner of the assessee also received notice on 17.10.2016 regarding the details of deductions under chapter XVII-B for the expenses of Rs. 4.37 Crore under various sections and after verification of details only additions of Rs.748,038/- was made to the income of the said partner. The assessee also explained that during the regular assessment the assessee furnished all the required details and the AO after verification passed the assessment order by disallowing the expenses of Rs. 6,17,309/-.

3. The reply of the assessee was not accepted by AO by taking view that the auditor has clearly mentioned in the audit report that there is shortfall on account of lessor deduction then required. On the contention of the assessee that the AO has disallowed some expenses, the AO held that said disallowances were made on account of other reasons, and have no relevance with default of TDS. And accordingly made disallowances under section 40(a)(ia) of Rs. 4.37 Crore.
4. On appeal before Id. CIT(A) the action of the assessing officer was affirmed. The Id.CIT(A) confirmed the order of AO in *ex-parte* order by taking view that appellant is not interested in filing any details during the appellate proceedings and availed the opportunities under the principles of natural

justice. Further aggrieved, the assessee has filed present appeal before this Tribunal.

5. We have heard the submission of Ld. Authorised Representative (AR) of the assessee and ld. Senior Departmental Representative (Sr. DR) for the Revenue. The ld. AR for the assessee submits that the ld.CIT(A) passed the order *ex-parte*, without providing fair and proper opportunity to the assessee. The ld. AR for the assessee submits that during the appellate proceedings, the assessee also filed adjournment application before the ld.CIT(A) as assessee needs more time to file details before the Ld.CIT(A) as expenses were incurred almost 6 to 7 years back and compilation of details were taking time. The Ld.AR further submitted that the ld.CIT(A) without granting further opportunity and not considered the statement of facts filed before him, passed *ex-parte* order. The assessee has good case on merit and is likely to succeed if one more opportunity of hearing is granted to him to explain the facts before ld.CIT(A). The ld.AR for the assessee prayed that the assessee may be given one more opportunity to represent his case before the ld.CIT(A). The ld.AR further submits that the ld.CIT(A) passed the *ex-parte* order without discussing the merits of the case. The ld AR for the assessee undertook to be vigilant in attending the hearing before first appellate authority.
6. On the other hand, the ld.CIT-DR for the Revenue submits that the assessee was given ample opportunity as recorded in page 2 of para 4 of the order passed by the ld.CIT(A). The assessee failed to comply with the notice issued

by the ld.CIT(A). The ld.CIT(A) left with no option, except to proceed to decide the issue and in absence of any evidence or explanation affirm the action of AO. In alternative submission, the ld.CIT-DR for the Revenue submits that in case the Hon'ble Tribunal is deem appropriate, the assessee be directed to be vigilant and not to default in attending the proceedings and to waste the time of public authorities/ld.CIT(A).

7. We have considered the rival submission of both the parties and have gone through the orders of lower Authorities. We find that the assessing officer while passing the assessment order made disallowances for the want of TDS. The ld.CIT(A) confirmed the action of AO by taking view that there is non-compliance on the part of the assessee. We further find that before the AO, the assessee raised factual and legal submission. The ld CIT(A) has not seen and examined such facts and affirmed the action of AO. Before, us the ld. AR for the assessee submits that the assessee also filed adjournment application before the ld.CIT(A) as assessee needs more time to file details before the Ld.CIT(A) as expenses were incurred almost 6 to 7 years back and compilation of details were taking time. We find merit in the submissions of the ld AR for the assessee that sufficient and reasonable time was not granted to the assessee.
8. However, before us the ld AR for the assessee still undertook to be vigilant in timely making compliance before the ld. CIT(A). We, instead of going into controversy, whether the assessee defaulted in attending the proceedings

before the ld.CIT(A) or not. We find one more reasons that the order of the ld.CIT(A) is not in accordance with mandate of section 250(6) of the Income Tax Act. Section 250(6) of the Act mandates that the Ld. CIT(A) while deciding the appeal is required to pass order on points of determination and decision therein on and reasons for such decision. Therefore, considering the facts and circumstances of the case, the appeal of the assessee is restored back to the file of the ld.CIT(A) to decide all the grounds of appeal on merit in accordance with law. The assessee is directed to appear before the ld.CIT(A) as and when the date of hearing is fixed and to provide all necessary evidence and information without any further delay and not to seek the adjournment without any valid reasons. Accordingly the ground of appeal by assessee is allowed for statistical purpose.

9. In the result, appeal of the assessee is allowed for statistical purpose.

Order announced on 9th September, 2021 at the time of hearing in virtual court hearing.

Sd/-
(Dr ARJUN LAL SAINI)
ACCOUNTANT MEMBER

Surat, Dated: 09/09/2021 / SGR*

Copy to:

1. Appellant
2. Respondent
3. CIT(A)
4. CIT
5. DR
6. Guard File

Sd/-
(PAWAN SINGH)
JUDICIAL MEMBER

By order

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Sr.Pvt. Secretary, ITAT, Surat