

**IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI “SMC” BENCH: NEW DELHI**

(THROUGH VIDEO CONFERENCING)

BEFORE SHRI KUL BHARAT, JUDICIAL MEMBER

ITA No.6979/Del/2019

[Assessment Year : 2012-13]

Vistaar Religare Films Ltd. D3 P3B, District Centre, Saket, New Delhi AACCV9101E	vs	ACIT Circle-26(2) Room No. 192, C. R. Building, I. P. Estate, New Delhi
APPELLANT		RESPONDENT
Appellant by	None	
Respondent by	Shri Om Prakash, Sr. DR	
Date of Hearing	03.01.2022	
Date of Pronouncement	06.01.2022	

ORDER

PER KUL BHARAT, JM :

This appeal by the assessee is directed against the order of the Ld. CIT(A)—13, New Delhi dated 14th June, 2019, pertaining to the Assessment Year 2012-13. The assessee has raised following grounds of appeal:-

“1. That having regard to the facts and circumstances of the case, Ld. CIT(A) has erred in law and on facts in passing the impugned order and that too without granting adequate opportunity of hearing.

2. That on the facts and circumstances of the case and in law, the Ld. CIT(A) has erred in not appreciating the fact that

assessment order u/s 143(3) of the Act, passed by the Ld. AO is void ab initio and has been passed in undue haste without providing adequate opportunity of being heard.

3. *That in any case and in any view of the matter, action of Ld. CIT(A) in passing the impugned order is bad in law and against the facts and circumstances of the case, and that the Ld. CIT(A) has erred in part-confirming the action of Ld. AO of making an addition to the extent of Rs. 2,70,83,628/- out of a total addition of Rs. 5,43,47,256/-.*

4. *That on the facts and circumstances of the case and in law, the Ld. CIT(A) has erred in not allowing the full claim of expenditure even after accepting the claim principally, but still making a disallowance of 50% of the expense on ad-hoc basis, which is absolutely untenable in law facts of the present case.”*

2. No one appeared on behalf of the assessee. The notice of hearing sent by way of Speed Post is returned with remark “Left”. It is seen that the notices sent on earlier occasions have also been returned and no one appeared on behalf of the assessee. Under these facts, the appeal was taken up for hearing in the absence of the assessee.

3. The facts giving rise to the present appeal are that in this case, return declaring loss of Rs. 5,43,11,472/- was filed electronically on 28/9/2012. Subsequently, the case was taken up for scrutiny

assessment. The assessment u/s 143(3) of the Income Tax Act, 1961 (in short "the Act".) was framed vide order dated 13/2/2015. The Assessing Officer while framing the assessment disallowed the expenditure of Rs. 5,41,61,256/- claimed on account of cost production of feature films. Further, the Assessing Officer also disallowed expenditure of Rs. 1,80,000/-. Thus, computed taxable income at Rs. 37,784/- against the declared loss of Rs. 5,41,61,256/-.

4. Aggrieved against this, the assessee preferred appeal before the Ld.CIT(A) The Ld.CIT(A) thereby partly allowed the appeal of the assessee.

5. The Ld.CIT(A) out of the disallowance of Rs. 5,41,61,256/- sustained the disallowance to the extent of Rs. 2,70,83,628/- and further, deleted the addition of Rs. 1,80,000/- made by the Assessing Officer in respect of disallowance of interest.

6. Aggrieved against this, the assessee preferred the present appeal before this Tribunal.

7. The only effective ground is against sustaining the addition to the extent of Rs. 2,70,85,628/-.

8. The Ld. Sr. Departmental Representative vehemently argued that the Assessing Officer was justified in making the disallowance. He relied on the decision of the Assessing Officer .

9. I have heard the Ld. Departmental Representative and perused the material available on record and gone through the orders of the authorities below. The Ld.CIT(A) has decided the issue by observing as under:-

“4.8 In light of the above peculiar facts and circumstances of the case, the appellant's appeal to allow the loss of Rs.5,43,47,256/- was considered and the genuineness of expenditure factually incurred was referred to the AO. The AO in the remand report, while challenging the contention of the appellant u/r 46A stated that since no revenue was reflected in his books, his case would not be covered u/r 9A and accordingly, was not entitled to the expenses claimed in the P&L a/c.

4.9. After perusal of the arguments put forth by the appellant and the report of the AO, it is held that firstly, the

appellant's case is not covered by the Board's circular no. 16 of 2016 dated 06.10.2016 since there was no abandonment of the film by the appellant himself. Rather he made his claim before the Hon'ble Bombay High Court which however held that the first right on revenue would lie with Eagle Films and if the film made profit, the appellant would be paid for the expenses incurred in making the film. It is another matter that the film was a flop and a gross collection was not enough to meet out the expenses /cost of production of the film incurred even by M/s Eagle Films (P) Ltd.*

4.10. *As regards, the claim of expenses incurred to the tune of Rs.5,41,67,256/-. In the P&L a/c, the AO disallowed the same on the ground that the assessee did not fulfill the condition of rule 9A of the Income Tax Rules, 1962 and that he failed to furnish any information as to why the revenue from the feature film was not shown while claiming the entire expense of cost of production. In light of the observations made earlier it is held that legally and factually the appellant was entitled to the revenue from the Feature Film which however did not materialize due to the peculiar facts of the case that it did not earn adequate revenue at the box office.*

4.11. *The AO in his remand report also stated that the assessee was asked to furnish complete details alongwith copy of the ledger account of the said expenses to justify the claim. While the copy of the ledger account was furnished vide reply dated 04.02.2015 no further details as called for were produced. Mere production of the ledger was not satisfactory explanation or justification to claim the expenses as genuine. Moreover, the fact that a substantial amount of expense to the tune of Rs.4.77 crores was also stated to have been claimed by M/s Eagle Films (P) Ltd., in production of the same film (Office Office), the duplicacy of certain expenses cannot be ruled out. Accordingly, it is considered fair and reasonable to disallow 50% of the expenses claimed, since the same had not been subjected to verification by the AO as has also been stated in the remand report. Thus, the addition to the extent of Rs.2,70,83,628/- is hereby **confirmed** on account of disallowance of 50% of expenses claimed to have been incurred on cost of production of the film.”*

10. The assessee has not placed any material on record controverting the finding of the Ld.CIT(A). Therefore, I do not see

any reason to interfere in the finding of the Ld.CIT(A). The grounds raised in this appeal are rejected.

11. In result, the appeal of the assessee is dismissed.

Above decision was pronounced on conclusion of Virtual Hearing in the presence of both the parties on 06th January , 2022.

Sd/-

(KUL BHARAT)
JUDICIAL MEMBER

Dated : 06/01/2022

R. N

Copy forwarded to:

1. Appellant
2. Respondent
3. CIT
4. CIT(Appeals)
5. DR: ITAT

ASSISTANT REGISTRAR
ITAT, NEW DELHI

