

**IN THE INCOME TAX APPELLATE TRIBUNAL
MUMBAI BENCH "G" MUMBAI**

**BEFORE SHRI PRAMOD KUMAR (VICE PRESIDENT) AND
MS. SUCHITRA KAMBLE (JUDICIAL MEMBER)**

**ITA No.1390/MUM/2020
(Assessment Year: 2008-09)**

M/s WSG Pictures Pvt. Ltd.
Conference Room No. 4, Taj
Wellington Mews, 33,
Nathalal Marg, Colaba,
Mumbai – 400001

Vs. Deputy Commissioner of Income
Tax, Circle-16(1),
(Erstwhile Asstt. Commissioner of Income Tax,
Circle-7(1))
Room No. 439, 4th Floor, Aayakar
Bhawan, Churchgate,
Mumbai 400 020

PAN No. AACCP5459R

(Assessee)

(Revenue)

Assessee by : Shri Ashwin Kashinath, A.R

Revenue by : Shri Hoshang B. Irani, D.R

Date of Hearing : 13/01/2022

Date of pronouncement : 19/01/2022

ORDER

PER SUCHITRA KAMBLE, J.M:

This appeal is filed by the assessee against the order dated 14.01.2020 passed by the CIT(A)-4, Mumbai, for assessment year 2008-09. The assessee has raised following grounds before us:

- “1. The learned Commissioner of Income-tax (Appeals) erred in passing an ex-parte order under Section 250 of the Act without giving opportunity of being heard to the Appellant and thereby upholding order passed by AO under Section 144 of the Act. The Id. CIT(A) and Id. AO erred in acting in the utmost prejudicial manner and against the spirit of the law. The order passed under Section 250 of the Act is against the principle of natural justice, bad in law and ought to be set aside.
2. Without prejudice to the ground 1 above the learned Commissioner of Income-tax (Appeals) erred in upholding the order of the AO rejecting the books of account and estimating the income of the Appellant on an ad-hoc basis at Rs.50,00,000/-.

It is submitted that the appellant is a company. The books of account were audited by an independent firm of chartered accountants. No discrepancy of what so ever in nature was reported by the Auditors. The learned AO had not brought any material on records to suggest that the books of account of the appellant are incorrect or incomplete. The appellant has maintained the proper books of account in accordance with the trade practice and the method of accounting consistently followed. The conclusion arrived at by the Ld. AO is hasty and based on conjunctures and surmises and is contrary to the facts and the law.

3. Without prejudice to above grounds and in an alternate;

3.1 The learned Commissioner of Income-tax (Appeals) erred in upholding the addition Rs. 3,44,12,545/- being loans taken from following parties:

S. No.	Name of the Party	Amount
1.	Maverick Media Pvt. Ltd.	1,04,58,254/-
2.	Moonbean Consultancy Services	30,00,000/-
3.	Sheetal Talwar	4,23,905/-
4.	Aashna Investment Pvt. Ltd.	5,00,000/-
5.	Akshay Mercantile Pvt. Ltd.	15,00,0007-
6.	Mukul Khattar	9,141/ -
7.	Rakesh Sarin	5,00,0007-
8.	Rakesh Sarin & Sons	10,00,000/-
9.	Vistaar Entertainment Ventures Pvt. Ltd.	6,50,000/-
10.	Vistaar Investment Advisors Pvt. Ltd.	1,63,71,245/-
TOTAL		3,44,12,545/-

It is submitted that the appellant had taken loan from the above parties in the normal course of business. The appellant had furnished details of the loans taken and had discharged its onus of proving the identity etc. of the of the loan creditors. The addition made section 68 of the Act is bad in law and ought to be deleted.

3.2 The learned Commissioner of Income-tax (Appeals) erred in upholding the order of Id. AO making an addition of Rs. 2,89,79,499/- under Section 2(22) (e) of the Act being the loans taken from following parties:

Sr.No.	Name of the Party	Amount
1	Maverick Media Pvt. Ltd.	1,04,58,254/-
2	Akshay Mercantile Pvt. Ltd.	15,00,0007-
3	Vistaar Entertainment Ventures Pvt. Ltd.	6,50,000/-
4	Vistaar Investment Advisors Pvt. Ltd.	1,63,71,245/-
TOTAL		2,89,79,499/-

It is submitted that appellant is not a beneficial owner within the meaning of section 2(22)(e) of the Act in any of the above entities and as such provisions of Section 2(22)(e) does not attracted.

3.3 The learned Commissioner of Income-tax (Appeals) erred in upholding the order of the Id. AO disallowance of Rs. 25,19,003/- under Section 40A(3) of the Act on an ad-hoc basis. It is submitted that the conclusion arrived at by the Id. AO is erroneous and contrary to the facts. The disallowance of Rs. 25,19,003/- under Section 40A(3) of the Act is bad in law and ought to be deleted.

3.4 The learned Commissioner of Income-tax (Appeals) erred in upholding the order of the Id. AO disallowing Rs. 6,49,805/- under Section 43B of the Act being service tax outstanding as at the year end. It is submitted that the appellant has suo-moto disallowed Rs. 6,49,805/- under section 43B of the Act in the Income-tax return, filed for the year amd as such no further disallowance should be called for.

3.5 The learned Commissioner of Income-tax (Appeals) erred in upholding the disallowance of Rs.2,27,250/- under Section 43B of the Act for non-payment of outstanding TDS liability. It is submitted that the appellant has duly paid entire TDS within the permissible time and as such no disallowance under Section 43B of the Act is called for.

4. The appellant reserves the right to add, to alter or amend the grounds of appeal.”

2. The return of income was filed on 30.09.2008 declaring total loss of Rs.2,53,67,880/-. The case of the assessee was taken up for scrutiny and accordingly notice u/s 143(2) was issued on 13.08.2009. The assessing officer after perusal of the submissions and the details filed by the assessee made following additions, viz. (i) disallowance of expenditure of Rs.25,19,003/- u/s 40A(3); (ii) addition u/s 68 of unsecured loans of Rs.3,44,12,545/- in income; (iii)addition u/s 2(22)(e) of Rs.2,89,79,499.18/-; (iv) addition u/s 43B of

Rs.2,27,250/- towards outstanding TDS amount. Thus, assessing officer assessed the total income of Rs.4,02,89,600/- thereby passing 144 order.

3. Being aggrieved by the assessment order the assessee filed appeal before the CIT(A). The CIT(A) passed ex-parte order and dismissed the appeal.

4. The Id. A.R. submitted that since the assessment order as well as the CIT(A) order is ex-parte, the matter may be remanded back to the file of the CIT(A) for proper adjudication.

5. The Id. D.R relied upon the assessment order and the order of the CIT(A) and submitted that sufficient opportunity was given to the assessee by the revenue.

6. We have heard both the parties all the relevant material available on record. It is pertinent to note that both the revenue authorities have passed the orders without giving proper opportunity of hearing to the assessee. Therefore, it will be appropriate to remand back the entire issue to the file of the CIT(A) for deciding the same after taking cognizance of the relevant material available on record and adjudicate the same as per the law. Needless to say, the assessee be given opportunity of hearing by following principles of natural justice. The appeal of the assessee is partly allowed for statistical purposes.

7. In the result, the appeal of the assessee is partly allowed for statistical purposes.

Order pronounced in the open court on 19.01.2022

Sd/-
(Pramod Kumar)
Vice President

Sd/-
(Suchitra Kamble)
Judicial Member

Place: Mumbai

Date 19.01.2022

Rohit, Sr. PS

आदेश की प्रतिलिपि अग्रेषित/Copy of the Order forwarded to :

1. अपीलार्थी / The Appellant
2. प्रत्यर्थी / The Respondent.
3. आयकर आयुक्त(अपील) / The CIT(A)-
4. आयकर आयुक्त / CIT
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण DR, ITAT, Mumbai
6. गार्ड फाईल / Guard file.

सत्यापित प्रति //True Copy//
आदेशानुसार/ BY ORDER,

उप/सहायक पंजीकार (Dy./Asstt. Registrar)
आयकर अपीलीय अधिकरण/ ITAT, Bench, Mumbai.