

**IN THE INCOME TAX APPELLATE TRIBUNAL
MUMBAI 'B' BENCH, MUMBAI**

**[Coram: Pramod Kumar (Vice President),
and Amarjit Singh (Judicial Member)]**

ITA No. 989/Mum/2021
Assessment year 2013-14

Shree Naurang Godavari Entertainment LtdAppellant
*C 1203, Runwal Elegant, Highland Park
Andheri, Mumbai 400 058 [PAN: AAMCS9423J]*

Vs.

Assistant Commissioner of Income Tax
Circle 16(1), MumbaiRespondent

Appearances by

Staney Saldhana *for the appellant*

A K Kardam *for the respondent*

Dates of the hearings : 16/12/2021

Date of pronouncement : 10/03/2022

O R D E R

Per Pramod Kumar, VP:

1. By way of this appeal, the assessee appellant has challenged correctness of the *ex-parte* order dated 12th December 2019 passed by the learned CIT(A) in the matter of assessment under section 143(3) of the Income Tax Act, 1961, for the assessment year 2012-13.

2. Grievances raised by the assessee appellant, as set out in the memorandum of appeal, are as follows:

1. The Ld CIT(A)-4, erred in passing an *ex-parte* order and dismissing the appeal of the appellant. The appellant had not received notices and hence could not make proper representation before the Ld CIT(A) - 4, Mumbai thereby denying the appellant an opportunity and natural justice.

2. The Ld CIT(A) erred in confirming the addition of Rs 13,56, 45,767/-u/s Section 68 of the I. T Act, 1961 of unsecured loans received by the company and remaining outstanding made by the Ld AO who had not considered part details produced before him. The Ld. CIT(A) confirmed the same without giving proper opportunity thereby denying the appellant natural justice. The Ld AO may be directed to delete the same.

3. The Ld CIT(A), erred in confirming the disallowance of Rs.8,02,717/- being adhoc 15% out of total business expenses of Rs 53,51,442/- without considering that most details were produced before the Ld AO. The Ld CIT(A) confirmed the same without giving proper opportunity thereby denying the appellant natural justice. The Ld AO may be directed to delete the same.

4. The Ld CIT(A), erred in confirming the disallowance of Rs.1,62,27,100/- being adhoc 10% out of cost of production of Rs 16,22,71,000/- without considering details produced before the Ld AO. The Ld CIT(A) confirmed the same without giving proper opportunity thereby denying the appellant natural justice. The Ld AO may be directed to delete the same.

5. The appellant has filed an affidavit for circumstances for delay in filing the appeal which may be considered and the delay condoned.

6. The appellant prays that the grounds of appeal be admitted and allowed.

3. Having perused the condonation petition and having heard the parties on the same, we are inclined to condone the delay beyond sixty days for the reason that the delay is due to the impact of covid. We thus proceed to take up the matter on merits. To adjudicate on this appeal on merits, only a few material facts need to be taken note of. The assessee before us is a company promoted by one of well known Bollywood artist and comedian Rajpal Yadav, and his wife Radha Yadav. With a successful acting career to his credit, Rajpal Yadav formed this company to try his luck in film production and entertainment software, but this initiative turned out to be a complete disaster. The film, 'Atta Pata Lapata', produced by the assessee company was a complete flop. The offices of the company had to be shut down as the assessee company was not in a position to honour its financial commitments. One of the Delhi based creditor of the assessee company even filed criminal cases against the company and its directors. Rajpal Yadav, key person of the company and its director, had to face imprisonment and things went completely haywire. It was in this backdrop that there was no compliance to the assessment notices issued to the company, and, resultantly, an ex parte assessment was finalized which not only disallowed Rs 1.62 crores out of film production costs and some other business expenses, but also added Rs 13.56 crores as unexplained credits- including some of the credits in respect of which criminal proceedings were faced. Aggrieved, assessee carried the matter in appeal but once again, owing to extraordinarily tough patch of time that the promoters of the assessee company were going through, there was no compliance with the notices of hearing. The appeal filed by the assessee company was dismissed, aggrieved by which the assessee is in appeal before us.

4. We have heard the rival contentions, perused the material on record, and duly considered facts of the case in the light of the applicable legal position.

5. On a perusal of material on record, including affidavit filed by the director of the assessee company and the details of criminal cases being faced by the company and its directors, we are satisfied that the assessee was prevented by the sufficient cause from appearing before the authorities below, and, in any case, when someone goes through such an unfortunate patch of time, as the directors of the assessee company, actually did, everything

else takes a back seat for a while. In the last few weeks of the relevant previous year, the criminal proceedings were initiated against the assessee and its directors and these proceedings culminated in prison time for the key person behind this company. That was indeed a tough, challenging and unfortunate patch of time for directors of the assessee company. The non-appearance before the authorities below, in such circumstances, cannot be put against the assessee so as to confirm the impugned additions and this ex-parte assessment. We have also noted that the assessee has now filed certain balance confirmations which were not available to the assessee in view of the acrimonious legal proceedings in progress at that point of time. Learned counsel for the assessee has also made a statement at the bar that given one more opportunity, the assessee will fully cooperate in expeditious disposal of the remanded proceedings and submit all such requisitioned information as possible. In view of these discussions, in our considered view, it will meet the ends of justice that the matter is remanded to the file of the Assessing Officer and the assessee is given one opportunity to produce the requisitioned information and explanations and make his submissions.

6. In view of the above discussions, as also bearing in mind entirety of the case, we deem it fit and proper to vacate the orders of the authorities below and remit the matter to the file of the Assessing Officer for framing the assessment de -novo. The assessee is, however, cautioned that there should be full cooperation with the assessment authorities, that no dilatory tactics be adopted and that no adjournments be sought in the remanded proceedings. If the assessee fails to comply with these conditions, the Assessing Officer will be at liberty to draw adverse inferences and frame the remanded assessment on the basis of material on record. With these directions, the matter stands restored to the file of the Assessing Officer. We order so.

7. In the result, the appeal is allowed for statistical purposes. Pronounced in the open court today on the 10th day of March, 2022.

Sd/-
Amarjit Singh
(Judicial Member)

Sd/-
Pramod Kumar
(Vice President)

Mumbai, dated the 10th day of March, 2022

Copies to:

(1)	<i>The appellant</i>	(2)	<i>The respondent</i>
(3)	<i>CIT</i>	(4)	<i>CIT(A)</i>
(5)	<i>DR</i>	(6)	<i>Guard File</i>

By order

Assistant Registrar/ Sr PS
Income Tax Appellate Tribunal
Mumbai benches, Mumbai