

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

BEFORE SHRI G.S. PANNU, PRESIDENT AND
SHRI SANDEEP SINGH KARHAIL, JUDICIAL MEMBER

ITA No.4499/Mum./2013
(Assessment Year : 2009-10)

M/s. G.S. Entertainment
B-001/01, Bhagtani Krishang
Dattaatrey Road, Santacruz (West)
Mumbai 400 049 PAN-AACFG0200A

...Appellant

v/s

Asstt. Commissioner of Income Tax
Central Circle-24 & 26, Mumbai

.....Respondent

ITA No.4362/Mum./2013
(Assessment Year : 2009-10)

Income Tax Officer
Ward-19(3)(1), Mumbai

...Appellant

v/s

M/s. G.S. Entertainment
B-001/01, Bhagtani Krishang
Dattaatrey Road, Santacruz (West)
Mumbai 400 049 PAN-AACFG0200A

.....Respondent

Assessee by : Shri Stany Saldhana
Revenue by : Shri Anil Kumar Das, Sr. AR

Date of Hearing- 21/07/2022

Date of Order- 14/09/2022

ORDER

PER BENCH

The present cross appeals have been filed by the assessee and the Revenue challenging the impugned order dated 30/03/2013, passed under

section 250 of the Income Tax Act, 1961 (*the Act*) by learned Commissioner of Income Tax (Appeals)-39, Mumbai, [*learned CIT(A)*], for the assessment year 2002-03.

2. The cross appeals have been listed for hearing before us pursuant to order dated 05/09/2019, passed by the coordinate bench of the Tribunal, in MAs No. 355/Mum/2019 and 356/Mum/2019, whereby earlier *ex-parte* order dated 01/04/2016, passed under section 254(1) of the Act was recalled and appeal was directed to be re-fixed for hearing.

ITA no.4499/Mum./2013
Assessee's Appeal – A.Y. 2009–10

3. In its appeal, the assessee has raised following grounds:

1. The learned Commissioner of Income Tax (A)-39, Mumbai erred in confirming sum of the additions made by the Id. AO the returned loss of Rs. 2,27,054/-.

2. The learned Commissioner of Income Tax (A) -39, Mumbai erred in confirming the addition made by the Id AO of Rs.1,04,78,535/- on account of cessation of liability under section 41 of the Income Tax Act, 1961 with respect to Sundry Creditors. The appellant respectfully submits that the additions of this sum may kindly be deleted.

3. The appellant prays that the various grounds of appeal be admitted and allowed."

4. The only grievance of the assessee in its appeal is against the addition made on account of cessation of liability under section 41 of the Act.

5. The brief facts of the case pertaining to this issue, as emanating from the record, are: The assessee is an entertainment firm, which is, inter-alia, engaged in production of films, TV serials, celebrity management, event

management services and such other activities. For the year under consideration, assessee filed its return of income on 30/09/2009 declaring total loss at Rs. 2,27,054. During the relevant assessment year, no business activities were carried on by the assessee. During the course of assessment proceedings, details were sought by the Assessing Officer in respect of sundry creditors amounting to Rs. 1,04,70,535. In reply, assessee submitted that the said sundry creditors are mostly in respect of film *Maine Dil Tujko Diya*. The assessee further submitted that since there was heavy loss after release of the film, payments could not be made to the creditors. The Assessing Officer vide order dated 23/12/2011 passed under section 143(3) of the Act, in absence of any documentary evidence, treated the liability as non-existent and accordingly, added the amount of sundry creditors of Rs. 1,04,70,535 to the income of the assessee. The Assessing Officer also rejected the contention of the assessee that section 41(1) of the Act is inapplicable in the present case. In appeal, learned CIT(A) vide impugned order dated 30/03/2013 dismissed the appeal filed by the assessee on this issue. Being aggrieved, the assessee is in appeal before us.

6. During the course of hearing, learned Authorised Representative (*learned AR*) submitted that the liability is still continuing and therefore, cannot be considered to be ceased under section 41(1) of the Act. On the other hand, learned Departmental Representative (*learned DR*) vehemently relied upon the orders passed by the lower authorities.

7. We have considered the rival submissions and perused the material available on record. As per the assessee, the amount of sundry creditors is in respect of aforesaid film. It is the claim of the assessee that soon after the release of said film, there were heavy loss and therefore the payments could not be made to the creditors. It has also been submitted that in the film trade, most of the creditors, if unpaid, accept the payment as and when the producers produce the next film or when funds become available. It has further been submitted that in the cases of non-payment, these creditors file letters with their respective associations and stall future film shoots made by persons connected with the firm, who have defaulted the payment. From the perusal of details of sundry creditors provided in the financials, it is evident that the nature of payment to be made to these creditors was in respect of various services associated with film / TV serials production. As is evident from the record, the Assessing Officer sought documentary evidence from the assessee to confirm the liability. On one hand, the Revenue, in absence of documentary evidence, treated the liability as non-existent and on the other hand, consider the same liability to be ceased and added it to the income of the assessee under section 41(1) of the Act. Further, it is also evident that the said liability is continuing in the books of account of the assessee from previous assessment years and there is nothing available on record to show that Revenue had ever doubted the genuineness of said liability in previous years. For the application of section 41(1) of the Act, it is necessary that the assessee must have obtained some benefit in respect of such trading liability by way of remission or cessation thereof. As per provision of section 41 of the

Act, such remission or cessation of liability also includes unilateral act of writing off such liability in the books of accounts by the assessee. The Revenue without bringing anything on record that the assessee has received some benefit in respect of said trading liability, during the year under consideration, treated the same to be ceased and considered it to be income of the assessee. Thus, we are of the considered view that in absence of any material to establish that the assessee has obtained any benefit in respect of the liability on account of sundry creditors, merely on surmises and assumptions it cannot be assumed that there is remission or cessation of liability in the year under consideration. More so, when there is no unilateral act by the assessee in writing off of liability in its books of accounts. In order to attract the provisions of section 41(1) of the Act, there should have been an irrevocable cessation of liability without any possibility of the same been revived, which has not so been established by the Revenue. Thus, in view of the above, we are of the considered opinion that addition on account of sundry creditors is not sustainable in the year under consideration and therefore, is directed to be deleted. As a result, grounds raised by the assessee are allowed.

8. In the result, appeal by the assessee is allowed.

ITA no.4362/Mum./2013
Revenue's Appeal – A.Y. 2009–10

9. In its appeal, the Revenue has raised following grounds:

"(1) On the facts and in the circumstances of the case and in law, the Learned CIT(A) erred in deleting the addition of Rs. 2,37,06,359/- made on account of

advances received without appreciating the facts that the advances crystallized as 'Income' when the film was released, for which advances was taken from Distributors/Presenters/event managers,

(2) On the facts and in the circumstances of the case and in law, the Learned CIT(A) erred in not referring the new additional evidences/submissions to the AO for verification and comment before accepting the plea as required in Rule 46A of the Income Tax rules 1962.

(3) The appellant prays that the order of the CIT(A) on the above ground be set aside and that of the AO be restored."

10. The only grievance of the Revenue is against deletion of addition made on account of advances received by the assessee.

11. The brief facts of the case pertaining to this issue, as emanating from the record, are: The assessee has shown certain advances received from distributors/presenters in its books of account for the year under consideration. During the course of assessment proceedings, assessee submitted that the said advances/loans were obtained in earlier year and no new loans/advances have been taken in the year under consideration. The assessee further submitted that certain loans have been taken from the family members and in respect of certain transactions the event could not be materialised. These loans/advances will be utilised when show/event will be done. The Assessing Officer vide order passed under section 143(3) of the Act did not agree with the submissions of the assessee and added the entire amount of Rs. 2,37,06,359 to the total income of the assessee. In appeal, learned CIT(A) vide impugned order allowed the appeal filed by the assessee on this issue. Being aggrieved, the Revenue is in appeal before us.

12. During the course of hearing, learned AR submitted that these loans/advances are reflecting in the books of accounts of the assessee since assessment year 2003-04. The learned AR further submitted that in respect of certain loans, which were taken from the family members, the creditors have shown these advances as receivables. In respect of the advances received on account of certain shows/events, learned AR submitted that due to some legal dispute the said shows/events could not happen till date and are soon as the said shows/events will be held the advances will be considered as income. On the other hand, learned DR vehemently relied upon the findings of the Assessing Officer.

13. We have considered the rival submissions and perused the material available on record. During the year under consideration, assessee had shown following advances received from distributors/presenters/events, in its books of accounts:

<i>a) Salman Khan (Presenters) MDTD</i>	<i>Rs. 2,09,75,000</i>
<i>b) Sohail Khan MDTD</i>	<i>Rs. 5,00,000</i>
<i>c) Film City Show</i>	<i>Rs. 11,00,000</i>
<i>d) Jalwa - 2003 Dubai Show</i>	<i>Rs. 1,81,359</i>
<i>e) Show Blitz India Ltd</i>	<i>Rs. 5,00,000</i>
<i>f) Sony Filmcity Show</i>	<i>Rs. 4,50,000</i>

14. We further find that these loans/advances were reflected in the financials in previous years also. As per the assessee, some of the loan has already been refunded by the assessee. It is the claim of the assessee that the creditors have shown these loans as receivables and thus refundable in nature. As regards the advances in respect of various shows, it is the plea of

the assessee that the shows have not been held yet and the said amount will be considered as the income in the year in which these shows will be held. We find that the Assessing Officer did not agree with the plea of the assessee on the basis that some of the loans received from family members were in respect of the film produced by the assessee and therefore the said advances should have been adjusted against the loss incurred on the release of said film. Further, in absence of details of shows not being held, the Assessing Officer added the advances in respect of such shows. The learned CIT(A) vide impugned order agreed with the submission of the assessee on the basis that loans/advances cannot be considered as the income irrespective of the operations of the company resulting into profit or loss. In the present case, it has not been denied that these loans/advances were taken by the assessee in earlier assessment years and no fresh advances were received in the current year. Therefore, in view of the above we deem it appropriate to remand this issue to the file of Assessing Officer for *de novo* adjudication after necessary verification in respect of the claim of the assessee. If upon verification, it is found that the creditor has shown the loan as refundable/receivable and the said position has been accepted by the Revenue in the case of creditor, then Assessing Officer is directed to grant relief to the assessee in respect of the said amount. As regards the advances in respect of various shows, the Assessing Officer is directed to examine whether such shows/events have taken place. We further direct that such advances can only be taxed in the year in which respective shows have taken place. With the above directions, grounds raised by the Revenue are allowed for statistical purpose.

15. In the result, appeal by the Revenue is allowed for statistical purpose.

Order pronounced in the open Court on 14/09/2022

Sd/-
G.S. PANNU
PRESIDENT

Sd/-
SANDEEP SINGH KARHAIL
JUDICIAL MEMBER

MUMBAI, DATED: 14/09/2022

Copy of the order forwarded to:

- (1) *The Assessee;*
- (2) *The Revenue;*
- (3) *The CIT(A);*
- (4) *The CIT, Mumbai City concerned;*
- (5) *The DR, ITAT, Mumbai;*
- (6) *Guard file.*

Pradeep J. Chowdhury
Sr. Private Secretary

True Copy
By Order

Assistant Registrar
ITAT, Mumbai