

**IN THE INCOME TAX APPELLATE TRIBUNAL
AMRITSAR BENCH, AMRITSAR.**

**BEFORE DR. M. L. MEENA, ACCOUNTANT MEMBER
AND SH. ANIKESH BANERJEE, JUDICIAL MEMBER**

**I.T.A. Nos. 251 to 256/Asr/2017
Assessment Years: 2008-09 to 2013-14**

M/s Movie Box Records P. Ltd. EK-216, Phagwara Gate, Jalandhar. [PAN: AAGCM2925D] (Appellant)	Vs.	Dy. CIT, Central Circle-II, Jalandhar. (Respondent)
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**I.T.A. No. 263/Asr/2017
Assessment Year: 2011-12**

Dy. CIT, Central Circle-II, Jalandhar. (Appellant)	Vs.	M/s Movie Box Records P. Ltd. EK-216, Phagwara Gate, Jalandhar. [PAN: AAGCM2925D] (Respondent)
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Appellant by	Sh. J.S. Bhasin, Adv.
Respondent by	Sh. Amlendu Nath Misra, CIT.DR

Date of Hearing	27.09.2022
Date of Pronouncement	10.10.2022

ORDER

Per:Bench:

The batch of six instant appeals of the assessee and one appeal of the revenue were filed against the order of the Id. Commissioner of Income Tax(Appeals)-1, Jalandhar, [in brevity the CIT(A)]for A.Ys. 2008-09 to 2013-14, order passed u/s 250(6) of the Income Tax Act 1961, [in brevity the Act]. The impugned orders were emanated from the order of the Id. Dy. Commissioner of Income Tax, Central Circle-II, Jalandhar, (in brevity the AO) order passed u/s 153A/143(3)of the Act. The assessee raised the following grounds which are as follows:

Ground,ITA No. 251/Asr/2017

“1. That when no assessment proceedings were pending for this year on the date of search, since the return originally filed in normal course was accepted as such, no re-assessment could be made to make several additions, for want of any incriminating document found in search.

2. That the Id.CIT(A) also erred in upholding the adhoc addition of Rs. 1,12,910/-, made by disallowance of 10% of the total expenses charged to P&L account under the head ‘audio

& video making charges' when no incriminating document was found to justify such a disallowance.

3. That sans a finding that said expenses were either not actually incurred or not incurred for business purposes, such a disallowance was not warranted on a mere guess work.

4. That the orders of the authorities below, to the extent disputed herein, are against law and facts of the case.”

Ground ITA No. 254/Asr/2017

“1. That in the facts and circumstances of the case, the ld.CIT(A) was not justified in upholding the rejection of books of account under section 145(3), as done by the ld.AO, on a wholly erroneous view of the case.

2. That the ld.CIT(A) grossly misdirected herself to endorse the findings of the ld.AO that sales of audio CDs to the extent of Rs.2,28,27,700/-, as shown in the letters sent to PPL, were not part of the total turnover of Rs.4,30,23,091.26 and therefore, the whole of it was taxable under section 69 of the Income Tax Act.

3. *That sans any corroborative evidence found in search, revealing any purchase/sale outside the books of account to effectuate such large scale transactions, a mere certificate given to PPL to facilitate receipt of royalty, was highly insufficient to uphold the impugned addition, more so, when the factum of such sales was not even accepted by the Sales Tax Authorities, after due verification and Inspection of assessee's premises.*

4. *That by any reckoning and without prejudice to above two grounds, not the entire sales, but only to the extent of net profit on such sales, could be sustained for any alleged unaccounted sales.*

5. *That the ld.CIT(A) also erred in upholding the ad hoc addition of Rs.11,82,095/-, made by disallowance of 10% of the total expenses charged to P&L account under the heads 'audio & video making expenses' and 'publishing expenses', when no incriminating document was found to justify such a disallowance.*

6. *That when the books of account had been rejected u/s. 145(3), such specific addition by way of disallowance of expenses was not warranted.*
7. *That the orders of the authorities below, to the extent disputed herein, are against law and fact of the case.”*

Ground ITA No.263/Asr/2017

“(i) Whether Ld. CIT(A) has not erred in deleting the addition on account of purchase of Audio and Video rights when terms and conditions as laid down in the agreements for purchase imply that the purchase made by the assessee are intangible capital asset and has an enduring benefit to the assessee and thus expenses related to it should be capitalized.

(ii) Whether on the facts and circumstances of the case the Ld. CIT(A) has not erred in deleting addition on account of interest free loan given to sister concern when assessee has not justified “business expediency” and failed to provide necessary details regarding business purpose behind investing money in sister concerns.

(iii) The appellant craves leave to add or amend the grounds of appeal on or before is heard and disposed off.”

2. ITA Nos. 251 to 256/Asr/2017 are related common ground, covered by ground no-2 and ITA No. 254/Asr/2017 is being agitated for separate ground for adjudication. The ground of ITA No.263/Asr/2017 is related to the appeal of revenue.

3. Considering the factual backdrop of all appeals, all the cases are in ground-wise tabular chart for clear understanding.

Sr. No.	ITA No.	Ground
1.	251 to 256/Asr/2017	Adhoc addition of expenses disallowed @ 10% of total expenses charged to P & L account under the head 'audio & video making charges'.
2.	254/Asr/2017	Addition of sales amount of Rs.2,28,27,700/-
3.	263/Asr/2017	Disallowance of revenue expenditure and treated as capital expenditure which was reversed by the ld. CIT(A).

4. The brief fact of the case is that the assessee is assessed u/s 143(3)/153A of the Act, the common issues are emanated, related to disallowance of expenses @ 10% on “audio and video making charges” which is related to ITA No.251/Asr/2017 to 256/Asr/2017. As per the request of the ld. Counsel the ITA 251/Asr/2017 is taken as a lead case. The assessee claimed the expenses in P & L account amount to Rs.11,29,100/-. The payments were made to artists by cash which are below the 20,000/-. The ld. AO disallowed 10% of expenses as treated them as bogus expenses and addition was made Rs.1,12,910/-. The issue was agitated before the CIT(A). The ld. CIT(A) had rejected the appeal of the assessee & issue is decided in favour of revenue.

4.1 In the next issue the assessee had paid the copy right to M/s Phonography Performance Ltd. (in brevity PPL), an autonomous body as owns as body assigned and exclusively controls public purpose rights and radio broadcasting rights of film and cast film songs of its members. The assessee filed the turnover details of PPL under Copy Right Act. The revenue has treated this turnover separately which is not a part of the total turnover of the assessee. The total turnover as declared by the assessee in its return of income amount of Rs.4,30,23,091.26/-. This particular

turnover amount of Rs.2,28,27,700/- was taken as not part of total turnover & added back with the total income of the assessee. The issue was agitated before the CIT(A). The Id. CIT(A) had rejected the appeal of the assessee & issue is decided in favour of revenue.

4.2 In the revenue appeal, the assessee claimed the expenses related to purchase of “audio and video rights” which was treated as revenue expenditure not a capital expenditure. Assessee on the other hand also sold the “audio and video rights” which is taken as the turnover of the assessee as revenue income. During assessment the Id. AO had not accepted the assessee’s claim & converted the revenue expenditure as capital expenditure. But the Id. CIT(A) disallowed the addition related to audio and video rights & passed the order in favour of assessee.

5. Being aggrieved assessee & revenue both filed an appeal before us by challenging the order of the Id. CIT(A).

ITA nos.- 251 to 256/Asr/2017

6. In this issue, we first relied on the order of the Id. CIT(A) in page no. 8 para 4 which is extracted as below:

“4. Issue of disallowance of Audio and video making expenses incurred in cash: A perusal of the P&L account of the assessee concern reveals that it has booked expenses on account of Audio and Video Making charges to the Me of Rs. 11,29,100/-. The assessee was asked to provide details of nature of these expenses along with the details of TDS deducted on them. The assessee furnished the copy of account of the expenses, from which it was seen that the expenses were incurred totally in cash. In view of this observation, the assessee was vide notice dated 02.03.2015 asked to reply as under:

"1. In this regard, you were vide questionnaire dated 11.02.2015 asked to provide the details of Audio and Video making charges and publicity expenses. It is seen from your replies that all these expenses have been incurred totally in cash and no TDS has been deducted of any of the expenses. In this regard, you are required to furnish the following details:

- i. Number of Videos produced by the company in each year.*
- ii. Whether the expenses to cameraman, model etc. were paid to the same persons or different teams.*
- iii. How were these professionals engaged by you i.e. whether on contract or otherwise,*

iv. In view of the huge quantum of these expenses, all in cash and non availability of necessary documents, why a part of these expenses be not disallowed on estimated basis.

v. Details of advertisement expenses and why part of the same he not been disallowed on estimated basis."

The assessee has replied as under: -

The details of Video Making Charges are generally made in as these are made to small /junior Artists, Cameramen, advertisement. The payments to artists are made is generally less than the limits prescribed under the provisions of Income Tax Act, 1961.

i) The year-wise details of audio vedios made during the years under consideration are enclosed.

ii) Mostly different persons/teams are engaged.

iii) The persons engaged are directly engaged by the assessee company. Whenever, such audio /videos are made through contactors, TDS has been duly deducted as per applicable provisions.

iv) The entire Income of the Assessee is from Sale of CD's /Ringtone which in turn is dependent on the advertisement. The said audio/video are made which are used in promotion and advertisements of the contents of the assessee company. Since, the entire expenses are directly relatable to the Income of the assessee, the same shall be fully allowed as expenditure of the respective years."

7. The Id. Counsel vehemently argued and mentioned that the expenses @ 10% is quite abnormal & high and the assessee had made the payment in cash because the number of unskilled labour was utilized. So, most of the artists demanded the cash payments and all the payments below the Rs.20,000/-.

8. The Id. CIT DR argued and relied on the order of the Id. CIT(A). As per the Id. CIT DR the expenses paid by the assessee is fictitious and none of the expenses are paid through bank. So, the addition should be sustained.

9. We heard the rival submission and considered the documents available in the record. The fact is that the assessee paid the amount by cash to the artists. There is no liability for deduction of tax as because there are the payments are below the taxable limit. The addition was made by disallowance expenses @ 10%. The expenses were debited in profit & loss account under the head audio and video making charges which are is the part of books of accounts of assessee related to fully for business purpose. As per the observation of revenue that there is no violation in maintenance of accounts related payment of the said expenses. The only grievance is that the payment is made by cash. We find that the disallowance @10% is really higher sided. With the consent of both the sides the disallowance is

restricted up to @5% on the total expenses of “audio and video making charges”.

We direct the revenue to act accordingly.

10. Considering the same the Ground No. 2& 3 of the assessee are partly allowed.

In case of Ground No. 1and 4 are general in nature and need not to be adjudicated.

The ground of this issue in all-other appeals are mutata mutandis similar with ITA No-251/Asr/2017as partly decided in favour of the assessee.

11. In the result, the appeal of the assessee is allowed partly.

ITA No.254/Asr/2017

12. During hearing ld. Counsel had filed a paper book containing pages 1 to 56 which is kept in the record. The ld. Counsel first mentioned that the assessee had submitted the statement before the PPL under the Copy Right Act and declared the turnover Rs.2,28,27,700/- related to sale of video/full movie cabs VCD/DVD, export sale and royalty income and other income. During search the ld. AO seized the documents and considered this sale as separate sale which is not included in the total turnover with the assessee. During the hearing the ld. Counsel placed the certificate in **APB page no. 25** dated 22.03.2012 which was certified by Chopra Malhotra & Associates, Chartered Accountant. During assessment ld. AO took the

cognizance on a letter of the assessee which was issued to PPL and total turnover was declared Rs.4,30,23,091/-. The copy of this letter is annexed in **page 23 APB**.

12.1 The Id. Counsel further argued that a verification was made by the revenue from the State Tax Act. The report was submitted before the Id. CIT(A) and the Id. CIT(A) had included the report in the order in page no. 23 para 5 which is annexed as follows:

“5 That the aforesaid facts pertaining to bifurcated details of sales/gross receipts of Rs.4,30,23,091.26 (i.e. sale of DVD’s and CD’s : Rs.231.27lac (+) Ringtones, Licence fees etc. : Rs. 198.94 lac) stood established beyond any scope of doubt when the Income Tax Department on the basis of certain suspicious and doubts shared the same with the Sales Tax Department, Jalandhar, which acting on the same carried out a surprise inspection at the business premises of the assessee company and carried out the requisite verifications as regards the impugned sales of Rs. 430.23 iacs which had been carried out as stood gathered from the documents which were furnished to PPL. However after thorough verification of the facts and deep scrutinizing of the claim of the assessee the Sales Tax Department therein being satisfied with the fact that the total sales of the assessee company was Rs. 4,30,23,091/- (supra) therein concluded as under:

" The Balance sheet for the year 2010-11 clearly depicts the figure sales, ringtone income and license fee under the head 'Revenue from operation' as of Rs. 2,31,27,738/-, Rs. 82,28,687/- and Rs. 1,16,66,666/- respectively amounting to Rs. 4,30,23,091/-. As no discrepancy could be detected, inspection proceedings stood dropped and case filed."

(Copy of order is enclosed herewith)

That a perusal of the aforesaid facts therein reveals beyond any scope of doubt that the total sale/gross receipt of the assessee had duly been disclosed in its audited financial statement filed with its return of income, as a result whereof the adverse inferences drawn by the A.O as regards the sales of the assessee which all the more had been got verified by the Sales Tax Department, being baseless therein a liable to be vacated."

13. The ld. CIT DR argued and relied on the order of the revenue authorities para 16 and 17 page no. 31 which is reproduced as below:

"16. I do not find myself in agreement with the assessee's contention. A surprise inspection by Sales Tax authorities was conducted on the assessee's premises on 26. 08.2015. It cannot be equated with the depth of search operations of the Income Tax Department. It is not clear

whether the Sale Tax authorities inspected the certificates given by the assessee and its Chartered Accountants to M/s PPL. The document provided by the assessee in this regard does not show any speaking order by the Sales Tax authorities, neither do they mention the documents referred to by the Assessing Officer in his assessment order. I therefore see no reason to hold the inspection conducted by the Sales Tax officials negates or nullifies the findings of the Assessing Officer.

17. Beyond the noting of the Sales Tax Authorities the assessee has not been produced any evidence or argument which can contradict the strong evidence of certification made by the assessee himself to M/s PPL of CDs sales of Rs. 2,28,27,700/-. If at all the assessee's contention was genuine, it could have reported the Chartered Accountants who gave a false certificate or reported to M/s PPL that the certificates furnished by it were not factual. The assessee has resorted to none of these to counter the Assessing Officer's finding that the sale of CDs was clearly reported to M/s PPL but was suppressed for the purposes of income tax."

14. We heard the rival submissions and relied on the documents available in the record. First the Id. AO has calculated the revenue from operation amount of Rs.

2,31,27,738/- but in this turnover the amount of Rs. 2,28,27,700/- is included. The assessee during the hearing before the ITAT made a clear representation that disputed amount is not the out of the book sales. The revenue has not rejected the books of account u/s 145 of the Act. The addition of turnover Rs.2,28,27,700/- was made by the AO on wrong assumption. Considering the factual matrix & the evidentiary value of the seized documents are clearly indicated that the amount of Rs. 2,28,27,700/- is the part of the total turnover amount of Rs.4,30,23901/- accordingly the addition made by the ld. AO is quashed.

15. In the result, the ground 1 to 4 of the assessee in ITA 254/Asr/2017 is allowed. Ground No. 1, 6 and 7 are general in nature. Ground No. 5 was already decided in earlier paragraph.

ITA No. 263/Asr/2017

16. In this appeal the observation of the ld. CIT(A) is reproduced as below in page no. 42 para 40:

“40. Therefore, respectfully following the judgement of the Delhi High Court in case of CIT Vs M/s Super Cassettes Industries Ltd. ITA No. 69/2004 dt. 02.12.2014, on an identical issue, I delete the addition of Rs. 93,06,002/- made by Assessing Officer on account of the purchase of Audio and

video rights of music albums. Since the addition itself is deleted, and the expenditure has been considered as being revenue in nature, there is no requirement of any allowance of Rs.48,46,930/- on account of depreciation as allowed by the Assessing Officer.”

17. We heard the rival submissions and relied on the documents available in the record. The Id. Counsel had fully relied on the order of the Id. CIT(A). In the order of the Id. CIT(A) respectfully relied on the order of the Hon'ble Apex Court. The Id. CIT-DR had only relied on the order of the Id. AO & unable to bring any contrary judgment against the finding of the Id. CIT(A). We find no infirmity in the order of the Id. CIT(A). The Id. Counsel further relied on the order of '**CIT vs. Lakshmi Vilas Bank Ltd.**', 170 DTR 270 (Mad). The Id. Counsel in his argument mentioned that the payment of 'audio and video rights' has taken as revenue expenditure, on other hand, the sale of 'audio and video right' was taken in the revenue income in the profit & loss account of the assessee. So, both the income and expenses are in same nature. It cannot be come under the head of capital expenditure. In this regard, the appeal of the revenue ground no. 1 to 3 is liable to be quashed.

18. In the result, the appeal of the revenue bearing **ITA 263/Asr/2017** is dismissed.

Order pronounced in the open court on 10.10.2022

Sd/-

**(Dr. M. L. Meena)
Accountant Member**

Sd/-

**(ANIKESH BANERJEE)
Judicial Member**

AKV

Copy of the order forwarded to:

- (1)The Appellant
- (2) The Respondent
- (3) The CIT
- (4) The CIT (Appeals)
- (5) The DR, I.T.A.T.

True Copy
By Order