

**IN THE INCOME TAX APPELLATE TRIBUNAL
Hyderabad 'B' Bench, Hyderabad**

Before Shri Rama Kanta Panda, Accountant Member

AND

Shri Laliet Kumar, Judicial Member

ITA No.261/Hyd/2022		
Assessment Year: 2019-20		
Prasads SP Entertainment LLP 8-2-293/82/JIII/6 Ramanaidu Studios Road No.79, Film Nagar, Jubilee Hills Hyderabad-500 033 PAN : AAIFT7106J	Vs.	ACIT,CC-1(2) Aaykar Bhawan Basher Bagh Hyderabad
(Appellant)		(Respondent)
Assessee by:		Shri A.Srinivas,CA
Revenue by:		Shri Kumar Aditya, Sr.AR
Date of hearing:		21.12.2022
Date of pronouncement:		21.12.2022

ORDER

Per Shri Rama Kanta Panda, A.M.

This appeal filed by the assessee is directed against the order dated 04.05.2022 of the Learned Commissioner of Income Tax (Appeals)-11, Hyderabad relating to AY 2019-20.

2. Facts of the case, in brief, are that the assessee is a company engaged in the business of film production. It filed its return of income on 31.10.2019 declaring income of Rs.1,22,53,250/-. A search and seizure operation u/s. 132 of the I.T.Act was carried out in Suresh Production group and its associate concerns on 27.11.2019 wherein certain incriminating materials pertaining to the assessee as per annexures A/SP/OFF/HYD/05 were found and seized.

3. During the course of search operation, it was found that as per page no. 115 annexed to annexure A/SP/OFF/HYD/05, the gross collections of the firm SP Prasads Entertainment LLP for F.Y.2018-19 is Rs. 35,39,81,629/-. However, as per the audit report filed, the gross collection is shown at Rs. 34,62,37,549/-. The Profit & Loss for the Financial year 2018-19 is annexed in page no 92 of annexure A/SP/OFF/HYD/05. On perusal of the material, it was seen that the notings and contents pertaining to the assessee had a bearing on the income of the assessee for the relevant period. Accordingly, after duly recording the satisfaction note, notice u/s.153C of the Income Tax Act, 1961 dated 09.02.2021 was issued and duly served on the assessee. However, no return was filed in response to notice issued and served u/s. 153C.

3.1 The AO issued statutory notices u/s. 142(1) in response to which the AR of the assessee appeared. However as mentioned by the AO no return of income was filed by the assessee in response to notice u/s. 153A/153C . On being questioned by the AO as to why the assessment should not be completed u/s. 144 of the I.T.Act, the assessee replied as under:-

“ With regard to the above, we would like to bring to your notice that we have made several attempts to upload the Return of Income. However, due to the erratic errors on the Income Tax Portal, we have been unable to upload the Return of Income in response to your notice.

We have taken screen shots of the error messages which we are enclosing herewith to show that, there has been no negligence on our part in trying to file the Return of Income.

The error message has given us a solution to upload the returns but the solution also has proven to be of no use, as the error continues. We would also like to bring to your notice that for the other Assessment Years, we have the return u/s.153C wherever the portal allowed us to.

We would like to bring to your notice, that without prejudice, we have filed all information in response to your notices u/s 142 (1) on various dates. All information as called for have been submitted by us.

In view of the above, as we have submitted all information, the question of passing an order u/s. 144 is not warranted. The non filing of return of income u/s. 153C is purely, a technical fault, of the Income Tax portal which, we have demonstrated by enclosing the error screen shots.

We there fore request you to complete the assessments u/s. 143(3) r. w. s 153 C and complete the Assessments."

4. However, the AO on verification of the e-filing portal noted that no return of income is reflected as on that date. He, therefore proceeded to complete the assessment u/s. 144 of the I.T.Act. Since there is a difference between the gross collections received by the assessee as per the seized document and as per the GST return, the AO rejecting the various explanation given by the assessee made addition of Rs.62,12,927/-.

5. In appeal, the ld.CIT(A) gave part relief to the assessee by observing as under:-

In the instant case, the assessment was completed by making an addition of Rs.62,12,927/ - On account being variation in gross collections as per seized document and return of income.

Going into facts of the case, during the Course of Search u/s.132 in the case of Suresh Productions group and its associate Concerns on 20.11.2019, daily collection registers (DCR) of the appellant firm were found as per which the gross collections for the year under consideration is Rs.35,24,50,4 76/(Rs.35,39,81,629-15,31,153 [audience count also included in the cumulative total which is just a number and not sales]) whereas the appellant had admitted gross collections of Rs.34,62,37,549/ - as per return of income. The Assessing Officer rejected the appellant's contention regarding the difference and accordingly added the difference amount as income of the appellant.

The appellant submitted that amount of Rs.2,38,873/-pertains to commission income of March 2018 and that the same was accounted for in AY 2018-19 and has furnished the relevant ledger in this regard which is reproduced as under:

PRASADS SP ENTERTAINMENT LLP

ON LINE COMMISISON BOOK MY SHOW Account Statement from 01/04/2017 to 31/03/2018

TC	DATE	V.NO.	DESCRIPTION	DEBIT	CREDIT
JV	30/04/2017	0937	Being the commission On Online ticket Sales From 01.04.2017 to 30.04.2017 (50449 Quantity)		330,203.00

JV	31/05/2017	0938	Being the commission On Online ticket Sales From 01.05.2017 to 31.05.2017 (88519 Quantity)	588,766.00
JV	30/06/2017	0939	Being the commission On Online ticket Sales From 01.06.2017 to 30.06.2017 (52789 Quantity)	330,203.00
JV	10/08/2017	0494	Being the commission On Online ticket Sales From 01.07.2017 to 31.07.2017 (426403@18%)	426,403.00
JV	11/09/2017	0581	Being the commission On Online ticket Sales From 01.08.2017 to 30.08.2017 (475148@18%)	475,148.00
JV	11/10/2017	0748	Being the commission On Online ticket Sales From 01.09.2017 to 30.09.2017 (454139 @18%)	454,139.00
JV	06/11/2017	0749	Being the commission On Online ticket Sales From 01.10.2017 to 31.10.2017 (396446@18%)	396,446.00
JV	06/12/2017	1180	Being the commission On Online ticket Sales From 01.11.2017 to 30.11.2017 259500@18%)	259,500.00
JV	08/01/2018	1181	Being the commission On Online ticket Sales From 01.12.2017 to 31.04.2017 (389221@18%)	389,221.00
JV	05/02/2018	1562	Being the commission On Online ticket Sales From 01.01.2018 to 31.01.2018 (430525 @18%)	430,525.00
JV	07/03/2018	1563	Being the commission On Online ticket Sales From 01.02.2018 to 28.02.2018 (430525 @18%)	332,069.00
JV	31/03/2018	1746	Being the commission On Online ticket Sales From 01.03.2018 to 31.03.2018	202,435.00
				<u>46,15,381.00</u>
				<u>46,15,381.00</u>
			OPENING BLANCE B/F	46,15,381.00
			Total Apr-Jun(3months)	1,249,495.00
			Total July-March(9months)	3,365,886.00
			Total	4,615,381.00
			Add: GST on Income for 9 months as GST was w.e.f. 1-July-2017	605859.48
			Total	5,221,240.48
			Matches with Schedules in P&L	

From the above, it is seen that the commission income of Rs.2,02,435/- (the gross income with 18% GST amounts to Rs.2,38,873/-) pertains to March 2018 and that the same was accounted for in AY 2018-19.

Thus, after taking into account the above amount of Rs.2,38,873/-, the net collections is Rs.35,22,11,603/- (Rs.35,24,50,476/- - Rs.2,38,873/-) whereas the appellant had admitted gross collections of Rs.34,62,37,549/- as per return of income. Thus the difference is Rs.59,74,054/-.

Further, the appellant submitted that amount of Rs.10,90,150/- pertains to income of FY 2017-18 and that the same was accounted for in AY 2018-19 and has furnished the relevant schedule of P&L in this regard which is reproduced as under:-

Prasads SP Entertainment LLP

Notes to financial statements for the year ended 31st March, 2019

(Amounts in Rs.)

SCHEDULE No.9

Revenue from Operation

Particulars	For the year ended 31.03.2019	For the year ended 31.03.2018
Gross collections including Taxes (Net of	246,040,695	263,090,624
Less: i) Distributors Share 92,040,400		
ii) Income offered in FY 2017-18 <u>1,090,150</u>	<u>93,130,550</u>	<u>98,323,815</u>
Less: GST Collected	152,910,145	164,766,809
	50,323,383	42,539,182
Total	102,586,762	122,227,627

SCHEDULE NO.10

Other Operating Income

Particulars	For the year ended 31.03.2019	For the year ended 31.03.2018
Canteen Sales	80,244,087	80,574,625
Advertisement Revenue	6,915,941	6,908,008
3D Glasses/Hire Charges		
Rent from stalls	6,423,553	3,603,357
Revenue from Ticket booking Agents	6,383,086	5,221,240
Income from Weighing Machine	158,828	238,786
Sale of Scrap	36,089	40,000
Total	100,161,584	96,586,016
Less: GST Collected	6,859,409	6,017,325
Total	93,302,175	90,568,691

SCHEDULE NO.11

Other Income

Particulars	For the year ended 31.03.2019	For the year ended 31.03.2018
Interest earned	346,784	263,232
Credit Balances Written Back	1,178,925	361,620
Misc. income	35,270	31,790
Total	1,560,979	656,642

SCHEDULE NO.12

Rates and Taxes

Particulars	For the year ended 31.03.2019	For the year ended 31.03.2019

Entertainment Tax(up to 30.06.2017)		10,193,312
Other Taxes and Licenses	236,689	645,650
Total	236,689	10,838,962

From the above, it is seen that the income of Rs.10,90,150/- pertaining to the year under consideration has been offered to income during FY 2017-18.

Thus, after taking into account the above amount of Rs.10,90,150/-, the net collections is Rs.35,11,21,453/-(Rs.35,22,11,603-Rs.10,90,150) whereas the appellant had admitted gross collections of Rs.34,62,37,549/- as per return of income. Thus the difference is Rs.48,83,904/-.

The appellant further stated that an amount of Rs.8,46,935/- excluding relevant taxes pertains to net of credit notes which were recorded and reduced from the turnover and included as part of the turnover for the next financial year. The relevant part of GST return is as under:

Pt. IV Details of tax paid as declared in returns filed during the financial year							
9	Description	Tax Payable (₹)	Paid Through Cash (₹)	Paid Through ITC (₹)			
				Central Tax	State Tax / UT Tax	Integrated Tax	Cess
	1	2	3	4	5	6	7
A	Integrated Tax	12,90,933.00	0.00	0.00	0.00	12,91,530.00	
B	Central Tax	2,80,06,447.00	1,31,02,320.00	1,22,24,462.00		30,01,620.00	
C	State/UT Tax	2,80,06,447.00	1,61,03,940.00		1,22,24,462.00	0.00	
D	Cess	0.00	0.00				0.00
E	Interest	1,26,745.00	65,499.00				
F	Late Fees	5,700.00	5,700.00				
G	Penalty	0.00	0.00				
H	Other	0.00	0.00				

Pt. V Particulars of the transactions for the financial year declared in returns of the next financial year till the specified period						
Sr.No.	Description	Taxable Value(₹)	Central Tax(₹)	State Tax/UT Tax(₹)	Integrated Tax(₹)	Cess(₹)
	1	2	3	4	5	6
10	Supplies / tax declared through Amendments (a) (net of debit notes)	0.00	0.00	0.00	0.00	0.00
11	Supplies / tax reduced through Amendments (b) (net of credit notes)	8,46,935.00	1,19,113.00	1,19,113.00	0.00	0.00
12	Reversal of ITC availed during previous financial year		0.00	0.00	0.00	0.00
13	ITC availed for the previous financial year		0.00	0.00	0.00	0.00
	Total Turnover (5N + 10 - 11)	2,01,36,522.00	2,79,98,931.00	2,79,98,931.00	12,90,930.00	0.00

Pt. V Particulars of the transactions for the financial year declared in returns of the next financial year till the specified period						
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From the above, it is seen that the appellant has reduced an amount of Rs.8,46,935/- from the turnover on account of being net of credit notes and on inclusion of taxes, the gross of the same is Rs.10,85,161/- (Rs.8,46,935/- + Rs.1,19,113 +Rs.1,19,113).

Thus, after taking into account the above amount of Rs.10,85,161/-, the net collections is Rs.35,00,36,292/- (Rs.35,11,21,453-Rs.10,85,161)

whereas the appellant had admitted gross collections of Rs.34,62,37,549/- as per return of income.

With regard to the balance difference amount of Rs.37,98,743/- (Rs.35,00,36,292-Rs.34,62,37,549), the appellant was not able to furnish any explanation with supporting evidence and therefore addition is confirmed to the extent of unreconciled amount of Rs.37,98,743/- and the ground no.4 is partly allowed accordingly.

The ground no.2 and 3 are inconsequential for adjudication in view of the relief granted above to the extent of evidence submitted by the appellant.

The ground no.1 and 5 are general in nature and need no adjudication.

To sum up the appeal is partly allowed.

6. Aggrieved with such order of the ld.CIT(A), the assessee is in appeal before the Tribunal by raising the following grounds

1.The order of the Appellate Commissioner is contrary to law, facts and circumstances of the case.

2.The Appellate Commissioner ought not to have confirmed the order of AO, who completed the Assessment u/s. 144 read with 153C, on the premise that the Assessee has not filed a return of income.

3. The Appellate Commissioner erred in confirming an amount of Rs.37,98,743/-, with respect to differences in Daily Collection Register and the financial statements.

7. The ld.counsel for the assessee submitted that although assessee has duly reconciled the difference between the gross collections as per the documents found during the course of search and the collection as per the GST return, however, both the lower authorities have failed to go through the same properly for which the addition has been made by the AO and partly sustained by the ld.CIT(A). He submitted that given an opportunity, the assessee is in a position to reconcile the difference to the satisfaction of the AO on the basis of the material already available on record.

8. The ld. DR on the other hand strongly supported the order of the ld.CIT(A). He submitted that the ld.CIT(A) after thoroughly going through the various details filed by the assessee has

sustained an amount of Rs.37,98,743/- on account of unreconciled amount. Therefore, no further opportunity should be granted to the assessee.

9. We have heard the rival arguments made by both the sides, perused the orders of the AO and Id.CIT(A) and the paper book filed on behalf of the assessee. We have also considered the various decisions cited by both the sides. We find on the basis of search conducted u/s.132 of the Act in the case of Suresh Production group and its associated concerns on 20.11.2019, the daily collection register of the assessee firm were found and seized as per which the gross collection for the year under consideration was Rs. 35,24,50,476/-. However, the assessee had admitted gross collection of Rs.34,62,37,549/- as per the return of income. Since the assessee could not reconcile the difference before the AO, the AO made addition of Rs.62,12,927/-. We find the Id.CIT(A) restricted the addition to Rs.37,98,743/-, the reasons of which have already been reproduced in the preceding paragraph. It is the submission of the Id.counsel for the assessee that he has given full details reconciling the difference between the two figures and the Id.CIT(A) without appreciating the facts properly has sustained a part of the addition made by the AO, which is not justified. It is his submission that given an opportunity, the assessee is in a position to reconcile the difference with evidence to the satisfaction of the AO or Id.CIT(A) as the case may be. Considering the totality of the facts of the case and in the interest of the justice, we deem it proper to restore the issue to the file of the AO with a direction to grant an opportunity to the assessee to substantiate his case with evidence to his satisfaction by reconciling the difference. The AO shall decide the issue as per fact and law after giving due opportunity of being heard to the assessee. We hold and direct accordingly. The grounds raised by the assessee are accordingly allowed for statistical purposes.

10. In the result, the appeal filed by the assessee is allowed for statistical purpose.

Order pronounced in the Open Court at the time of hearing itself on 21st December, 2022.

Sd/- (LALIET KUMAR) JUDICIAL MEMBER	Sd/- (RAMA KANTA PANDA) ACCOUNTANT MEMBER
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Hyderabad, dated 21st December, 2022.

Thirumalesh/sps

Copy to:

S.No	Addresses
1	Prasads SP Entertainment LLP 8-2-293/82/JIII/6 Ramanaidu Studios Road No.79, Film Nagar, Jubilee Hills Hyderabad-500 033
2	ACIT,CC-1(2) Aaykar Bhawan Basher Bagh Hyderabad
3	CIT(A)-11, Hyderabad
4	PrI.CIT(Central), Hyderabad
5	DR, ITAT Hyderabad Benches
6	Guard File

By Order