

IN THE INCOME TAX APPELLATE TRIBUNAL  
MUMBAI BENCH "B", MUMBAI  
BEFORE SHRI AMIT SHUKLA, JUDICIAL MEMBER AND  
SHRI GAGAN GOYAL, ACCOUNTANT MEMBER  
**ITA No. 2760/Mum/2013 (A.Y. 2009-10)**

**Maharashtra Film Stage and Cultural  
Development Corporation Limited**

Dadasaheb Phalke Chitranagri,

Goregaon, East

Mumbai-400 065

**PAN: AAACM7646K**

..... Appellant

Vs.

**ACIT-11 (1)**

Aayakar Bhavan,

Mumbai-400020

..... Respondent

Appellant by : Shri Mani Jain  
Respondent by : Dr. Mahesh Akhade, CIT- DR  
Date of hearing : 14/03/2023  
Date of pronouncement : 20/03/2023

**ORDER**

**PER GAGAN GOYAL, A.M:**

This appeal by the assessee is directed against the order of Ld. CIT(A)-3, Mumbai dated 04.02.2013 u/s 250 of the Income Tax Act, 1961 (hereinafter referred to as "the Act") for assessment year 2009-10. The assessee has raised the following grounds of appeal.

1. *On the facts and in the circumstances of the case and in law the Ld. CIT(A) erred in confirming the advances written off amounting to Rs. 10.07.37 891/-.*
2. *On the facts and in the circumstances of the case and in law the Ld. CIT(A) erred in confirming the bad debts written off amounting to Rs. 1,14.03,962/-.*
3. *On the facts and in the circumstances of the case and in law the Ld. CIT(A) erred in confirming the leave encashment of Rs. 1.77.449/- claimed by the appellant.*
4. *On the facts and in the circumstances of the case and in law the Ld. CIT(A) erred in not allowing depreciation of Rs.19,067/-.*
5. *On the facts and in the circumstances of the case and in law the Ld. CIT(A) erred in confirming the disallowance of Rs.4,62,000/- made by the Ld. A.O by invoking the provisions of Sec 40A (3) of the Income Tax Act, 1961*
6. *On the facts and in the circumstances of the case and in law the Ld. CIT(A) erred in confirming the addition of Rs.17,59,687/- on account of difference in the profit.*
7. *The Appellant craves leaves to add, amend, alter, modify and or withdraw any of the above grounds of appeal, which are without prejudice to one another. The appellant prays this Hon'ble Tribunal to delete the additions/disallowance made by the Ld. AO to the extent confirmed by the Ld. CIT(A).*

2. Brief facts of the case are that assessee filed return of income on 30.09.2009 declaring total profit of Rs.11,15,88,425/-. This return was revised on 26.09.2010 declaring loss of Rs. 1,30,59,943/-. Case of the assessee was selected for scrutiny. Assessee is a State Government PSU and subject to audit by the auditor appointed by C & AG.

3. Initially the original return was filed on the basis of audit report signed by chartered accountant appointed by the management as interim measure (as no C & AG auditor was appointed). In this return, assessee declared profit of Rs.11,15,88,425/-. Thereafter, this appointment of

statutory auditor nullified by the C & AG under the Companies Act, 1956. It is a basic premise of law that in the case of Central and State PSUs auditor has to be appointed by C & AG only. Thereafter, C & AG appointed an auditor and as per the financials approved by that auditor in consultation with C & AG, assessee has to file a revised return on 26.09.2010 declaring a loss of Rs.1,30,59,943/-.

4. The Assessing Officer (AO) was not agreed with the figures of revised return on technical grounds and proceeded on the figures as enumerated in the original return itself. Against the loss of Rs.1,30,59,943/-, he assessed the income of the assessee at Rs.11,03,68,330/- vide para 5 to 12 of the assessment order. Assessee being aggrieved with this order of AO preferred an appeal before the Ld. CIT(A)-3 Mumbai, wherein, with partial relief, he confirmed the order of AO. Assessee being further aggrieved with this order of Ld. CIT(A) preferred this appeal before us.

5. We have gone through the order of AO, order of the Ld. CIT(A) and submissions of the assessee along with paper book filed. It is observed that there is a substantial gap in the financials as audited by the earlier CA Firm vis-à-vis signed by the CA firm duly appointed by the C& AG. As the assessee corporation is being owned, financed and operated by the Maharashtra State Govt., As per Companies Act, Auditor has to be appointed by the C&AG of India only. Any appointment of Auditor, other than appointed by C&AG is null and void in the eyes of law. The

department is of the view that *“the provisions of I.T. Act, 1961 do not allow for ignoring the financial accounts signed by a CA being the Tax Auditor & accepting the Financial Figures signed by the Statutory Auditors”*.

6. This stand itself is not sustainable, as the accounts and Tax Audit were being signed by an un-authorized person/firm. Income Tax Act, 1961 may be silent on this, but can't override the statutory provisions of Companies Act, 1956 pertaining to audits and accounts of a state owned statutory corporation. Some times it is seen that there is a delay in appointment of Auditors by the office of C&AG of India and may be under the pressure of compliance management may appoint another Auditor without backing of law, that does not mean that the same will be a proper compliance of law. If version of the department is accepted, it will create a great difficulty in the matters of PSUs (State & Central), wherein sometimes appointments of Auditors are late for various reasons, but on the other hand no one else other than C&AG Auditor can conduct the audit of accounts and Tax Audit.

7. **Ground No. 1 pertains to disallowance of Rs. 10,07,37,891/- being advance written off in the revised return and ground no. 2 pertains to bad debts written off.** A fact pertinent to the issue is already on record and accepted by the Ld. CIT(A) Also, *“Being advances written off in the revised return of income filed, which were duly approved by the shareholders in the AGM held after filing the original return of income”*.

It means whatever may be the accounts and tax audit reports filed with the Original Return, **were not duly approved by the shareholders in the AGM.** There are no arguments on merits by the revenue while disallowing the same u/s. 37(1), except that the same were not claimed in the original return. As discussed in the Para 5 and 6 (supra), any accounts and audit in defiance of Companies Act, 1956 in the case of PSUs, can't be placed and approved by the shareholders in AGM, hence is of no value in the eyes of law. Until and unless accounts are duly adopted and approved by the shareholders in AGM there is no sanctity of the same.

8. In this case as discussed(supra), earlier accounts were audited and filed with original return of income and thereafter a revised return was filed with audited results of the assessee along with tax audit report duly approved and adopted by the shareholders in AGM, is a correct procedure of compliance. We don't see any fault in filing of revised return in the given circumstances. While holding so, we gain further strength from the decision of Hon'ble Allahabad High Court in the case of **[2013] 36 taxmann.com 96 (All.) CIT-I, Lucknow v. U.P. Rajkiya Nirman Nigam Ltd.** Wherein Hon'ble Court held as under:

*"Brief facts, giving rise to the instant appeal, are that the assessee U.P. Rajkiya Nirman Nigam Ltd. is a State Government Undertaking engaged in the construction activities. During the year Assessment Year under consideration, i.e., 2004-05 relevant to the F.Y. 2003-04, the assessee had filed its original return declaring therein Rs.6,34,21,360/- on 1-11-2004, but subsequently, the same was revised at Rs.4,32,14,180/- on 18.8.2005 and while revising the said return, it has been declared that the debts to the tune of Rs. 2,13,50,967.28, out of Rs. 42.07 crores of sundry debtors, had become bad and irrecoverable, as these debts were pertaining to the period 1987-88 and 1998-99. A notice under Section 143 (1) of the Income-tax Act was issued requiring the*

assessee to explain as to how the debts which had become bad only on 30-3-2005 and accordingly relates to Assessment Year 2005-06, but the same has been claimed in the Assessment Year 2004-05 to which reply was tendered by the Assessee-respondent and the relevant para of the reply reads as under: -

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| <p>"(i) That the financial year ended on 31-3-2004.</p> <p>(ii) That the audit for the period 1-4-2003 up to 31-3-2004 could only be finalized after the closure of financial year that is after midnight of 31-3-2004.</p> <p>(iii) That when the audit is to be taken up for finalization by the auditors after the closure of the financial year, i.e. after the midnight of 31-3-2004, any decision by the AUDITORS to reconcile, audit, pass rectification entry (if any), passing of journal entry in the Books, any correction by the auditors, or decision regarding debit of expenditure or any outgoing or credit of any income or receipt, accounting of any asset or liability different from what the assessee has already done, can and shall only be taken after 1-4-2004. Hence whether any decision for debiting an entry or crediting an entry is to be taken, whether by the auditors, Management or by the management on, the advise and guidance of the Statutory Auditors so as to disclose the correct income for the purpose of assessment, will only be taken on or after 1-4-2004. Hence whether the same is taken on 1-4-2004 or 30-9-2004 or any other date after 1-4-2004 will not change the nature and complexion of the entry. In the present case, when the due date for filing return came, the accounts had not been completely audited and finalized the Books were still subject to audit and open for any correction by the auditors. Hence any decision made before finalization of Accounts can in any manner effect and correct the Accounts and the decision so taken has in all circumstances to be considered as a method and procedure for placing correct income for assessment both as per the statutory provisions of Companies Act, 1956 and I.T. Act, 1961."</p> |
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**5.** The Assessing Authority did not agree with the explanation/justification given by the Assessee and accordingly, add the same on the grounds that these debts were to be written off in the Financial Year 2004-05 relevant to the Assessment Year 2005-06, as the decision with regard to the said debt being bad and was irrecoverable had been taken on 30-3-2005. The First Appellate Authority while dismissing the appeal of the assessee uphold the reasoning of the Assessing Officer. Under these circumstances, the assessee filed an appeal before the Income-tax Appellate Tribunal and the Tribunal came to the conclusion that there is no requirement in law under Section 36(1)(vii) of the Income-tax Act, that the amount should actually be written off before the end of the financial year.

Relevant provisions of Section 36 (1) (vii) read as under: -

"36(1)

(vii) subject to the provisions of sub-section (2), the amount of any bad debt or part thereof which is written off as irrecoverable in the accounts of the assessee for the previous year"

6. On perusal of the provisions here-in-above, it reveals that the only requirement for allowing the bad debt under Section 36 (1) (vii) of the Income-tax Act, is that any bad debt or part thereof is written off as irrecoverable and secondly, they should be written off in the accounts of the assessee for the previous year. In the instant appeal, neither the department nor the assessee disputes that the debt had become bad and it was written off.

7. The prescription as provided is to write off bad debt by the assessee in the accounts 'for the previous year', but it does not say to write off bad debt 'in the previous year'. Thus, there is a vast difference if the word 'in' would have been there in place of 'for'. Further, the words 'accounts of the assessee' are qualified with further words 'for the previous year'. Thus, it only means that the accounts in which the Act of writing off is to be done by the assessee should be for the previous year. Therefore, the law requires to write off the bad debt in the accounts of the assessee in the relevant accounting year. There is neither any condition nor any provision that the writing off should be done in the previous year, i.e., before end of the financial year.

8. In the present case, debts relating to the period 1987-88 and 1998-99 claimed in the accounts which were prepared up to 31-3-2004 and as the accounts of the assessee are open and subject to corrections by the Auditors, as per the Companies Act, then such writing off can be done in those account books. No new legal proposition has been brought to our notice for treating the debt as bad or irrecoverable should be taken in the previous year itself. In other words, where account books are not closed and not signed by the Board of Directors and not adopted by the shareholders as per the Companies Act, it is legally permissible to make adjustments before they are finally adopted.

9. Further, it is admitted that the original return, on the basis of unaudited accounts, was filed on 1-11-2004. After audit had taken place and report of the Auditors was accepted, revised return was filed on 18-8-2005 and it is only in the revised return, the debts to the tune of Rs.2 crores and odd had been declared as bad. The ground taken by the Assessing Authority and Appellate Authority for not accepting the said bad debts during the assessment year under consideration, i.e., 2004-05 is contrary to the provisions of Section 36 (1) (vii) of the Income-tax Act, and further in view of the interpretation as stated here-in-above. Therefore, the Tribunal has rightly allowed the appeal of the assessee.

**10.** *The Apex Court in the case of Kerala State Industrial Development Corp. Ltd. v. CIT [2012] 349 ITR 365/25 taxmann.com 564, while dealing with the State Public Sector Undertaking and the provisions of Section 36 (1) (vii) has laid down two conditions to be satisfied at the relevant time, namely, that (a) bad debt must be established to have become bad in that year and (b) bad debt should have been written off in the books of account of that year. If both these conditions are satisfied, then the assessee is entitled for the claim of bad debt.*

**11.** *In view of above, the questions are answered in negative, i.e., against the Revenue and is in favour of the assessee."*

9. In view of the above decision of Hon'ble Allahabad High Court and our observation(supra), facts of the present appeal and decision discussed(supra) are similar, we don't see any force in the decision of Ld. CIT(A) in rejecting the claim of the assessee, simply because the same was not claimed in the original return and was claimed in the revised return filed in compliance to C&AG. We have gone through the submissions of the assessee and found the decision of assessee well founded on facts and logics. Being, a State PSU question on the sanctity of decisions and accounting can't be raised as the same is being owned by State Govt. and Audited by the C&AG of India. More, over even if version of Revenue is accepted for the time being, still same has to be allowed in next F.Y. and it results into a deferment only, but nothing on merits of the claim. **In the light of above discussion order of the authorities below is set aside and Ground Nos. 1 & 2 raised by the assessee is allowed.**

10. **Ground No. 3 pertains to disallowance of Leave Encashment of Rs. 1,77,449/-.** In the original return of income assessee claimed Rs. 12,33,904/- as leave encashment **paid** during the year. However, at the time of filing of revised

return assessee claimed Rs. 14,11,353/- through computation of income. This disallowance was made because of non-Acceptance of revised return by the Revenue. We set aside this disallowance and restore the matter back to the file of AO for fresh adjudication on the basis of evidences to be adduced by the assessee. Assessee is directed to cooperate with the AO and advance evidences of actual payment during the year in favour of his claim for Rs. 14,11,353/-. **In the result this ground of appeal raised by the assessee is allowed for statistical purposes.**

11. **Ground No. 4 pertains to disallowance of depreciation of Rs. 19,067/- towards capital assets.** This issue also had its roots in the issue of filing revised return and non-acceptance of the same by Revenue. Assessee claimed depreciation on the basis of figures capitalised on the directions of the C & AG of India. As hold(supra), we already approved the filing of revise return on the given facts of the case, no disallowance can be made by the AO, if assessee claimed some allowance based on the accounts approved by the C & AG of India. **In the result AO is directed to delete the addition and Ground Raised by the assessee is allowed.**

12. **Ground No.5 pertains disallowance made u/s. 40A (3) amounting to Rs. 4,62,000/-.** On this issue as claimed by the assessee that there is a wrong reporting in the Tax Audit Report and actually these amount were not claimed as an expense, same is restored back to the file of AO for re-verification by AO, based on evidences advanced by the assessee. Assessee is directed to

substantiate its claim with relevant evidences that the same is not claimed as expense, hence not disallowable u/s. 40A(3). **In the result this ground of appeal raised by the assessee is allowed for statistical purposes.**

**13. Ground No. 6 pertains to addition of Rs. 17,59,687/- on account of difference in Original Return and Revise Return.** As submitted by the assessee that this difference arisen because of different treatment given by the C & AG of India w.r.t. revenue of the assessee. As already hold by us that revise return filed by the assessee is proper on the given facts of the case, revenue has to be considered as declared in the revise return and department cant disturb the same on the basis of original return. **This ground of appeal raised by the assessee is allowed.**

**14. In the result appeal filed by the assessee is allowed for statistical purposes.**

Order pronounced in the open court on 20<sup>th</sup> day of March, 2023.

**Sd**  
(AMIT SHUKLA)  
JUDICIAL MEMBER

**Sd**  
(GAGAN GOYAL)  
ACCOUNTANT MEMBER

Mumbai, दिनांक / Dated: 20/03/2023  
*Mahesh R. Sonavane*

**Copy of the Order forwarded to:**

1. अपीलार्थी/The Appellant ,
2. प्रतिवादी/ The Respondent.
3. आयकर आयुक्त CIT
4. विभागीय प्रतिनिधि, आय.अपी.अधि., मुंबई/DR, ITAT, Mumbai
5. गार्ड फाइल/Guard file.

//True Copy//

BY ORDER,

(Dy. /Asstt.Registrar)  
**ITAT, Mumbai**