

**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. No.232 to 235/Asr/2022

Assessment Years: 2010-11 to 2013-14

M/s Ohri& Batra Showbiz Pvt. Ltd. G.K. Tower, BSF Colony, Opp. HVM college, Jalandhar. [PAN: AADCB3859N] (Appellant)	Vs.	Dy. Commissioner of Income Tax, Central Circle-II, Jalandhar. (Respondent)
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Appellant by	None.
Respondent by	Sh.S.R. Kaushik, CIT. DR

Date of Hearing	27.04.2023
Date of Pronouncement	11.05.2023

ORDER

Per: Bench:

A batch of appeals of the assessee was filed against the order of the Id. Commissioner of Income Tax (Appeals)-5, Ludhiana,[in brevity the 'CIT (A)'] order passed u/s 250(6) of the Income Tax Act 1961[in brevity the Act], for A.Ys. 2010-11 to 2013-14 [in brevity the Act], order dated 30.03.2022.The impugned orders were emanated from the order of the Id. Dy. Commissioner of Income Tax, Central Circle-II, Jalandhar (in brevity the Id. AO), order passed u/s 143(3)/153A of the Act date of order 05.11.2015.

2. The appeals were filed with delay of 17 days. The assessee filed a condonation of delay of 17 days. With the consent of Id. DR the delay of 17 days is condoned.

3. At the outset, the relevant factual backdrops as well as the issue involved in all the cases are identical. We, therefore, the ITA No. 234/Asr/2022 is taken as a lead case.

ITA No. 234/Asr/2022

4. The assessee has taken the following grounds:

“1. That the order passed by the Hon’ble CIT (A) dated 30.03.2022 is against the law and facts of the case.

2. That having regard to the facts and circumstances of the case, Hon’ble CIT (A) has erred in law and on facts in confirming the action of Ld. AO in framing the impugned assessment order u/s 153A/143(3) and without complying with the mandatory condition u/s 153A/153D as envisaged under the Income Tax Act, 1961.

3. That having regard to the facts and circumstances of the case, Hon’ble CIT (A) has erred in law and on facts in confirming the action of Ld. AO in framing the impugned assessment order u/s 153A/143(3) without considering the facts that assessment framed by the A.O. is beyond the time limit contemplated u/s 153B(1) r.w. Explanation (ii)(a) of the Income Tax Act, 1961.

4. That having regard to the facts and circumstances of the case, Hon’ble CIT (A) has erred in law and on facts in confirming the

action of Ld. AO in referring the 'Books of accounts' of the assessee company for 'Special audit' u/s 142(2 A) of the Income Tax Act, 1961.

5. That having regard to the facts and circumstances of the case, Hon'ble CIT (A) has erred in law and on facts in confirming the action of Ld. AO in framing the impugned assessment order u/s 153A/143(3) wherein he though disbelieved the 'book results' of the assessee company, but however framed assessment without rejecting the latter's 'Books of accounts', as per the provisions of Sec. 145(3) of the Act.

6. That having regard to the facts and circumstances of the case, Hon'ble CIT (A) has erred in law and on facts in confirming the action of Ld. AO in making an addition of Rs. 1,21,11,581/-, without considering the facts of the case and without observing the principles of natural justice.

7. That having regard to the facts and circumstances of the case, Hon'ble CIT (A) has erred in law and on facts in confirming the action of Ld. AO in making an addition of Rs. 54,25,040/-, without considering the facts of the case and without observing the principles of natural justice.

8. That having regard to the facts and circumstances of the case, Hon'ble CIT (A) has erred in law and on facts in confirming the action of Ld. AO in making an addition of Rs. 7,66,500/- u/s 68 of the Act, without considering the facts of the case and without observing the principles of natural justice.

9. That having regard to the facts and circumstances of the case, Hon'ble CIT (A) has erred in law and on facts in confirming the

action of Ld. AO in making an addition of Rs. 4,88,000/-, without considering the facts of the case and without observing the principles of natural justice.

10. That having regard to the facts and circumstances of the case, Hon'ble CIT (A) has erred in law and on facts in confirming the action of Td. AO in making an addition of Rs. 7,50,000/- u/s 68 of the Act, without considering the facts of the case and without observing the principles of natural justice.

11. That the appellant craves the leave to add, modify, amend or delete any of the grounds of appeal at the time of hearing and all the above grounds are without prejudice to each other.”

5. Brief facts of the case is that the assessment was completed u/s 153A/143(3) of the Act. The search and seizure operation u/s 132 of the Act was carried out on dated 05.12.2012. During search operation certain incriminating documents found and seized which belongs to the assessee company. As per the ld. AO the notice u/s 153A was issued and duly served on the assessee and the assessment was completed u/s 153A. The addition was made in the hands of the assessee in different heads other than incriminating materials. Being aggrieved, assessee filed an appeal before the ld. CIT(A). The assessee challenged both the legal and factual grounds before the ld. CIT(A). The ld. CIT(A) upheld the order of the ld. AO and disposed of the appeals accordingly. Being aggrieved assessee filed appeals before us.

6. During hearing proceeding, the appeal was called for none was present on behalf of the assessee. Although no adjournment petition was filed. On perusal of the documents we find that the hearing was fixed in different dates. Considering the issues, the matter is taken for adjudication after hearing the Id. DR.

7. The Id. DR first pointed out that the assessee has challenged the jurisdiction related to assessment u/s 153A/143(3) but the same issue was never challenged before the Id. CIT(A). The Id. DR submitted the written submission which are kept in record. The Id. DR fully relied on the order of the revenue authorities.

8. We heard the submission of the Id. DR and perused the order of the revenue authorities. According to the assessment order the Id. DR first relied on page 7 para no. 5 of the assessment order which is extracted as below:

“5. Issue of non recognition of income relatable to the movie ‘JineeMeraDiluteya’: The distribution rights of the movie JMDL were assigned by the assessee to M/s Tips Industries Limited, Bombay vide Agreement dated 20th day of October, 2010 for a consideration of Rs.60.00 Lacs to hold the Worldwide, rights, as part to meet the production cost of picture for the consideration as stipulated in terms of clause 3 of the said Agreement. However, during the course of the said film production, besides the aforesaid distribution agreement for an amount of Rs.60,00,000/-, the assessee executed another agreement dated 23.11.2011 vide which in terms of para (c) of the Preamble to the said Agreement read with clause 1 and 4 thereof, the assessee assigned and transferred the complete

ownership rights and also the copy rights of the said films for whole World/Universe for a further consideration of Rs. 1,75,00,000/-. Vide letter of arrangement by and between the said parties dated 16th May, 2012, the parties confirmed to have received payment of Rs. 1,37,41,960/-, besides the aforesaid earlier sum paid by M/s Tips Industries Limited of Rs.43,83,000/- out of the sum of Rs.60,00,000/- for distribution rights, received upto 17.01.2011 (financial year ended 31.03.2011).”

9. Considering the grounds of the appeal of the assessee were agitated before the first appellate authority which are extracted from the appeal order in persuasion of pages 2 to 4 of the appeal order para 2 is reproduced as below:

“2. *The appellant has preferred following grounds of appeal: -*

- 1. That the order of the A.O. is against the law and facts of the case.*
- 2. That the assessment framed by the A.O is beyond the time limit contemplated u/s 153B (1) r.w. Explanation (ii)(a) of the Income Tax Act, 1961.*
- 3. That the A.O had gravely erred in law and facts of the case in assuming jurisdiction and framing assessment in the hands of the assessee company.*
- 4. That the A.O had acted in blatant violation of the basic 'Principles of Natural Justice' by proceeding with and framing assessment in the hands of the assessee company, without disposing of the serious objections raised by the assessee company and its 'group*

concerns/'directors' as regards the prejudiced and hostile approach adopted by the A.O, in light of the peculiar circumstances attending to their respective cases.

5. *That the A.O had gravely erred in law and facts of the case in referring the 'Books of accounts' of the assessee company for 'Special audit' u/s 142(2A) of the Income Tax Act, 1961.*

6. *That the A.O had gravely erred in law and facts of the case in failing to give a reasonable opportunity of being heard to the assessee company before 'directing' it to get the accounts audited u/s 142(2A) of the 'Act', i.e. after obtaining the approval of the Pr. CIT (Central), Ludhiana.*

7. *That the A.O had gravely erred in law and facts of the case by failing to appreciate that as the report of the 'Special auditor' which as directed by the Pr. CIT(Central), Ludhiana, was statutorily required to be delivered latest by 30.06.2015, was however delivered by the 'Special auditor' only as on 14.09.2015, therefore in the absence of any extension of the stipulated date, no cognizance of the 'Audit Report' so filed by the 'Special auditor' could be validly taken by the A.O.*

8. *That the A.O had gravely erred in law and facts of the case, wherein he though disbelieved the 'book results' of the assessee company, but however framed assessment without rejecting the latters 'Books of accounts', as per the provisions of Sec. 145(3) of the 'Act'.*

9. *That the A.O had gravely erred in law and facts of the case in holding the assessee company as being in default u/s 40(a)(ia) of the 'Act', and therein erred in making an addition of Rs. 84,32,981/- in the hands of the assessee company.*

10. That the A.O had gravely erred in law and facts of the case in holding the assessee company as being in default u/s 40(a)(ia) of the 'Act', and therein erred in making an addition of Rs. 5,78,600/- in the hands of the assessee company.

11. That the A.O had gravely erred in law and facts of the case in holding the assessee company as being in default u/s 40(a)(ia) of the 'Act' and therein erred in making an addition of Rs. 31,00,000/- in the hands of the assessee company.

12. That the A.O on the basis of misconceived facts, premature findings and self-suiting inferences, without affording reasonable opportunity to the assessee company to further substantiate its claim/contention that no disallowances u/s 40(a)(ia) of the 'Act' were called for w.r.t the amount aggregating to Rs. 1,21,11,581/- (i.e. Rs. 84,32,981/- + Rs. 31,00,000/- + Rs. 5,78,600/-), had however erroneously made an addition of Rs. 1,21,11,581/- in the hands of the assessee company.

13. That the A.O had gravely erred in law and facts of the case in making an addition of Rs. 54,25,040/- towards alleged undisclosed income of the assessee company.

14. That the A.O. on the basis of misconceived facts, premature findings and self-suiting inferences, without affording reasonable opportunity to the assessee company, had therein gravely erred in making an addition of Rs. 54,25,040/- towards alleged non recognition of income relatable to the movie 'JinheMeraDilLuteya', in the hands of the assessee company.

15. That the A.O had gravely erred in law and facts of the case in making an addition of Rs. 7,66,500/- towards alleged 'Unexplained cash credits' u/s 68 of the 'Act', in the hands of the assessee company.

16. That the A.O on the basis of misconceived facts, premature findings and self-suiting inferences, without affording reasonable opportunity to the assessee company, had made an addition of Rs. 7,66,500/- towards alleged 'Unsecured loans' and 'deposits' in the hands of the assessee company.

17. That the A.O had gravely erred in law and facts of the case by most arbitrarily disallowing 'Salary expenses' of Rs. 4,88,000/- as stood debited in the P & Loss A/c' of the assessee company for the year under consideration.

18. That the A.O had gravely erred in law and facts of the case in making a Protective addition' of Rs. 7,50,000/- in the hands of the assessee company.

19. That the A.O had gravely erred in law and facts of the case by most arbitrarily drawing adverse inferences and making protective addition of Rs. 7,50,000/- in the hands of the assessee company, on the basis of an alleged 'dumb' document as had surfaced in the course of the proceedings before the 'Special auditor'.

20. That the AO had gravely erred in law and facts of the case in assessing the income of the assessee company at Rs. 1,99,83,931/-, as against the 'Returned income' of Rs. 4,42,810/- and raising an additional demand towards 'Tax' and 'Interest' of Rs. 87,89,518/- in the hands of the assessee company.

21. Any other ground of appeal as may be allowed to be raised during the course of hearing of the appeal.”

9.1 The assessee first time challenged before the bench about the jurisdiction of assessment u/s 153A/143(3). The assessee challenged that there is no such any incriminating material for completion of the assessment by the Id. AO. But the same issue was not challenged specifically before the Id. CIT(A). Only, the section 153B (1) r.w. Explanation-(ii)(a) was duly challenged before the first appellate authority. The extract of section 153B (1) r.w. Explanation-(ii) (a) is reproduced as below:-

“153B.....

Explanation.—In computing the period of limitation under this section—

- (i) the period during which the assessment proceeding is stayed by an order or injunction of any court; or*
- (ii) the period commencing from the date on which the Assessing Officer directs the assessee to get his accounts audited under sub-section (2A) of section 142 and—*
 - (a) ending with the last date on which the assessee is required to furnish a report of such audit under that sub-section; or*
 - (b) where such direction is challenged before a court, ending with the date on which the order setting aside such direction is received by the Principal Commissioner or Commissioner; or.....”*

But from the assessment order, we find that there is no specific determination of incriminating documents related to completion of the assessment. In our considered view, the legal ground of the assessee is challenged afresh before the bench. Accordingly, the matter is setting aside to Id. CIT(A) related to legal ground challenged by the assessee before the bench. Considering the other ground related to factual aspect is kept open before the Id. CIT(A). The discussion on merit in this

order is only remained for academic purpose. The assessee is directed to file amended ground before the Id. CIT(A) during set aside proceeding. Needless to say, the assessee should get reasonable opportunity for hearing in the set aside proceeding.

In the result, the appeal of the assessee bearing **ITA No. 234/Asr/2022** is allowed for statistical purposes.

10. The bench has noticed that the issues raised by the assessee in the above appeals are equally similar on set of facts and grounds. Therefore, it is not imperative to repeat the facts and various grounds raised by the assessee. Hence, the bench feels that the decision taken by us in ITA No. **234/Asr/2022** for the Assessment Year 2012-13 shall apply mutatis mutandis in the above listed appeals.

11. In the result, the appeals of the assessee bearing **ITA Nos. 232/Asr/2022, 233/Asr/2022, 234/Asr/2022 and 235/Asr/2022** are allowed for statistical purposes.

Order pronounced in the open court on 11.05.2023

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