

**आयकर अपीलीय अधिकरण, हैदराबाद पीठ**  
**IN THE INCOME TAX APPELLATE TRIBUNAL**  
**Hyderabad 'A' Bench, Hyderabad**

**Before Shri R.K. Panda, Accountant Member**  
**AND**  
**Shri Laliet Kumar, Judicial Member**

ITA No.412/Hyd/2021		
Assessment Year: 2007-08		
Shri Petla Jagannadh Hyderabad PAN:AEKPP2273E	Vs.	Asstt. C. I. T. Circle 14(1) Hyderabad
(Appellant)		(Respondent)
Assessee by:	Shri A. Srinivas, CA	
Revenue by:	Shri KPRR Murthy, CIT(DR)	
Date of hearing:	02/05/2023	
Date of pronouncement:	16/05/2023	

**ORDER**

**Per R.K. Panda, A.M**

This appeal filed by the assessee is directed against the order dated 03.09.2019 of the learned CIT (A)-6 Hyderabad relating to A.Y.2007-08.

2. Facts of the case, in brief, are that the assessee is a Film Director-cum-Producer. He is deriving professional income by directing and producing films. He is also in receipt of business income, being proprietor of M/s Vaishno Academy, a proprietary concern which is engaged in producing films and leasing film-related equipment. He filed his return of income for AY 2007-08 on 31.10.2007 declaring total income of Rs.5,22,05,345/-.

3. In this case, a survey u/s 133A was conducted on 31.7.2006 and the case was converted to scrutiny as per the compulsory scrutiny norms and the assessment was completed u/s 143(3) on 31.12.2009 determining the total income at Rs.8,93,80,545/- by making the following additions :

- (i) Addition of Rs.31,00,000/- made on the basis of noting related to certain cash receipts as mentioned in the impounded diary.
- (ii) Addition of Rs.3,02,75,200/- being the assessee's share of collections received from M/s Asha Film Distributors towards the movie "Pokiri"
- (iii) Disallowance of Rs.38,00,000/- claimed as payment made to M/s Prasad Film Laboratories under the head "Cost of Production of the film Pokiri"

4. Aggrieved by the said order passed by the Assessing Officer, the assessee preferred an appeal before the CIT(A) who has partly allowed the appeal. Subsequently cross appeals were filed by the Department as well as the assessee before the Tribunal. The Tribunal vide ITA No.1627/Hyd/2010 filed by the assessee and ITA No.75/Hyd/2011 filed by the Revenue vide order dated 10.02.2014 restored the issue of addition of Rs.3,02,75,200/- to the file of the Assessing Officer by observing as under:

*"5.1. The claim of the assessee is that the share of the assessee was at Rs. 1.40 crores and others is relating to the share of Vaishnavi Academy of Rs.4,42,75,200/- and also there was an expenditure in the nature of commission, advertisement. But, however, there is no evidence furnished*

*regarding these facts. In our opinion, it is appropriate to examine the entire issue by the Assessing Officer and decide the issue in accordance with law. Further, we make it clear that the agreement produced by the assessee is self-serving document and it cannot be acted upon as the assessee categorically stated before the Assessing Officer that there was no agreement. Accordingly, this issue is remitted back to Assessing Officer for fresh consideration.”*

5. So far as the addition of Rs.38,00,000/- is concerned the Tribunal had also restored the issue to the file of the Assessing Officer by observing as under:

*“11. The contention of the assessee is that the amount of Rs.38 lakhs is incurred by two other parties namely Sri Venkateswara Films Rs. 5 lakhs and SS Communications Rs. 33 lakhs which was paid to Prasad Laboratories on behalf of assessee and according to the assessee the same to be allowed. If these payments are not claimed as expenditure in the hands of these two parties, then it is natural to allow the claim of the assessee. Being so, it is appropriate to examine the issue in detail accordingly.”*

6. It may be pertinent to mention here that the CIT (A) in the first round of litigation has sustained the addition of Rs.31.00 lakhs and the assessee had not filed any appeal before the Tribunal on this issue.

7. Subsequent to the order passed by the Tribunal, the Assessing Officer issued a notice u/s 142(1) on 15.7.2015. However, the assessee did not respond to the show-cause notice issued for which another letter was issued on 25.2.2016 asking the assessee to explain as to why the amount of Rs.3,02,75,200/- being the difference in collection from the movie “Pokiri” for the financial year 2006-07 shall not be added to the total income of

the assessee. In response to the same, the assessee submitted that he has given the above film on distributorship of the ceded area to one Mr. A. Mallikarjuna who operates under the name & style of M/s. Asha Film Distributors. The assessee reiterated that he has sold the movie "Pokiri" for a total consideration of Rs.1,40,00,000/- and he is nowhere concerned with the gross collection which have accrued to the Distributor. The copy of the MOU entered into with the Distributor for the distribution rights for the film "Pokiri" was again brought to the notice of the Assessing Officer.

7.1 However, the Assessing Officer was not satisfied with the arguments advanced by the assessee. He issued notice u/s 133(6) calling for certain information from Mr. A. Mallikarjun such as to furnish the details of gross collection of the movie "Pokiri" out of which the assessee's share of income along with copy of the MOU in respect of Movie "Pokiri" and copy of agreement, if any, entered into with the assessee. Shri Mallikarjun, vide letter dated 10.02.2016 confirmed the gross collection of the ceded area at roughly about Rs.7.25 crores. He, however, submitted that he has no books of account or ledger in support of this figure due to efflux of time. He further confirmed that he has purchased the said movie for a total consideration of Rs.1,40,00,000. He also

enclosed a copy of the MOU entered into with the assessee for the distribution rights for the film in the ceded area. However, in view of the observation of the Tribunal that the said MOU is a self-serving document and therefore, cannot be accepted, the Assessing Officer rejected the same. In absence of any registered written agreement or any documentary evidence to support the claim, the Assessing Officer made addition of Rs.3,02,75,200/- being the difference between Rs.4,42,75,200/- and Rs.1,40,00,000/-. The Assessing Officer accordingly determined the total income of the assessee at Rs.8,25,80,545/-.

8. In appeal, the learned CIT (A) partly allowed the appeal filed by the assessee. So far as the addition of Rs.3,02,75,200/- is concerned, he sustained an amount of Rs.1,97,12,023/- by observing as under:

*“6.28 I have carefully considered the contention of the assessee and examined the same in the light of the fact of the case as emanating from the documentary evidence placed on record. At the outset, it may be noted that the assessee is once again harping on the MOU wherein it is stated that the agreement between the assessee and the distributor i.e., M/s. Asha Film Distributors is that of an outright sale and, therefore, the entire profits would accrue to the distributor after transferring the distribution and theatrical rights for fixed consideration. As such, the assessee has placed heavy reliance upon the MOU Which has been rendered otiose by the Hon'ble ITAT vide order dated 10.01.2014 (supra) on account of the fact that the same is self-serving document in nature inasmuch as it was not produced before the AO during the course of first round of assessment proceedings.*

*6.29 At this juncture, it may not be out of place to emphasize the fact that though the Hon'ble ITAT has recorded an adverse finding against the assessee with regard to admissibility of the MOU as an evidence in order to allow his claim that the he had received Rs.1,40,00,000/- only from M/s. Asha Film Distributors, the assessee has not filed any appeal against such finding u/s. 260A of the Act before the Hon'ble Jurisdictional High Court i.e., the Hon'ble High Court of Judicature at*

Hyderabad. Thus, I am of the considered opinion that the issue has reached finality without any dispute pending before the Higher Judicial Authorities.

6.30 In this connection, it is also interesting to note that the said MOU was not available during the course of survey conducted on 31.07.2006. Further, neither the assessee nor the AR of the assessee has furnished the same in response to questionnaire dated 05.11.2009 (supra) issued during the course of first round of assessment proceedings. Also, it is not out place to highlight the fact that while recording the sworn statement during the course of survey, the assessee himself stated that there is no agreement entered into between the parties. Thus, there is no merit in the assessee's contention with regard to the MOU.

6.31 Further, the assessee argued that Sri A. Mallikarjuna of M/s. Asha Film Distributors has also stated before the AO that he had purchased the distribution rights on outright basis for Rs. 1,40,00,000/- only. In this regard, it may be noted that Sri A. Mallikarjuna, in his reply to the AO, vide letter dated 10.02.2016, has categorically stated that "I do not have any books of accounts or ledgers in support of the above figures due to efflux of time". Accordingly, he could not produce any books of account or other documentary evidence in support of his claim except furnishing a copy of the same MOU (supra), which cannot be considered as an admissible evidence in order to accept his contention with regard to purchase of distribution rights on outright basis for Rs . 1,40,00,000/- only. On the other hand, in the same letter he himself has confessed to the fact that the gross collections of film "Pokiri" for Ceded Area was roughly about Rs. 7,25,00,000/-.

6.32 Thus, as categorically held by the Hon'ble ITAT, I do not accept the argument of the assessee that on the basis of the MOU, he had received Rs.1,40,00,000/- only from M/s. Asha Film Distributors towards the sale of distribution rights of Telugu feature film "Pokiri" for Ceded Area.

6.33 Be that as it may, as per the impounded document, being the Fax message received by the assessee from M/s. Asha Film Distributors, it is clearly stated that as on 28.07.2006 i.e., 91 days collections, the total share of the assessee is Rs.4,42,75,200/-, but before claiming commission and other expenses. Further, as per the said impounded document which is captioned "REPORT TITLED DCR", as on 27.07.2006 i.e., 91 run days, in respect of Ceded Area, the total gross collection came to Rs.6,94,22,079/-. Further, the total net collections is worked out to Rs.5,92,38,541/-, and against which the assessee's total share amount is quantified at Rs. 4,42,75,200/-.

6.34 Also, it is pertinent to note that, out of Rs.4,42,75,200/-, a sum of Rs. 88,55,040/-, being 20% of the said amount has been reduced stating that 20% commission. Similarly, a sum of Rs.17,70,437/- has been reduced towards share of Kurnool area and Tirupati area. Accordingly, the net total share of the assessee has been recorded as Rs.3,37,12,723/-. At the juncture, it is also important to note that the said collections are upto 27.07.2006 only i.e., 91 days, whereas the film

"Pokir" was exhibited in the cinema theatres far more than 100 days. Further, it is a known fact that the said film "Pokiri" is a blockbuster hit at box office. A scanned copy of the impounded document is given below for ready reference and better understanding of the factual matrix:

REPORT TITLE: G.C.R.  
 Picture : POKIRI  
 Release date : 28/4/2008  
 Run date : 27/12/2008  
 Run Day : 91  
 DAY OF WEEK: Thursday  
 Week : 13th

Name of the Station	Run Day	JPL Show	Noon Show	Matine Show	First Show	Second Show	Gross Amount	Net Amount	Share Amount	Run week Gross Amt.	Run week Net Amt.	Run week Share Amt.	Total Gross Amt.	Total Net Amt.	Total Share Amt.
ANANTHAPUR	91	0	4322	4707	3400	3097	15,000	13,199	6,600	1,45,290	1,25,708	62,853	44,80,796	38,80,730	24,08,461
NANDYAL	91	0	4540	6333	2598	3877	17,348	15,200	7,600	1,16,447	1,01,101	50,552	29,23,503	25,78,336	15,51,531
ADONI	91	0	2555	2196	1690	1311	7,852	6,570	3,285	60,527	52,150	26,076	22,89,990	20,09,984	12,63,413
KADAPA	91	0	3170	5162	3751	4650	16,733	14,248	7,124	1,42,538	1,21,831	60,916	60,71,149	43,92,207	27,82,728
TIRUPATHI	91	1267	2785	4988	3816	7182	20,067	17,532	8,788	1,96,301	1,71,249	85,626	53,41,970	46,95,255	27,40,021
CHITTOR	91	0	3081	4836	3395	1836	13,258	11,477	5,739	1,02,834	89,134	44,570	28,92,351	25,37,049	14,90,782
Total							2,67,124	2,09,342	74,876	22,34,257	17,57,788	7,78,724	6,94,22,079	5,92,38,541	4,42,75,200

PERCENTAGE BASED

Total Percent: 16%

20% Commission Net Share: 8855040

35420190

Handwritten calculations:  
 Gross: 1,75,32,695  
 Share: 1,08,46,903  
 Net: 5,18,89,384  
 3,34,28,297  
 6,94,22,079  
 4,42,75,200

Handwritten notes:  
 Asha Film  
 Co. 2002

Handwritten notes on the right:  
 1/3 third party Share: Rs.1006167  
 1/2 third party Share: Rs.701240

Handwritten notes at the bottom right:  
 1707437  
 33712723

6.35 In view of the above, I am of the considered opinion that the net share of the assessee from Ceded Area collections is Rs.3,37, 12, 723/- in place of Rs.4,42,75,200/- adopted by the AO and Rs.1,40,00,000/- contended by the assessee. Accordingly, the AO is directed to adopt Rs.3,37,12,723/- as the net income of the assessee received from M/s.Asha Film Distributors towards Ceded Area distribution rights. Thus, after excluding Rs. 1,40,00,000/- disclosed by the assessee, the balance amount of Rs.1,97,12,723/- (Rs.3,37, 12, 723 - Rs. 1,40,00,000) is subject to tax as additional income of the assessee in place of Rs. 3,02,75,200/- assessed by the AO. In view of the above, the appeal is partly allowed. Thus, the grounds of appeal raised by the assessee on this issue are partly allowed."

9. So far as the omission of Rs.31,00,000/- to the returned income is concerned, the learned CIT (A) directed the Assessing Officer to rectify the mistake which is apparent from record by observing as under:

"7.1 (i) MISTAKE IN COMPUTATION OF REVISED TOTAL INCOME BY THE AO  
 During the course of appellate proceedings, while perusing the assessment record, it is observed that in respect of first round of quantum proceedings, while giving effect to the order of the CIT(A) dated 15.11.2010 (supra), the AO passed the consequential order in PAN: AEKPP2273E dated 17.02.2011 (inadvertently typed as 17.02.2010) wherein the revised total income of the assessee has been computed at Rs. 8,55,80,545/-. While doing so, as directed by the CIT(A) (supra), inter

*alia, the AO conducted verification and retained the addition of Rs.31,00,000/-, and deleted the addition of Rs.38,00,000/- made in the original assessment order. The relevant portion of the consequential order dated 17.02.2011 (supra) is reproduced below for ready reference:*

*"The CIT(A)-VI, Hyderabad has given a direction to the Assessing officer to verify the basis for making an addition of Rs.31,00,000/- by allowing an opportunity to the appellant. Accordingly, the assessee was given an opportunity vide this Office letter dt: 26-11-2010 to offer his submissions in this regard. The assessee vide his reply dated 07-02-2011 has reiterated the earlier stand that the amount of Rs.31,00,000/- was part and parcel of the undisclosed sum of Rs.225 lakhs and hence the same should be added back again. The facts of the case are verified and concluded on the following lines.*

*The undisclosed income admitted by the assessee of Rs.225 lakhs during post survey proceedings was stated by the assessee as receipts received but not recorded in the books. During the course of assessment proceedings, the books of account were verified and found that an excess amount of Rs.31,00,000/- over and above Rs.225 lakhs was also received by the assessee and addition was made treating this amount as unaccounted. The assessee's contention that the said amount of Rs.31 lakhs was only a noting but not actual receipt finds no strength as the collections received were noted as cash and cheque receipts. Therefore, as the assessee could not come up with any further evidence to support his claim except reiterating the old stand it is concluded that the addition made of Rs.31,00,000/- need not be deleted." (emphasis supplied)*

*7.2 Further, while filing the appeal against the order of CIT(A) (supra) before the Hon'ble ITAT, the assessee did not prefer any grounds of appeal against the CIT(A)'s direction with regard to addition of Rs. 31,00,000/-. Thus, the issue pertaining to addition of Rs.31,00,000/- was not under dispute before the Hon'ble ITAT and, also, before the AO while passing the impugned order u/s. 143(3) rws 254 of the Act giving effect to the order of the Hon'ble ITAT (Supra). Accordingly, while passing the impugned order u/s. 143(3) rws 254 of the Act, the Assessing Officer should have retained the addition of Rs.31,00,000/- and deleted the addition of Rs.38,00,000/- only".*

10. Aggrieved with such order of the learned 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 erred in confirming an amount of Rs.1,97,12,723/- as additional income of the Assessee.
3	The Appellate Commissioner erred in not taking cognizance of the statement given by the distributor, who purchased the movie outright.
4	The Appellate Commissioner erred in giving a direction to the A.O on a matter, which was not in dispute before the Appellate Commissioner amounting to Rs.31,00,000/-.
5	The Appellate Commissioner while giving direction to rectify the mistake at Ground no.3 above should have given an opportunity to the Appellant.
6	Any other grounds which the appellant may urge either at or before the date of hearing.

11. Grounds of appeal No.1 & 6 being general in nature are dismissed.

12. Grounds of appeal No. 2 & 3 relate to the order of the CIT (A) in confirming the amount of Rs.1,97,12,723/-.

13. The learned Counsel for the assessee strongly challenged the order of the CIT (A) in sustaining the addition of Rs.1,97,12,723/- out of the addition of Rs.3,02,75,200/- made by the Assessing Officer. He submitted that the Assessing Officer had issued notice u/s 133(6) to Mr. A. Mallikarjun who was the

witness of the Assessing Officer. Mr. Mallikarjun in his reply has categorically stated that he had purchased the distribution rights on outright basis for Rs.1,40,00,000/- only. Therefore, in the absence of any contrary material, the addition made by the Assessing Officer and sustained by the CIT (A) is not justified. So far as the document impounded during the course of survey is concerned, the learned Counsel for the assessee referred to page 6 of the Paper Book and submitted that the same is a dumb document since neither it contains the signature of the assessee nor it is in the handwriting of the assessee. It was simply a paper found from the office premises which was received on fax.

14. Referring to the decision of the Hon'ble Supreme Court in the case of Kathiroom Service Co-operative Bank Ltd. v. CIT [2014] 360 ITR 243, he submitted that the Hon'ble Supreme Court in the said decision has held that although the power can be exercised in the course of inquiry by calling for information even where no proceedings are pending, however, the same has to be exercised only with the permission of the Director or the Commissioner. He submitted that in the instant case no such permission was obtained since the assessing authority has not obtained prior approval of the Director or the Commissioner before issuance of such notice. Therefore, the use of such a reply

on the basis of the notice u/s 133(6) against the assessee is not justified. He also relied on the decision of the Delhi Bench of the Tribunal (3<sup>rd</sup> Member) in the case of Amarjeet Singh Bakshi vs. ACIT reported in 86 ITD 13 and the decision of the Hon'ble Supreme Court in the case of CBI vs. V.C. Shukla dated 2<sup>nd</sup> March, 1998.

15. The learned DR, on the other hand, heavily relied on the order of the CIT (A). He submitted that the document impounded during the course of survey clearly shows that the fax was received from Asha Film Distributors by the assessee on his fax and recovered from the office of the assessee. The said fax contains the share of the assessee at Rs.4,42,75,200/-. Therefore, the assessee in absence of any valid explanation cannot deny the transaction. He submitted that the learned CIT (A) while deciding the issue has given exhaustive reason which is self-explanatory and therefore, the same should be upheld and the grounds raised by the assessee on this issue should be dismissed.

16. We have heard the rival arguments made by both the sides, perused the orders of the AO and the learned CIT (A) and the paper book filed on behalf of the assessee. We have also considered the various decisions cited before us by both sides. We find the AO in the instant case made addition of Rs.3,02,75,000/-

which is the difference between the amount of Rs.4,42,75,200/- being the collection as per document impounded and Rs.1,40,00,000/- shown by the assessee on account of assessee's share received from the film distributor Mr. A. Mallikarjun on account of the movie "Pokiri". We find the learned CIT (A) reduced such addition to Rs.1,97,12,723/- the reasons of which have already been reproduced in the preceding paragraph. We do not find any infirmity in the order of the learned CIT (A) on this issue. A perusal of the fax received from Asha Film Distributor, a copy of which is placed at page 6 of the paper book, clearly shows the share of the assessee at Rs.4,42,75,200/- on account of the picture "Pokiri". The above amount is for 91 days. The said fax clearly gives all the details and was recovered from the office of the assessee which was received in his Fax number only. When the said document gives the time, date, name of the Centre with whom the assessee is doing business giving full details of the share of the assessee, it cannot be said that it is a dumb document. Although Sri Mallikarjun has stated that he has given only Rs.1,40,00,000/-, however, he did not produce any books of account to support his claim nor he has given any explanation as to how and why the fax was sent from his office to the assessee. Since the impounded document clearly gives full details of the share of the assessee at Rs.4,42,75,200/- and since the learned

CIT (A) out of the above has allowed certain expenses towards commission, therefore, in absence of any contrary material brought to our notice, the order of the learned CIT (A) is upheld and the grounds raised by the assessee on this issue are dismissed.

17. Grounds of appeal No. 4 & 5 relate to the order of the learned CIT (A) in directing the Assessing Officer to enhance the income by Rs.31,00,000/-.

18. After hearing both sides, we find the above amount of Rs.31.00 lakhs was sustained as unaccounted income and the assessee has not challenged the above addition in the first round of litigation before the Tribunal. This otherwise shows that it had attained finality. Since the Assessing Officer in the order passed subsequent to the order of the Tribunal had not made this addition, the learned CIT (A) directed the Assessing Officer to rectify his omission which is apparent from record. There is no illegality or perversity on this issue in our opinion. It has been held in various decisions that the power of the CIT (A) is co-terminus with that of the power of the Assessing Officer and the CIT (A) can do which the Assessing Officer has failed to do. Further, since the learned CIT (A) has already deleted an amount of Rs. 1,05,62,477/- and another amount of Rs.38.00 lakhs

subject to certain verification, therefore, by directing the Assessing Officer to rectify the mistake amounting to Rs.31.00 lakhs does not amount to any enhancement of income. Therefore, he is not required to issue any notice for enhancement of income. In any case, the learned CIT (A) has given a simple direction to rectify the mistake which the Assessing Officer has committed by not adding the amount of Rs.31.00 lakhs which has attained finality . Therefore, the order of the learned CIT (A) on this issue is justified. The grounds raised by the assessee on this issue are accordingly dismissed.

19. In the result, the appeal filed by the assessee is dismissed.

Order pronounced in the Open Court on 16<sup>th</sup> May, 2023.

**Sd/-**

**Sd/-**

<b>(LALIET KUMAR) JUDICIAL MEMBER</b>	<b>(R.K. PANDA) ACCOUNTANT MEMBER</b>
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Hyderabad, dated 16<sup>th</sup> May, 2023.

***Vinodan/sps***

Copy to:

S.No	Addresses
1	Shri P. jagannadh, 8-2-293/82/A/623/1, Road No.34, Jubilee Hills, Hyderabad 500003
2	ACIT, Circle 14(1) IT Towers, AC Guards, Hyderabad
3	DR, ITAT Hyderabad Benches
4	Guard File

*By Order*