

IN THE INCOME TAX APPELLATE TRIBUNAL
"E" BENCH, MUMBAI

BEFORE SHRI G.S. PANNU, PRESIDENT, AND
SHRI SANDEEP SINGH KARHAIL, JUDICIAL MEMBER

ITA no.624/Mum./2023
(Assessment Year : 2017-18)

5th Element Digital Media Solutions Pvt. Ltd.
426, 4th Floor, Building no.05, Laxmi
Industrial Estate, New Link Road
Near Laxmi Industrial Estate
Mumbai 400 058 PAN – AAACZ6062G

..... Appellant

v/s

Income Tax Officer
Ward-9(2)(4), Mumbai

.....Respondent

Assessee by : None
Revenue by : Shri Biswanath Das

Date of Hearing – 10/05/2023

Date of Order – 26/05/2023

ORDER

The captioned appeal has been filed by the assessee challenging the impugned order dated 17/01/2023, passed under section 250 of the Income Tax Act, 1961 ("*the Act*") by the learned Commissioner of Income Tax (Appeals), National Faceless Appeal Centre, Delhi, [*learned CIT(A)*], for the assessment year 2017-18.

2. When this appeal was called for hearing neither anyone appeared on behalf of the assessee nor was any application seeking adjournment filed. From the perusal of the record, we find that the notice of hearing was sent to the assessee through Registered Post A/D as well as by e-mail at the postal/e-

mail address provided in Form No.36 and the notice sent through Registered Post has been returned unserved. Therefore, in view of the above, we proceed to dispose off the present appeal ex-parte, qua the assessee after hearing the learned Departmental Representative ("*learned DR*") and based on the material available on record.

3. In this appeal, the assessee has raised the following grounds:-

"The appellant prefers an appeal against an order u/s 250 dated 17/01/2023 passed by Ld. Commissioner of Income Tax (Appeals), National Faceless Appeal Centre, New Delhi on following amongst other grounds each of which are without prejudice to any other :-

- 1.0 *The Ld. CIT(A) erred in passing the exparte order without considering the bonafide reasons and compelling circumstances, which had precluded the appellant to furnish the submissions/documents during course of 1st appeal and ought to allowed additional time to represent the appeal;*
- 2.0 *On facts and circumstances of the case and in law, Ld. CIT(A) ought to have estimated the income @ 0.50% of gross receipts/credits, as appellant's business is held as accommodative in nature;*
- 3.0 *The Ld. CIT(A), having upheld the appellant's business as accommodative in nature, ought to have sustained the addition of incremental peak credits involving rotation of funds on allowing telescoping of funds;*
- 4.0 *On facts and circumstances of the case and in law, Ld. CIT(A) erred in sustaining the addition u/s.68 r.w.s 115BBE of entire gross receipts disclosed in P & L account of Rs.19,35,39,366/-;*
- 4.1 *The Ld. CIT(A), before confirming the addition u/s.68 of entire gross receipts of Rs. 19,35,39,366/-, ought to have considered the understated vital facts, being;*
 - a) *The entire gross receipts/sales had been brought to tax without allowing the deduction of corresponding payments/expenses;*
 - b) *The Ld. AO had not rejected appellant's books of accounts u/s. 145(3), still had made the addition of entire gross receipts disclosed in P & L account;*
 - c) *The disputed receipts pertain to the funds received on behalf of service providers, under fund collection agreement, for remitting same funds to the service providers/payees;*

- d) *The addition is based on uncorroborated information and ward inspector's report, without providing a copy to the appellant for rebuttal;*
- 4.2 *Without prejudice, Ld. CIT(A) ought to have adopted the concept of real income and estimated the real income on disputed receipts/sales of Rs.19,35,39,366/-, since there exist corresponding payments and rotation of same funds against disputed gross receipts brought to tax;*
- 5.1 *On facts and circumstances of the case and in law, Ld. CIT(A) erred in sustaining the addition u/s.68 r.w.s 115BBE of Unsecured loans of Rs.7,83,44,194/-;*
- 5.2 *The Ld. CIT(A), before making the addition u/s.68 r.w.s. 115BBE of Unsecured loans of Rs.7,83,44,194/-, ought to have considered the understated vital facts, being,*
- a) *The appellant filed several documentary evidences such as ledger, confirmation, PAN, CIN master data, I.T acknowledge-ment receipt, bank statements and other documents on record;*
- b) *The appellant received the entire loans through banking channel by A/c payee cheques/RTGS;*
- c) *The appellant is not required to explain the source of lenders funds and the addition of confirmed transactions cannot be made in hands of the recipient;*
- d) *The addition is based on uncorroborated information and ward inspector's report obtained at back of the appellant without providing a copy to the appellant for rebuttal;*

6.1 *On facts and circumstances of the case and in law, Ld. CIT(A) erred in sustaining the addition u/s 69A of Rs.30,63,08,456/- of entire deposits made in appellant's bank accounts;*

6.2 *Without prejudice, Ld. CIT(A) ought to have adopted the concept of real income and estimated the real income embedded on disputed deposits of Rs.30,63,08,456/-, since there exist corresponding payments and rotation of same funds against disputed gross receipts brought to tax;*

7.0 *On facts and circumstances of the case and in law, Ld. CIT(A) erred in confirming the addition u/s.68 r.w.s 115BBE of cash deposits made in bank accounts, during demonization period, of Rs. 14,40,000/-;*

The appellant craves leave to add, amend, alter and/or withdraw any of the grounds of appeal at the time of hearing."

4. The brief facts of the case as emanating from the record are that the assessee is a private limited company. During the year, the assessee claimed

to be engaged in rendering services and commission activities related to movie shooting, advertisement, and media products. The assessee has claimed that they act as middlemen, procured orders from various parties/entities belonging to the entertainment, film, advertisement industry, etc., and forward such assignments to the outstation line producers/service providers. The assessee has claimed that they have made tie-ups with outstation providers situated in Dubai, Abu Dhabi, Muscat, Oman, etc., who are experts in ad-shooting, short films, and event contracts. During the year under consideration, the assessee filed its return of income on 31/10/2017 declaring a total income of Rs.2,58,120. The return filed by the assessee was selected for complete scrutiny to verify the following reasons:-

"1. Foreign Remittance made to persons located in low tax jurisdiction countries (Assessee being remitter)

2. Value of foreign remittance sent by the assessee is higher than the gross total income (Assessee being remitter)

3. Large turnover shown in ITR but Audit Report (3CD) not filed.

4. Large outward remittance to a non-resident not being a company or to a foreign company."

5. During the scrutiny assessment proceedings, it was noted that the assessee has the following credits appearing in its books:-

<i>Particulars</i>	<i>Amount</i>
<i>Revenue from Film Production / Ad Shooting related activities</i>	<i>19,35,39,366</i>
<i>Unsecured loan (received during A.Y. 2017-18)</i>	<i>7,83,14,194</i>
<i>Cash Deposited in Bank Account</i>	<i>14,40,000</i>

6. Accordingly, the Assessing Officer ("AO"), in respect of credit of Rs.19,35,39,366 appearing in assessee's books, issued various notices

repeatedly asking the assessee to submit the details of the parties responsible for the credit of aforesaid sum appearing, from the alleged sale of services on account of ad-shooting/film shooting, etc., in the profit and loss account. The assessee was also asked to submit supporting documentary evidence to substantiate the claim of the genuineness of the credits on account of sales of services to Indian clients. The AO also issued notice under section 133(6) of the Act to three parties from whom the assessee has claimed to have received advances. However, the said notice issued under section 133(6) of the Act was returned unserved from all three parties. Notices under section 133(6) of the Act were also issued to the banks, wherein the assessee was maintaining its accounts, requesting them to provide the bank statements of all the accounts standing in the name of the assessee along with the details of the payers from whom the money was credited in assessee's account. From the perusal of the information received, the AO noted that there is more than one concern operating from the same address, and apart from the assessee, 5 other concerns are operating from the same address. However, none of them were found to be operating from the addresses upon field visit by the Ward Inspector. During the assessment proceedings, the assessee was repeatedly asked to provide the details of the Indian clients to whom the services of ad-shooting/film shooting, etc. were provided by UAE-based entities. However, the assessee did not provide any details in this regard. The AO also noted that the assessee was supposed to obtain the enquiry from the Indian clients and procure the work order for the UAE-based concerns and therefore, the assessee must have had in its possession the communications related to the enquiry from the Indian clients and also the copies of the work order.

However, none of these details were provided during the assessment proceedings to substantiate its claim establishing the genuineness of the receipts from Indian clients. The assessee vide submission dated 24/12/2019 claimed that they are only fund-collecting agent for Dubai-based service providers and therefore adding the entire gross receipts disclosed in assessee's bank account as its income would be seriously unjustified as it would lead to taxing receipts without allowing any expenses. The AO vide assessment order dated 30/12/2019 passed under section 143(3) of the Act concluded that the assessee has no valid explanation to offer with regard to the credits of Rs.19,35,39,366 in its profit and loss account and has failed to prove the three factum '*identity, creditworthiness and genuineness*'. Accordingly, the AO held the sum of Rs.19,35,39,366 to be taxable under section 68 read with section 115BBE of the Act as unexplained cash credit.

7. Further, the balance receipts of Rs.28,46,52,650 credited in bank statements of the assessee were also added under section 69A of the Act. As regards the unsecured loan of Rs.7,83,14,194 received during the year under consideration, the assessee did not submit return of income, balance sheet, profit and loss account of the lenders to establish the creditworthiness of the lenders. Accordingly, in order to verify the identity, creditworthiness of the lenders, and genuineness of the transaction, notice under section 133(6) of the Act was issued to all the entities asking them to explain the source of funds and submit bank statements to substantiate the "*nature and source*" of the funds. However, there was no reply from either of the parties. In view of the same, the assessee was asked to submit the latest address of the lenders,

in case the same has been subsequently changed. However, the assessee did not file any details in this regard. The assessee, during the assessment proceedings, also failed to produce the details sought from the lenders vide notice issued under section 133(6) of the Act. The Ward Inspector at the time of service of notice under section 133(6) of the Act found that the lenders were not available at the given address and some other concerns were running the business therefrom. In view of the fact that the identity and creditworthiness of the lenders and genuineness of the transaction could not be established by the assessee, the AO made an addition of the entire amount of Rs.7,83,44,194 as unsecured loan under section 68 read with section 115BBE of the Act.

8. The AO also noted that the assessee has deposited cash of Rs.14,40,000 by way of Specified Bank Notes of Rs.1000 and Rs.500 denominations in its three bank accounts during the demonetisation period from 09/11/2016 to 31/12/2016. During the assessment proceedings, the assessee was asked to explain the nature and source of the cash deposit during the demonetisation period with supporting documentary evidence. In reply, the assessee submitted that the nature and source of cash deposits during the year lies in cash withdrawal from the bank. In the absence of supporting documentary evidence to substantiate the nature and source of the cash deposits, the AO made the addition of Rs.14,40,000 under section 68 read with section 115BBE of the Act as unexplained credit. The AO also directed that if any appellate proceedings take a stand that such credits are not reflected in books of account then this addition is deemed to have been done under section 69A

read with section 115 BBE of the Act on a protective basis as the assessee has not at all cooperated in the proceedings to establish true nature and source of the cash deposits. Without prejudice to the above addition made in the assessment order, the AO proceeded to examine the receipts from alleged film/ad-shootings on merits and disallowed expenditure of Rs.19,18,51,197 under section 37 of the Act on protective basis.

9. During the appellate proceedings, the learned CIT(A) issued e-notices to the assessee, however, the assessee sought an adjournment, as noted on page 11 of the impugned order. Thereafter, two more opportunities were provided to the assessee to provide written submission and documentary evidence in support of its contentions vide e-notices dated 15/11/2022 and 21/12/2022, however, the assessee did not reply or furnish any details in response to same. Accordingly, the learned CIT(A), in the absence of any documentary evidence/submission on behalf of the assessee, upheld the additions made by the AO. The learned CIT(A), however, deleted the protective addition made by the AO under section 37 of the Act on the basis that the addition of Rs.19,35,39,366 has already been made under section 68 of the Act, which is the total receipts of the assessee shown in the profit and loss account. Being aggrieved, the assessee is in appeal before us.

10. During the hearing, the learned DR explained the facts of the case and vehemently relied upon the order of the lower authorities.

11. Having heard the learned DR and perused the material available on record, we find that during the assessment proceedings, the assessee did not

file complete details in support of its claim and even before the learned CIT(A) no submission/details were filed despite multiple opportunities being granted. Now in the present appeal before us, there is no representation of/on behalf of the assessee. From the conduct of the assessee, it appears that the assessee is not interested in pursuing litigation against the additions made by the AO. Therefore, in the absence of any contradictory material being available on record, we are of the considered view that the impugned order passed by the learned CIT(A), upholding the additions made by the AO, requires no interference and, thus, is upheld. Accordingly, grounds raised by the assessee in this appeal are dismissed.

12. In the result, the appeal by the assessee is dismissed.

Order pronounced in the open Court on 26/05/2023

Sd/-
G.S. PANNU
PRESIDENT

Sd/-
SANDEEP SINGH KARHAIL
JUDICIAL MEMBER

MUMBAI, DATED: 26/05/2023

Copy of the order forwarded to:

- (1) *The Assessee;*
- (2) *The Revenue;*
- (3) *The PCIT / CIT (Judicial);*
- (4) *The DR, ITAT, Mumbai; and*
- (5) *Guard file.*

Pradeep J. Chowdhury
Sr. Private Secretary

True Copy
By Order

Assistant Registrar
ITAT, Mumbai