

**IN THE INCOME TAX APPELLATE TRIBUNAL, 'E' BENCH
MUMBAI**

**BEFORE: SHRI AMIT SHUKLA, JUDICIAL MEMBER
&
SHRI GAGAN GOYAL, ACCOUNTANT MEMBER**

**ITA No.875/Mum/2023
(Assessment Year :2017-18)**

ITO-9(2)(1) Room No.601A, 6 th Floor, Aayakar Bhavan M.K.Road, Mumbai-400 020	Vs.	M/s. 5 th Element Digital Media Solutions Pvt Ltd. 426, 4 th Floor Building No.05, Laxmi Industrial Est, New Link Road Near Laxmi Industrial Est, Mumbai-400 058
PAN/GIR No.AAACZ6062G		
(Appellant)	..	(Respondent)

Assessee by	None
Revenue by	Shri Biswanath Das
Date of Hearing	10/07/2023
Date of Pronouncement	10/07/2023

आदेश / O R D E R

PER AMIT SHUKLA (J.M):

The aforesaid appeal has been filed by the Revenue against the order dated 17/01/2023 passed by NFAC Delhi for the quantum of assessment passed u/s.143(3) for the A.Y.2017-18.

2. The only ground raised by the Revenue reads as under:-

1. *Ld. CIT(A) erred in deleting the addition amounting to Rs. 19,18,51,197/- being the entire expenses which has been added back on protective basis since the assessee has failed to provide explanation/documentary evidence with regard to the expenses claimed in the books of account?"*

3. Here the Revenue is aggrieved by deletion of protective addition. The brief facts qua this issue are that during the course of assessment proceedings AO observed that assessee has debited the following expenses in the profit and loss account:-

Particulars	Amount
Shooting Expenses	19,22,39,569
Bank Charges	1,05,632
Other Expenses	4,07,760
Audit Fee	25,000
Salary & Wages	4,82,000

4. According to ld. AO these expenses have not been incurred wholly and exclusively for the purpose of assessee's business and accordingly, he has disallowed sum of Rs.19,18,51,197/- on protective basis. The protective addition was made on the ground that AO has already made addition of Rs.19,35,39,366/- on account of entire receipts shown in profit and loss account and again he has disallowed the corresponding expenses also. The ld. CIT (A) has deleted the addition after observing as under:-

"[1.5.7.2] It is well known fact that expenses are made out of income. Here in this case, the AO has already made addition of

Rs.19,35,39,366/- u/s. 68 of the Act which is the total receipts of the assessee shown in its P&L A/c. Therefore, disallowing expense to tune of Rs. 19,18,51,197/- and adding back it to the income of the assessee leads to double taxation which is not justifiable with the assessee.

Keeping the above discussion in mind that the addition of entire receipts and corresponding payments cannot be brought to tax which result into double taxation, therefore, I hereby delete addition made in the para 10.10 of the impugned order to the tune of Rs.19,18,51,197/- is hereby deleted.

5. From the aforesaid finding of the Id. CIT(A), we are unable to understand as to how such a protective addition can be sustained when at the same time Id. AO is disallowing the receipts and also disallowing the corresponding expenses incurred out of the said receipts and that to be 100%. Accordingly, we do not find any infirmity in the order of the Id. CIT (A) and the same is confirmed.

6. In the result, appeal of the Revenue is dismissed.

Order pronounced on 10th July, 2023.

Sd/-
(GAGAN GOYAL)
ACCOUNTANT MEMBER
Mumbai; Dated 10/07/2023
KARUNA, sr.ps

Sd/-
(AMIT SHUKLA)
JUDICIAL MEMBER

Copy of the Order forwarded to :

1. The Appellant
2. The Respondent.
3. CIT
4. DR, ITAT, Mumbai
5. Guard file.

//True Copy//

BY ORDER,

(Asstt. Registrar)
ITAT, Mumbai