

**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.59/Asr/2022
Assessment Year: 2013-14**

The Assistant Commissioner of Income Tax Central Circle-1, Jalandhar. (Appellant)	Vs.	M/s Kapil Batra Film Production House Pvt. Ltd. Mandi Road, Behind Luxmi Cinema, Jalandhar. [PAN: -AAECK5974G] (Respondent)
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Appellant by	Sh. Amit Jain, CIT. DR
Respondent by	None

Date of Hearing	23.08.2023
Date of Pronouncement	31.08.2023

ORDER

Per:Anikesh Banerjee, JM:

The instant appeal of the revenue 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.Y. 2013-14. The impugned order was emanated from the order of the Id. DCIT, CC-II, Jalandhar, (in brevity the AO) order passed u/s 143(3) of the Act.

2. The revenue has taken the following grounds:

“1. Whether Upon the facts and circumstances of the case, the Ld. CIT(A) has erred in deleting the addition of Rs. 17,69,271/- made by the AO on account of unaccounted income, relying on the clause/condition as per agreement made.

2. Whether Upon the facts and circumstances of the case, the Ld. CIT(A) has erred in reducing the addition from Rs. 1,00,00,000/- to Rs.20,00,000/-made by the AO on account of unexplained investment u/s 69 of the Income Tax Act, 1961, relying on the clause/condition as per agreement made.

3. Whether Upon the facts and circumstances of the case, the Ld. CIT(A) has erred in law in reducing the addition from Rs. 1,42,69,428/- made by the AO on account of unexplained expenditure u/s 69C of the Income Tax Act, 1961, which was based on the specific report of the Special Auditor.

4. Whether Upon the facts and circumstances of the case, the Ld. CIT(A) has erred in law in reducing the disallowance made u/s 40A(3) at Rs.82,26,000/- to Rs.2,02,899/- when the same was required to be confirmed at Rs. 11,32,899/-.

5. The appellant craves leave to add, amend, modify, vary, omit or substitute any of the aforesaid grounds of appeal at any time before or at the time of hearing of the appeal.”

3. Brief fact of the case is that the assessee is a company and doing film production. The assessee's assessment was initiated on basis of a search operation u/s 132(1) of the Act which was undertaken at the residential premises of Sh. Rajan Batra & Sh. Kapil Batra at Jalandhar on 05.12.2012. During the search the incriminating document was found the Id. AO claimed that the assessment was framed u/s 153C/143(3) of the Act. During assessment proceeding, the addition was made in different heads by the Id. AO. Aggrieved assessee filed an appeal before the Id. CIT(A). The Id. CIT(A) after considering the submission of the assessee and the report of the Special Auditor the amount of Rs.17,69,271/- was deleted on account of un-accounted income related to agreement. The Id. CIT(A) had received proper evidence and the addition was duly deleted. The Id. CIT(A) has further observed and decided about the addition amount of Rs.1 crore, which was claimed of deduction related to forfeited amount. The assessee paid this advance and the said amount was forfeited. On basis of the supporting evidence Rs.80 lacs was deleted and appeal was partly in favour of the assessee. Only Rs. 20 lacs was upheld in favour of the revenue. Related to addition amount of Rs. 1,42,69,000/- in connection with excess expenses made for production of the

movie which was found during search proceeding and the document was seized. In appeal proceeding, the assessee submitted the details documents. The amount to Rs.61,88,101/- was upheld and rest amount Rs.82,26,600/- was deleted as because the said amount was added back separately by invoking the provision of section 40A(3). As per the ld. CIT(A) the same amount should not be added twice. Related to addition for violation of provision of section 40A(3) Rs.82,26,000/-. The ld. CIT(A) considering the report of the Special Auditor reduced the addition and restricted the addition amount of Rs.2,02,899/- and the balance amount was quashed. Being aggrieved revenue filed an appeal before us.

4. When the matter was called for hearing, none was present on behalf of the assessee and the adjournment petition was also not submitted before the bench. On perusal of the documents, we find that the assessee has taken several dates and it was informed that on date of hearing on 1st August 2023 that the date which has fixed on 23.08.2023 is a “final opportunity” for hearing. But no response from the end of assessee. Considering the issue, we proceed to dispose of the appeal *ex parte qua* for assessee after hearing the ld. DR.

5. The ld. DR vehemently argued and relied on the order of the ld. AO.

6. We heard the rival submission and considered the documents available in the record. The adjudication of the above appeal is as per the grounds which are as below.

Ground No. 1

7. In this ground the relief was granted by the Id. CIT(A) amount of Rs.17,69,271/-. We consider the relevant paragraph in page 15 of the appeal order which is reproduced as below:

4.4 Grounds of appeal Nos. 12 & 13 relate to addition of Rs. 17,69,271/-. The AO has mentioned that that assessee was engaged in the distribution of the movie 'Munde Patiale De' and the company has shown net loss of Rs. 12,11,589/- on this account which was produced by M/s Tara Jee Enterprises Mumbai. The assessee has claimed expenditure of 40,00,000/- being minimum guarantee and taken the business proceeds as its total receipts of the movie at Rs.27,88,411/-. As per the AO, however, as per clause 15 of the agreement dated 03.05.2012, it was specifically provided that the "Net Revenues", earned on exploitation of the said film shall be appropriated, firstly, by the distributors commission 20% on the net revenue from the exploitation of the movie and thereafter in recoupment of minimum guarantee of Rs.40 Lacs. The AO has mentioned that business proceeds also includes Rs.7,50,000/- from Daddy Mohan Records being audio/video recording rights and therefore, in view of this agreement, the actual income is Rs. 5,57,682/- (20% of 27,88,411) as against loss of Rs. 12,11,589/- shown by the assessee. Therefore, as per the AO, there has been an under reporting of the income to the tune of Rs. 17,69,271/-(557682 + 1211589). The assessee was confronted vide questionnaire dated 01.10.2015 and show-caused why this amount of Rs. 17,69,271/- (557682 + 1211589) may not be added to the Income for the year. The reply filed by the assessee is reproduced in the assessment order,

where the assessee stated that as per the clause IV(a) of the agreement a minimum guarantee of Rs. 40 lacs was payable by the distributor, out of which the amount was to be spent on the release of the said film. It was also submitted that clause 15 of the agreement only lays down the manner in which the amount received by the distributor on exploitation of the said film has to be appropriated and filed copy of the agreement along with copy of the relevant accounts. The reply of the assessee was considered but not found acceptable by the AO who mentioned that para 15 of the agreement clearly says that the distributor shall be entitled to 20% of the net revenue of the movies and then it shall get its part of the minimum guarantee of Rs. 40 lacs subject to the actual expenditure. As per the AO, the total expense incurred by the assessee was Rs. 10,94,224/- only which is debited to the producer's account and therefore, the income of the assessee has to be recognized at 20% of the net collection of the movie i.e. 20% of 27,88,411/- which comes to Rs. 5,57,682/-. Since the assessee has shown a loss of Rs. 12,11,589/-, an amount of Rs. 17,69,271/- (557632 + 1211589) was added to the income of the assessee.

The facts of the case, the basis of addition made by the AO and the arguments of the AR during the course of appellate proceedings have been considered. The AR has submitted that during the course of the assessment proceedings, the A.O, partly appreciating the facts, pertaining to incurring of expenses and suffering of loss of Rs. 12,11,589/- by the assessee company in the distribution of the movie "Munde Patiala De" made this addition. As per the AR, the AO most arbitrarily concluded that the assessee company had earned an income of Rs. 5,57,682/- (i.e. 20% of Rs. 27,88,411/-), and observing that as the assessee company had claimed a 'loss' of Rs. 12,11,589/-, therein made an addition of Rs. 17,69,271/- (i.e. Rs. 5,57,682/- + Rs. 12,11,589/-) in the hands of the assessee company. The AR has further submitted that as per clause IV (a) of the agreement, a Minimum guarantee of Rs. 40.00 lacs was payable by the distributor out of which the amount was to be spent on expenses on release of the film. The AR filed the copy of the agreement and the relevant para is reproduced below:



"Iv (a) It is agreed between the Producer and Distributor that the Distributor shall Release the said film on MINIMUM GUARNATEE/Royalty bases. That the Distributors instead of paying to the Producers a sum of Rs. 40,00,000/- (Rupees FORTY LACs) only by way of MINIMUM GUARANTEE/Royalty the Distributor shall spend this MINIMUM GUARATEE/Royalty amount of the Producer on releasing the said film and on pre release and after release of the said film on TV Promotion, Poster Publicity, Newspaper Publicity, Promotion of all sorts, UFO, Digital Charges, Optical prints charges, Posters 30 x 40, Poster 20X40. Photosets, standings, six sheeters, booklets, Enlargements, show cards, loose stills, blocks, hordings etc."

As per the AR, the assessee company has duly credited the account of the producer of the film by Rs. 40.00 Lacs being amount of Minimum Guarantee payable as per agreement (even if the receipts from the film are lesser than the minimum guarantee amount) and debited his account by the amount of expenses incurred on his (producer) behalf on release of film. Accordingly, total receipts from the film have been duly recognized as Income from the film in the profit & loss account. The above arguments of the AR are found acceptable in view of the provision in the agreement with the producer in respect of expenditure on execution of distribution rights of this film prescribing a minimum guarantee payment in respect of the movie 'Munde Patiala De'. The assessee was required to spend this minimum guarantee amount and was entitled to adjust the expenses out of this amount. Since the collections from the movies were less than the minimum guarantee amount, the loss was to be borne by the distributor i.e. the assessee who is entitled to claim it as business loss. The assessee has duly entered these amounts in its books of accounts and no fault is found in this regard. In case of minimum guarantee agreements, if the receipts from the film are less, then the loss has to be borne by the distributor. This is a normal trade practice in this business line. Therefore, the addition made by the AO is not found sustainable and hence deleted.

Accordingly, these grounds of appeal are allowed.

Ground No. 2

7.1 Related this ground, the addition was reduced by the Id. CIT(A) which is mentioned that the relevant paragraph 4.5 of the appeal order is reproduced as below:

4.5 Grounds of appeal Nos. 14 & 15 relate to addition of Rs. 1,00,00,000/-. The AO has mentioned that the assessee entered into an agreement with M/s. Karma Dhanoa Movies and M/s JD Films, Ambala Cantt for the distribution of movies 'Kabaddi Once Again' and 'Tera Mera Vadda' respectively. The AO further mentioned that as per the agreements seized at Page no. 61 to 66 and 47 to 56 respectively of Annexure A-23 from the office of the assessee, the assessee has lent amounts of Rs. 80 lacs and Rs. 20 lacs respectively to the producers at the time of signing of the agreements. As per the AO, the assessee was confronted on this issue. In reply, the assessee submitted that no advance was lent to the producer and as per the terms & conditions; the said amount was to be spent by the distributor for the promotion and release of the film and enclosed the copies of receipt accounts and copies of accounts of expense incurred by the assessee in respect of these movies. The reply was considered but not found acceptable by the AO and the AO reproduced the scanned copy of the seized agreements and mentioned that as per main clauses, the distributor i.e. the assessee company has advanced an amount of Rs. 80 lacs & Rs. 20 lacs respectively to the producers at the time of signing of the agreements. As per the AO, however the assessee has not been able to provide any proof in support of this investment of total Rs. 1 crore and the same was added to the income of the assessee by the AO as unexplained investment u/s 69 of the Income Tax Act, 1961.

The facts of the case, the basis of addition made by the AO and the arguments of the AR during the course of appellate proceedings have been considered. The AR has submitted that the agreement was entered with M/s. Karma Dhanoa Movies and M/s JD Films, Ambala Cantt for the distribution of movies 'Kabaddi Once Again' and 'Tera Mera Vadda' respectively. As per the AR, the assessee company had to lend & advance a sum of Rs. 80 lacs & Rs. 20 lacs respectively to be utilized/spent on TV Promotion, Poster Publicity, Newspaper Publicity, Lab bills, Promotion of all sorts. The AR submitted that as per the agreement entered with M/s. Karma Dhanoa Movies (producer of the movie), the assessee company had to lent an advance Rs. 80 lacs to be utilized/spent on promotion but nothing was paid to the producer and in support of the said claim filed a copy of police report on a complaint made by the producer and stated that it clears beyond doubt that nothing was paid to the producer. Similarly, with regard to the film 'Tera Mera Vadda', as per the AR, the assessee was required to spent Rs. 20 lacs on promotion and no advance was actually paid. The AR further argued that this is a general practice in the film industry, that the distributor has spent the money on the promotion of the film which is ultimately recouped on release of the film from the collections. It is further argued that the actual transactions with both the firm has duly been recorded in the books of accounts based upon terms & conditions of the agreement and submitted that the assessee has not made any advance directly to the producer. It is also submitted that the entries related to the said agreement, the expenses made, receipts/commission etc. have been duly entered in the books of accounts and reflected in the profit & loss account of the company and enclosing the copy of the same.

Along with the submission, the AR has filed a copy of the agreement with M/s. JD Films and the relevant para is reproduced below:

"WHEREAS, the PRODUCERS have requested the DISTRIBUTORS to lent and advance to the PRODUCERS for the promotion of the said film the sum of upto Rs. 30,00,000/- (approx.) (Thirty Lacs only) in which 10,00,000/- (Ten Lac Rupees) to be paid by the producer to Distributors as the amount to be lent and advanced on actual expenditures made only and represented to the DISTRIBUTORS that the PRODUCERS shall spend the said amount on TV Promotion, Poster Publicity, Newspaper Publicity, Promotion of all sorts, UFO, Digital Charges, however the amount to be spent upon the prints will be borne by the PRODUCERS themselves."

From the above, it is clear that the amount to be spent on advertisement was to the extent of Rs. 10 lacs only. Therefore, the arguments of the AR that whole of the amount was spent by the assessee as distributor on the advertisement, is not supported by this agreement. Hence, the balance amount



out of total sum of Rs. 30 lacs mentioned in this agreement, remains unexplained and the AO was right in making the addition for the same at Rs. 20,00,000/-.

In respect of agreement with M/s. Karma Dhanoa Movies, after perusal of the documents filed by the AR and the assessment record and after going through the agreement dated 23.04.2012, the argument of the AR appears to have merits. Further, the AR has filed a copy of the enquiry report by the Ludhiana Police in respect of complaint filed by Sh. Harjinder Singh Dhanoa against Sh. Rajan Batra C/o Kapil Batra Film Production House Pvt. Ltd. regarding the movie 'Kabaddi Once Again' where the fact of this agreement and failure of the movie after release and dispute regarding payment between the parties and a case filed in Civil Court at Jalandhar are also mentioned. As per this police report, nothing was paid by the assessee to Sh. Harjinder Singh Dhanoa in terms of the agreement dated 23.04.2012 and hence, he made a police complaint against Sh. Rajan Batra. The AR has filed the ledger account and in the books of accounts, the assessee has accounted for the amounts relating to the expenses incurred on this movie. There is nothing on record to show that the assessee paid any sum to the producer and there is no receipt mentioned for mode of payment of Rs. 80,00,000/- on the agreement, i.e. either in cash or through cheque. The argument of the AR has merit that this is a normal practice in this line of business where the amount of lent & advance has to be adjusted out of the collections against the film which is clear from clause (e) of para 2 at page no. 4 of the agreement which for reference is reproduced below:

"d) That the "net revenues" earned on exploitation of the film shall be appropriated in the following manner:

i. Firstly, by the DISTRIBUTORS –

- Commission @15% on the net revenues from the exploitation of the said Film*
- Amount lent & advanced i.e. Rs. 80,00,000 (Eighty Lacs only) (approx.)"*

It is relevant to mention here that the amount mentioned is written as "approx." which indicate that this was not the final amount to be spent by the distributor. This word "approx." is also appearing at para 1 of page 3 which for reference is also reproduced below:

That the DISTRIBUTORS agrees to lent and advance to the PRODUCER a sum of upto Rs. 80,00,000 (approx.) (Eighty Lacs Only) against the said film against the right and securities mentioned in the Clauses hereunder. The amount of Rs. 80,00,000 (Eighty Lacs only) will be lent and advanced to the PRODUCERS at the time of signing of this agreement."



The agreement as a whole is to be read to understand the content and the intent of the parties involved. On a holistic reading of the agreement referred by the AO, it came out that Rs. 80 lacs approximately was kept aside by the distributor to be spent on the promotion & advertisement of the film on behalf of the producer and ultimately this amount would be adjusted out of the receipts of the film. The distributor will transfer only the balance amount to the producer after adjusting this amount of Rs. 80 lacs plus his share as commission @15%. Also, it is not coming out as to the mode of payment of Rs. 80,00,000/- to the producer by the distributor (assessee) nor any document was found during the search which could indicate that the assessee paid any amount in pursuance to this agreement which was not accounted for in the books of the assessee. Neither there is any acceptance from the producer or any document or entry in the accounts of the producer that Rs. 80 lacs was paid by the assessee. In fact, the producer has filed a complaint against the assessee for recovery of dues which clearly indicate that no such advance of Rs. 80 lacs as inferred by the AO, was paid by the assessee to M/s. Karma Dhanoa Movies Prop Sh. Harjinder Singh Dhanoa. The Special Auditor has not made any adverse comment in this regard. Under the facts & circumstances of the case and on the basis of the documents on the record, the addition of Rs. 80 lacs made by the AO is not found sustainable and therefore deleted.

To sum-up, the addition to the extent of Rs. 20 lacs is sustained and the appellant gets relief of the balance amount.

Accordingly, these grounds of appeal are partly allowed.

Ground No.3

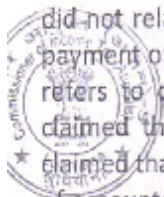
7.2 Related to this addition, the Id. CIT(A) reduced the addition. The relevant paragraph 4.6 of the appeal order is reproduced as below:

The agreement as a whole is to be read to understand the content and the intent of the parties involved. On a holistic reading of the agreement referred by the AO, it came out that Rs. 80 lacs approximately was kept aside by the distributor to be spent on the promotion & advertisement of the film on behalf of the producer and ultimately this amount would be adjusted out of the receipts of the film. The distributor will transfer only the balance amount to the producer after adjusting this amount of Rs. 80 lacs plus his share as commission @15%. Also, it is not coming out as to the mode of payment of Rs. 80,00,000/- to the producer by the distributor (assessee) nor any document was found during the search which could indicate that the assessee paid any amount in pursuant to this agreement which was not accounted for in the books of the assessee. Neither there is any acceptance from the producer or any document or entry in the accounts of the producer that Rs. 80 lacs was paid by the assessee. In fact, the producer has filed a complaint against the assessee for recovery of dues which clearly indicate that no such advance of Rs. 80 lacs as inferred by the AO, was paid by the assessee to M/s. Karma Dhanoa Movies Prop Sh. Harjinder Singh Dhanoa. The Special Auditor has not made any adverse comment in this regard. Under the facts & circumstances of the case and on the basis of the documents on the record, the addition of Rs. 80 lacs made by the AO is not found sustainable and therefore deleted.

To sum-up, the addition to the extent of Rs. 20 lacs is sustained and the appellant gets relief of the balance amount.

Accordingly, these grounds of appeal are partly allowed.

4.6 Grounds of appeal Nos. 16 & 17 relate to addition of Rs. 1,42,69,428/-. The AO has mentioned that the seized documents at Annexure A-8 page nos. 1 to 138 from the premises G.K. Tower, BSF Colony, Jalandhar pertain to the expenses incurred on production of the movie 'Pinky Moge Wali'. It is also mentioned that the Special Auditor has reported that the total of expenditures on this movie was Rs. 4,07,42,142/-, however, the assessee has reflected only Rs. 2,54,71,793/- in the books of accounts. The assessee was confronted and show caused as to why the difference of Rs. 1,53,69,428/- may not be added to the income as unexplained expenditure. The reply filed by the assessee is reproduced in the assessment order and the assessee claimed that certain payment recorded in the seized documents did not relate to the cost of the film and give example of page 48 relating to the payment of Rs. 9.15 lacs to Swaran Singh (the investor in the film) and page no. 73 refers to certain payments made to Sh. Kapil Batra, Director of the firm and claimed that the same was also not part of cost of production. The assessee claimed that the expenses related to the film have been duly reflected in the books of accounts which were the actual cost of the production of the film. The reply of the assessee was considered and the AO mentioned that compilation of annexure A-8 as made by the Auditor has been compared with the copy of accounts of the investors and it was seen that there was an entry of Rs. 6 lakh to Thind Wood



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Works which is also reflected in the books of accounts as repayment of loan and similarly with regards to Swaran Singh, payments totaling Rs. 5,00,000/- was also reflected as repayment of loans in the books of accounts and the benefit of these entries totaling Rs. 11,00,000/- was given by the AO. However, the contention of the assessee regarding payment to Sh. Kapil Batra was not accepted and the amount was taken as part of the cost of the production. The AO has mentioned that accordingly, the assessee has been unable to provide any satisfactory explanation regarding the proof/source of expenses amounting to Rs. 1,42,69,428/- (1,53,69,423 - 11,00,000) incurred on the production of the movie 'Pinky Moge Wali' as per the seized documents Annexure A-8, but not recorded in the books of accounts. Therefore, this amount of Rs. 1,42,69,428/- was added to the income of the assessee as unexplained expenditure u/s 69C of the Income Tax Act, 1961.

The facts of the case, the basis of addition made by the AO and the arguments of the AR during the course of appellate proceedings have been considered. The AR has submitted that this addition was made on the basis of a list of expenses prepared by the Special Auditor stating that a total of Rs. 4,08,41,130/- has been spent on the production of the film 'Pinki Moge Wali'. The AR further submitted that out of the expenses amounting to Rs. 4,08,41,130/-, only a sum of Rs. 82,26,000/- has been alleged to have been incurred in cash and balance amount was paid/spent through bank. As per the AR, the entire investment in the books of accounts has already been dealt with separately by the AO and by the Special Auditor. Further, the AR submitted that an amount of Rs. 7,75,000/- paid to M/s. Moon Filing Station reported at Sr. No. 68 of the Special Auditor list of expenses and an amount of Rs. 10,60,000/- paid to Bollywood 435 have been duly incurred through bank account but wrongly reported by the Special Auditor as cash expense in this list prepared by the Auditor as expenses incurred on the film. It is also submitted that the Special Auditor has mentioned names of two films on the Annexure of expenses incurred on this film, therefore it appears that the annexure could contain certain expense relating to the other movie i.e. 'Vivah 70 Kilometer' which was produced by sister concern namely 'M/s. Ohri Batra Showbiz Pvt. Ltd.' in the same period. In view of the above circumstances, as per the AR, the details of expenses prepared by the Special Auditor cannot be relied upon and addition on this ground was pleaded to be deleted. The AR has filed a table showing the details of expenses which were included by the Special Auditor as expenses on the film 'Pinki Moge Wali' but as per the AR these were not related to this film and were debited under other heads/other films and which are mostly through cheques as mentioned by the Special Auditor also. The total of such expense, as per the AR, is Rs. 1,13,93,731/- and for reference, the same is reproduced below:

DETAILS OF EXPENSES (out of list prepared by Special Auditors on film Pinki Moge Wali)

S.No per Special Auditor List	NAME OF THE PERSONS	PAGE NO OF SEIZED DOCUMENT	AMOUNT	REMARKS
4	MAKE UP MAN (AJAY VISHESH)	14	10,000.00	Misc Expenses
5	EXPENSES	28	25,000.00	Misc Expenses
11	DEVA ENTERPRISES	19	85,000.00	Charges to Film KOA
14	BOMBAI EXPENSES	33	5,80,000.00	Misc Expenses
19	VINAY KUMAR MOLIYA	47	80,000.00	Salary
25	SIMRANIT SINGH	53	30,000.00	Misc Expenses
29	SWARAN SINGH	57	6,15,000.00	CURRENT LIABILITY
30	N.P.W.MOVIS ANIMATION	58	1,80,000.00	TRAVELLING & SHOOTING EXP
67	KHARANA WORKS/DL TOURS PVT. LTD.	76	1,41,776.00	Travelling & Conveyance-2011-12
68	RAJESH KUMAR	78	20,000.00	Salary
69	MOON FILLING STATION	78	1,56,135.00	Diesel & Petrol-2011-12
70	HOTEL PRESIDENT	79	2,10,000.00	Lodging & Boarding Expenses
71	MAHINDER SINGH	80	2,35,000.00	Film Expenses PMV
74	KAPIL BATHA	83	11,00,000.00	Payments Relating to Director of Company
109	MUNISH MORE (LST) WCHT STUD. OI	109	1,00,000.00	Film Expenses Relating to Director of Company, Film Expenses Relating to Director of Company, Film Expenses PMV, SOCOO
125	DIETION	111	1,55,100.00	Film Expenses KOA
133	THIRD WOOD WORKS	114	6,00,100.00	CURRENT LIABILITY 16/00/00 Repayment
135	PARSAD FILM LAB	115	17,00,000.00	63500 Exp PMV, YVR
136	AMIT TALWAR FOR CHANDIGARH SONG	115	1,20,000.00	SALARY 165620H3400 CASH
140	Vrs. Friends	117	3,56,657.00	568000 Exp TNPKPVR, 500657 Exp MPD
147	UFO MOVIES INDIA LTD.	111	4,19,072.00	Relating to Munish Pabla Co
157	SONU J	125	1,40,000.00	Payments Relating to Director of Company
5	MAKHAN	125	10,000.00	Salary
203	SKAMFER CHLOREZAN SAR	127	50,000.00	CHEQUE RETURNED UNPAID
265	SKRAB MULTIPLEX	12E	45,000.00	Film Premium Expenses
266	SCRAB ENTERTAINMENT LIMITED	12E	1,64,000.00	Charges to PNR&RF/KOA
271	MISCELLANEOUS EXPE.	131	38,11,931.00	No spec Re-head
TOTAL			1,13,93,731.00	

On the basis of the above, if the expense of Rs. 1,13,93,731/- are reduced from the total expense of Rs. 4,08,41,130/-, the balance expenses of Rs. 2,94,47,399/- relates to the movie 'Pinki Moge Wali'. This is accepted by the AR also, but the assessee has debited only Rs. 2,32,59,298/- as Film expenses on 'Pinki Moge Wali' (included under the head Other Expense total at Rs. 3,01,13,256/- debited in the profit & loss account) and the balance Rs. 61,88,101/- was not reflected in the books of accounts. These mostly relates to the expenses incurred in cash (the total cash expense as per the Special Auditor were Rs. 82,26,000/-) and needs to be added as unaccounted expense of the assessee. The AR has argued that the addition on account of expenses in cash has been separately made by the AO by invoking the provision of Section 40A(3) and contended that if at all, the addition is required to be sustained at one place only and not twice. This argument of the AR has merits and accordingly, the addition is being sustained at one place only. Since, the assessee has not accounted for the expenses amounting to Rs. 61,88,101/- (which were made in cash), hence addition of Rs. 61,88,101/- is upheld here and appellant gets relief of the balance amount.

Accordingly, these grounds of appeal are partly allowed.

Ground No. 4

7.3 Related to this ground the Id. CIT(A) reduced the disallowance made u/s 40A(3). The relevant paragraph of appeal order is reproduced as below:—:

The AR has submitted that as per the report of the Special Auditor, out of total expenses on the production of the film i.e. Pinki Moge Wali, an amount of Rs. 82,26,000/- has been incurred in cash in contravention of the provision of Section 40A(3). However, as per the AR, the amount of Rs. 7,75,000/- paid to M/s. Moon Filing Station reported on Sr. No. 68 of the Special Auditor list of expenses and an amount of Rs. 10,60,000/- paid to Bollywood 435 have been duly incurred through bank account but wrongly reported by the Special Auditor in this list of the expenses incurred on the film in cash. It is also submitted that the Special Auditor has mentioned names of two films on the Annexure of expenses incurred on this film, therefore it appears that the annexure could contains certain expense relating to the other movie i.e. 'Vivah 70 Kilometer' which was produced by sister concern namely 'M/s. Ohri Batra Showbiz Pvt. Ltd.' in the same period. The AR argued that in view of the above circumstances, the details of expenses prepared by the Special Auditor cannot be relied upon and addition on this ground may please be deleted. Even if, the above argument of the AR regarding the expenses of Rs. 7,75,000/- paid to M/s. Moon Filing Station and Rs. 10,60,000/- paid to Bollywood 435 are accepted, even then the balance amount of Rs. 63,91,000/- (Rs. 82,26,000 – Rs. 7,75,000 – Rs. 10,60,000) was spent in cash in violation of Section 40A(3) and needs to be disallowed. Therefore, the addition to the extent of Rs. 63,91,000/- is liable to be sustained. The AR has argued that the addition on account of investment in cash has been separately made by the AO and contended that if at all, the addition is required to be sustained then it should be at one place and not twice. This argument of the AR has merits and accordingly, the addition is being sustained at one place. Since, the addition to the extent of Rs. 61,88,101/- has been upheld as unaccounted investment in cash, hence the addition of balance amount of Rs. 2,02,899/- (Rs. 63,91,000 – Rs. 61,88,101) is upheld here also and this represent cash payment out of accounted cash in violation of provision of Section 40A(3). To sum-up, the addition to the extent of Rs. 2,02,899/- is sustained and the appellant gets relief of the balance amount.

Accordingly, these grounds of appeal are partly allowed.

8. The assessee is a producer of the Film. During the appeal proceeding related to relief on additions of Rs.17,69,271/- the assessee properly explained about the source of money which was related to the agreement of sale executed by the assessee. So, the order of the Id. CIT(A) in this issue stands correct. In case of addition of Rs.1 crore out of that the Id. CIT(A) allowed the relief Rs.80 lacs. The

relief was granted on basis of the report from special auditor. The amount was supported by the agreement and the mode of payment i.e. the said amount was duly paid by the assessee to M/s Karma Dhanoa Movies, Proprietor Sh. Harjinder Singh Dhanoa. The special auditor had not made any adverse comment in this regard. So, the ld. CIT(A) was correctly allowed the claim of the assessee amount to Rs. 80 lacs.

Accordingly, the **Ground no 1 & 2** of the revenue are dismissed.

8.1 In addition u/s 69C related to unexplained expenditure the details of expenditure were duly submitted amount to Rs.1,13,73731/-. The ld. CIT(A) found that Rs.82,26,000/- is related to cash expenses and separately added back u/s 40A(3). So, the ld. CIT(A) correctly observed that the same amount cannot be taxed twice. Accordingly, the relief was granted amount to Rs.82,26,000/- is correct. We are not intervening the appeal order.

Accordingly, **Ground no-3** of the revenue is dismissed.

8.2. In case of addition for violation sec 40A(3) for cash payment. The amount to Rs.82,26,000/- was added by the ld. AO. The ld. CIT(A) in the appeal order has well explained the relief granted to assessee. The amount of Rs. 7,75,000/- & Rs. 10,60,000/- are paid through banking channel as per report of special auditor. The balance amount is Rs. 63,91,000/- (Rs. 82,26,000/- - Rs. 7,75,000/- - Rs.

10,60,000/-). The Id CIT(A) already confirmed the cash payment U/s 69C against bogus payment amount to Rs. 61,88,101/-. So, the balance amount to Rs. 2,02,899/- (Rs. 63,91,000/- - Rs. 61,88,101/-) is sustained for addition. The revenue in ground has claimed that the amount should be restricted to Rs, 11,32,899/-. But Id. DR was unable to bring any fact in favour of their claim. In our considered view the appeal order is upheld.

Accordingly, **Ground no-4** of the revenue is dismissed.

8.3. **Ground no-5** of the revenue is general in nature.

9. In the result, the appeal of the revenue bearing **ITA No. 59/Asr/2022** is dismissed.

Order pronounced in the open court on 31.08.2023

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