

**IN THE INCOME TAX APPELLATE TRIBUNAL
"SMC" BENCH, MUMBAI**

BEFORE SHRI N. K. CHOUDHRY, JM

I.T.A. No. 231/Mum/2023
Assessment Year: 2015-16)

Grand Slam Agencies Pvt. Ltd.,
66 The Arcade, World Trade
Centre, Cuffe parade,
Mumbai-400002.

Vs. CIT(Appeals)
3rd & 4th Floor, Pratishtha
Bhavan, Church Gate, M.K.
Road, Dhobi Talao, New Marine
Lines, Mumbai-400020.

PAN No. **AAACG1706A**

Appellant)	:	Respondent)
Appellant/Assessee by Revenue/Respondent by	:	Sh. B.H. Hansotia, Ld. CA Sh. Anurag Tripathi, Ld. DR
Date of Hearing	:	31.08.2023
Date of Pronouncement	:	26.09.2023

ORDER

Per N. K. Choudhry, JM:

The Appellant / Assessee herein has preferred this appeal against the order dated 24.11.2022 impugned herein passed by Ld. Commissioner of Income Tax (Appeals)-9/National Faceless Appeal Centre (NFAC), Delhi {in short 'Ld. Commissioner'} u/s 250 of the Income Tax Act 1961 (in short 'the Act').

2. In the instant case, brief facts relevant for adjudication of the instant appeal are that the AO also made the following additions/disallowances:

- "1) Interest on Income tax Refund amounting to Rs. 2,73,529/-*
- 2) Disallowable of Bad Debts amounting to Rs. 13,62,556/-*
- 3) Disallowance of Society Expenses amounting to Rs 75,804/-*
- 4) Disallowance of Interest Expenses amounting to Rs 18,700/-"*

3. Coming to the first addition on account of disallowance qua interest on income tax refund. I observe that as per AO's case, on perusal of CIB information for the AY under consideration, it was observed by the AO that Assessee has received interest on refund to the tune of Rs. 2,73,529/- (Rs. 1,53,197/- in AY 2009-10 and Rs. 1,20,332/- in AY 2010-11), however, not offered the said interest as income in its total income for the year under consideration. Therefore, the Assessee was show-caused, in response to which the Assessee though accepted that it has received the refund, however, claimed that it could not ascertain the interest, if any included in the refund received, consequently, not offered the same to tax. Ultimately, the AO by considering the contention of the Assessee as not acceptable and by concluding that the Assessee has failed to include the interest received on refund in its total income, added the said amount of Rs. 2,73,529/- in the total income of the Assessee.

4. The Assessee in appeal before the Ld. Commissioner claimed that though the Assessee accepted that he has received the refund cheque for AY 2009-10 amounting to Rs. 2,93,460/- but had also written to Income Tax Department vide letters dated 16.06.2015, 19.08.2015 and 09.02.2016 requested for the details but till date not received any reply. The Assessee before the Ld. Commissioner also attached the copy of the said letters. The Assessee also claimed that till date the details of refund paid has not been furnished by the Revenue/Department. To ascertain as to whether element on interest, if any included in the said income, the Ld.

Commissioner though considered the claim of the Assessee, however, ultimately justified the action of AO in making the addition qua interest amount on refund received during the year.

5. The Assessee before this Bench claimed that as per ITR for the AYs 2009-10 and 2010-11 refund payable is much more than the refund adjustment made by the Department, hence, the question of receiving interest does not arise. The Assessee has been writing regularly to the Income Tax Department for providing the details of refund paid but the same is not received till date. Infact the Ld. Commissioner also in para-5.3 of its order has directed to provide the Assessee with the income tax computation sheet determined the refund to the Assessee in the respective years but nothing has happened so far.

6. On the contrary Ld DR refuted the claim of the Assessee.

7. I have given thoughtful consideration to the claim of the Assessee and the direction issued by the Ld. Commissioner and non-action of the Revenue/Department to provide the income tax computation sheet determining the refund to the Assessee for the respective AYs even in spite of direction issued by the Ld. Commissioner, therefore in my considered view, it would be proper to remand the instant issue to the file of the AO for determination afresh by considering and providing the details sought as directed by the Ld. Commissioner and by giving an opportunity to the Assessee to substantiate its claim. Consequently this issue stands remitted to the file of the AO.

8. Second disallowance of Rs. 13,62,556/- relates to the bad-debts. I observe that the Assessee has written off an amount of Rs. 14,02,439/- as bad-debts which included the amount of Rs. 13,62,556/- from one party M/s Adlabs Ltd. The AO in order to verify the claim of the

Assessee, issued summons under section 131 of the Act to M/s Reliance Media Works Ltd. (in short RMWL) (earlier known as Adlabs Film Ltd.) who stated that the Assessee was creditor of Rs. 3,41,250/- in the books of it as on 01.04.2008 and thereafter has been paid Rs. 1,00,000/- on 17.02.2011 through cheque. The said facts are contrary to the claim of the Assessee, the Assessee was confronted with the reply of M/s Adlabs Film Ltd. but the Assessee could not contradict the evidence and therefore, the AO disallowed the said claim of Rs. 13,62,556/- and added to the income of the Assessee.

8.1 The Assessee before the Ld. Commissioner in appeal claimed that the debts were raised in earlier years and same were accounted as income in the relevant AY. The Ld. Commissioner considered the said claim of the Assessee, however, held that the Assessee has failed to submit confirmed Ledger A/c of the earlier years so claimed. It is for the Assessee to substantiate its documentary evidences with the claim made by it. This becomes more important with the Department for decision in the contrary evidence from the other party. The Assessee before the Ld. Commissioner also raised the issue/second contention to the effect that once the debit is written off or irrevocable in the books of account, the same is allowable. The said logic though was found as per law by the Ld. Commissioner as correct but he has not applied the same to the case of the Assessee on the ground that first onus is on the Assessee to prove that there was a debit account and the amount has been shown as income in any previous accounting year. The Assessee has failed to discharge its burden of proof. The Ld. Commissioner ultimately affirmed the said disallowance of Rs. 13,62,556/-.

8.2 The Assessee before me, to substantiate its claim, filed various details including the letter dated 28.09.2017 and invoices dated 06.01.2007, 09.05.2007, 02.05.2007 and 03.05.2007 and other documents related to booking made by Adlabs Corporate in the year 2005 to 2007. The Assessee also contended that the transaction was done with M/s Adlabs Film Ltd. which has been taken over by RMWL and as contended by the Assessee that since the officers who had requested the tickets, have left the Organization and therefore, not accounted the same in their travel vouchers, whereas the Assessee has full proof of all emails request made by Adlabs and also the tickets issued to them. Just because Adlabs has not accounted the same in their books/records that does not mean that the Assessee has not issued the tickets. The Assessee further mentioned that the bills were raised in the previous years and the same were accounted for as income in the relevant AYs. The Assessee also sent a legal notice dated 08.11.2010 to the Adlabs Company and all its Directors but postal department returned back the same, however, M/s RMWL vide its letter dated 12.11.2010 has requested the Assessee to forward the full details to its Accounts, which the Assessee has already forwarded. RMWL even after submitting the details/ledger, copy of bills/requisite of tickets, emails not reverted till date. The Assessee in support of its claim also relied upon the Circular No. 12 dated 30.05.2016 issued by the CBDT, whereby Point No.3 it has been clarified as under:

“The legislative intention behind the amendment was to eliminate litigation on the issue of the allowability of the bad-debts by doing away with the requirement for the assessee to establish that the debt has been infact recoverable.”

The Assessee, therefore, claimed that as per Circular, the onus to prove that there was a debt is not required. Once the debt has been written off as irrecoverable in the books of account, the same is available as deduction.

8.4 I have given thoughtful consideration to the facts and circumstances noted above and am of the considered view that justice would be met by remanding the instant issue to the file of the AO for decision afresh by considering the facts and circumstances and the contention raised by the Assessee as noted above. Resultantly, the same is remanded in the aforesaid direction.

9. Coming to the disallowance of Rs. 75,804/- qua Society Expenses. The Assessee had taken a premises on rent from its sister concern and paid the charges of Rs. 75,804/- as Society Maintenance Charges and claimed the same as rent, rates and taxes under the head Administrative and other cost being part of Rs. 3,22,890/-. The authorities below considered the rent agreement wherein it is nowhere mentioned that the Society Charges are to be paid by the tenant only. The Assessee before me claimed that as the Assessee had taken the premises from its sister concern on a nominal rent and impliedly agreed for paying the Society Charges directly to the Society and it is a fact that Assessee itself has used the premises but not the owner of the property, hence, the same is liable to be allowed.

9.1 I have given thoughtful consideration to the peculiar facts and circumstances of the case and observe that though in the rent agreement, the rent has been specified to the tune of Rs. 5000/- as claimed, however it is a fact that Assessee has used the premises and therefore, directly and indirectly liable to pay the society maintenance expenses and to claim as expenditure incurred, if not claimed by the owner of the premises, hence for the just decision of the case and for the ends of justice, I am inclined to remand the instant issue to the file of the AO to allow the said claim after verifying that the owner of the property

has not claimed such expenses. Consequently this issue also stands remanded.

10. Next issue relates to the disallowance on interest expenses amounting to Rs. 18,700/-. The Assessee claimed to have paid EMI for the Car purchased in 2013, directly to Kotak Mahindra Finance Ltd. and therefore, claimed that interests paid to NBFC are not subjected to TDS, if they have offered the interest income to tax. Both the authorities below have not accepted the contention of the Assessee and made the disallowance under section 40a(ia) of the Act.

10.1 Considering the peculiar facts and circumstances of the case, as the Assessee has claimed *“that the interest paid to NBFC is not subjected to TDS, if the same has been offered to the income to tax and therefore, Kotak Mahindra Finance Company being a professionally maintained to be Ltd. Company, would have surely offered the said interest income to tax,”* I am inclined to remand the instant issue also to the file of the AO for decision afresh, however, the onus would be upon the Assessee to establish its claim/contention as noted above. Consequently, this issue is also remanded.

12. In the result, appeal filed by the Assessee stands allowed for statistical purposes.

Order pronounced in the open court on 26-09-2023.

Sd/-
(N. K. CHOUDHRY)
Judicial Member

SK, Sr.PS.

Copy of the Order forwarded to :

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

BY ORDER,

(Dy./Asstt.Registrar)
ITAT, Mumbai

Sr. No.	Details	Date	Initial	Designation
1	Draft dictated on (dictation sheets are attached with main file)	21.09.23		Sr.PS/PS
2	Draft dictated on PC			Sr.PS/PS
3	Draft Placed before author	22.09.23		Sr.PS/PS
4	Draft proposed & placed before the Second Member			JM/AM
5	Draft discussed/approved by Second Member			JM/AM
6	Approved Draft comes to the Sr.PS/PS			Sr.PS/PS
7	Order pronouncement on			Sr.PS/PS
8	File sent to the Bench Clerk			Sr.PS/PS
9	Date on which the file goes to the Head clerk			
10	Date on which file goes to the AR			
11	Date of Dispatch of order			