

IN THE INCOME TAX APPELLATE TRIBUNAL ‘I’ BENCH, MUMBAI

**BEFORE SHRI OM PRAKASH KANT, AM AND
MS. KAVITHA RAJAGOPAL, JM**

ITA Nos.848 & 849/Mum/2023
(Assessment Year: 2014-15)

Warner Bros. International Television Distribution Inc. C/o. Warner Bros. Pictues Television (Indi) Pvt. Ltd. 407, 4 th Floor, Windfall, Sahar Plaza Complex, Andheri Kurla Road, J. B. Nagar Andheri (E), Mumbai-400 059	Vs.	Asst. CIT (International Taxation)- 4(3)(2) Mumbai – 400 021
PAN/GIR No. AAACW 9801 E		
(Appellant)	:	(Respondent)

Assessee by	:	Shri Manuj Sabharwal
Revenue by	:	Shri Anil Sant

Date of Hearing	:	10.10.2023
Date of Pronouncement	:	27.10.2023

ORDER

Per Kavitha Rajagopal, J M:

These two appeals have been filed by the assessee, challenging the order of the learned Commissioner of Income Tax (Appeals) (‘ld.CIT(A) for short), National Faceless Appeal Centre (‘NFAC’ for short) passed u/s.250 of the Income Tax Act, 1961 (‘the Act’), pertaining to the Assessment Year (‘A.Y.’ for short) 2014-15.

2. As the facts are identical in both the appeals, we hereby pass a consolidated order by taking ITA No. 849/Mum/2023 as the lead case.

ITA No. 849/Mum/2023

3. The assessee has challenged the order of the Id. CIT(A) in not deciding the additional ground of appeal challenging the validity of the final assessment order in view of the amended provision of section 144C of the Act.

4. The brief facts are that the assessee is a company incorporated in USA and is engaged in the business of distribution of rights of exhibition of audio-visual media content (cinematographic films). The assessee's case was reopened for the reason that the assessee has not filed its return of income for the year under consideration and that an amount of Rs.54,25,330/- being the receipt from M/s. Star India Pvt. Ltd. was not offered to tax. In response to the notice u/s. 148 of the Act, the assessee filed its return of income declaring total income at Rs.67,69,00,040/-.

5. The Id. Assessing Officer ('A.O.' for short) passed the assessment order u/s. 143(3) r.w.s. 147 of the Act dated 31.03.2022 accepting the returned income filed by the assessee and levied the tax @ 116.2225%. The Id. A.O. had imposed surcharge and cess over the rate of 15% as per Article 12(2)(a)(ii) of India-USA DTAA.

6. Aggrieved the assessee was in appeal before the Id. CIT(A).

7. The Id. CIT(A) held that the assessee was covered by India-US DTAA where the tax on royalty income was charged @ 15% which is inclusive of surcharge and cess as per Article 2(1)(v)(i) of the treaty. The Id. CIT(A) further held that as per Article 2(1)(b)(i), the income tax shall include surcharge and no further levy of surcharge @ 5% and education @ 3% was to be levied. The Id. CIT(A) relied on the decision of the co-ordinate bench in the case of *DIC Asia Pacific Pte. Ltd. vs. ADIT* [2012] 22 taxmann.com

310 (Kol.) and the tribunal in the case of *Parke Davis and Company LLC vs. ACIT* [2014] 41 taxmann.com 193 (Mum). It is observed that the ld. CIT(A) has allowed the appeal filed by the assessee with regard to the interest and the penalty proceedings also.

8. The assessee is in appeal before us, challenging the ground that the ld. CIT(A) has failed to adjudicate the additional ground raised by the assessee challenging the validity of the final assessment order as per the amended provision of section 144C of the Act.

9. The learned Authorised Representative ('ld. AR' for short) for the assessee stated that the ld. CIT(A) has given relief to the assessee by holding that the assessee was not entitled to surcharge and cess as per the India-USA DTAA. The ld. AR further contended that the ld. A.O. has not passed the order giving effect to the ld. CIT(A)'s order and that there will be no grievances of the assessee if the ld. A.O. passes the said order.

10. The learned Departmental Representative ('ld.DR' for short), had nothing to controvert the said fact.

11. We have heard the rival submissions and perused the materials available on record. Though the assessee has raised a legal ground, challenging the validity of the final assessment order, the ld. AR stated that the ld. CIT(A) has already given relief to the assessee by holding that the assessee was not entitled to further surcharge and cess which was inclusive of 15% tax levied on the royalty income. It is observed that the ld. A.O. in spite of the ld. CIT(A)'s order dated 23.01.2023 has not yet passed the order giving effect of the ld. CIT(A). If the same has been passed by the ld. A.O. there would be no scope for further adjudication as the assessee would get its relief and since the Revenue

has not appealed against the order of the Id. CIT(A), the same has reached finality. We, therefore, direct the A.O. to pass the order giving effect of the Id. CIT(A), if the same is not given so far.

12. In the result, the appeal filed by the assessee is allowed for statistical purpose.

ITA No. 848/Mum/2029

13. The grounds of appeal raised by the assessee in this appeal are as follows:

<i>Ground no.</i>	<i>Ground of appeal</i>	<i>Tax effect (INR)</i>
1	<i>On the facts and in the circumstances of the case and in law, the ld. A.O. has well as the ld. CIT(A) failed to appreciate that the failure to file the return of income was due to a bona fide belief and plausible understanding of law that the Appellant was not required to file return as the entire tax liability was discharged through TDS.</i>	10,98,10,108
2	<i>On the facts and in the circumstances of the case and in law, the ld. A.O. has grossly misunderstood the provisions of law in stating that “as the assessee has not filed its return of income which was required to be filed as per section 139(1) and 115A(5) of the Act thus the assessee has concealed its particulars of income as per the section 271(1)(c)”. The CIT(A) erred in confirming the same.</i>	
3	<i>On the facts and in the circumstances of the case and in law, penalty u/s. 271(1)(c) is not leviable as there is no amount of tax sought to be evaded. The entire tax payable on assessed income is paid by way of tax deducted at source.</i>	
4	<i>On the facts and in the circumstances of the case and in law, the ld. A.O. as well as the ld. CIT(A) failed to appreciate that there was no concealed income.</i>	
5	<i>Assuming though not accepting that penalty is leviable, the ld. CIT(A) failed to consider that the tax sought to be evaded is calculated at the rate of 16.2225% whereas the applicable rate is 15%.</i>	
<i>Total Tax Effect = Rs.10,98,10,108</i>		

14. The assessee has raised various grounds in this appeal and that would become academic when the Id. A.O. passes the order giving effect to the order of the Id. CIT(A). we, therefore, direct the Id. A.O. to pass the order giving effect to the Id. CIT(A)'s order.

15. In the result, the appeal filed by the assessee is allowed for statistical purpose.

Order pronounced in the open court on 27.10.2023.

Sd/-

(Om Prakash Kant)
Accountant Member

Mumbai; Dated : 27.10.2023

Roshani, Sr. PS

Sd/-

(Kavitha Rajagopal)
Judicial Member

Copy of the Order forwarded to :

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

BY ORDER,

(Dy./Asstt. Registrar)
ITAT, Mumbai