

IN THE INCOME TAX APPELLATE TRIBUNAL
MUMBAI 'D' BENCH, MUMBAI.

Before Shri B.R. Baskaran (AM) & Smt. Kavitha Rajagopal (JM)

I.T.A. No. 1098/Mum/2022 (A.Y. 2007-08)

Ravinder Walia Flat no. 15, 10 th floor, Menoti Mahal, Nr. Aarya Samaj Mandir, Opp. Being Human Store, Santa Cruz (W), Mumbai 400 054. PAN : AAJPW9207C (Appellant)	Vs.	Asst. Commissioner of Income Tax – 11(1), Mumbai. (Respondent)
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Assessee by	Shri Hiro Rai
Department by	Shri Ashok Kumar Ambastha
Date of Hearing	06.10.2023
Date of Pronouncement	25.10.2023

ORDER

Per B.R.Baskaran (AM) :-

The assessee has filed this appeal challenging the order dated 15.03.2022 passed by the learned Commissioner of Income Tax (Appeals), NFAC, Delhi (in short 'ld. CIT(A)') and it relates to Asst. Year 2007-08.

2. The assessee has challenged the order passed by ld. CIT(A) in confirming the following two additions :-

- a) Addition of unexplained expenses of Rs.2,88,14,556/-; and,
- b) Addition of unaccounted entries of Rs.90,59,009/-.

3. The facts relating to the above said additions are stated in brief. This is the second round of proceedings. In the first round, the Tribunal had

restored the matter back to the file of ld. CIT(A) for examining of the issues afresh since the ld. CIT(A) had passed an *ex parte* order. The original assessment in the hands of the assessee was completed on 29.12.2009 under Section 143(3) of the Income Tax Act, 1961 (in short 'the Act'). The Department carried out survey action in the business premises of the assessee, who was engaged in the production of film. During the course of survey action, various documents containing details of expenses incurred under various heads were found and impounded. The aggregate amount of expenses noted in the documents was Rs.2,88,14,556/-. Before the Assessing Officer, the assessee submitted that these expenses have not been incurred, but they are only estimate of expenses to be incurred. Since specific amounts were mentioned in the documents, the Assessing Officer took the view that these represented amounts actually paid/payable by the assessee towards various expenses. Accordingly, he assessed the above said amount of Rs.2,88,14,556/- as unexplained expenses. The Assessing Officer also noticed that the survey team had found a document titled "*details of cash entries removed from computer for the year 1/4/2006 to 31/3/2007*". The survey team also found an unaccounted bank account maintained by the assessee with Federal Bank. The aggregate amount of deposits found in the bank account and the cash entries deleted from the computer amounted to Rs.90,59,009/-. During the course of survey proceedings, the assessee had agreed to surrender a sum of Rs. 90,00,000/- as unaccounted income. Accordingly, the Assessing Officer assessed the difference amount of Rs.59,009/- (Rs.90,59,009 – Rs.90,00,000) as income of the assessee. The Assessing Officer also assessed the amount of Rs.90,00,000/- surrendered by the assessee.

4. In the appellate proceedings before the ld. CIT(A) in the second round, the ld. CIT(A) called for Remand Report from the Assessing Officer. It was the submission of the assessee before the ld. CIT(A) that copy of impounded documents were not supplied to him and hence he could not give proper explanation/reconciliation before the Assessing Officer. However, the ld. CIT(A) took the view that assessee has not explained the expenditure entries

aggregating to Rs.2,88,14,556/- and accordingly, he confirmed the addition. The ld. CIT(A) also confirmed the addition of Rs.59,009/- and Rs.90,00,000/- made by the Assessing Officer. Aggrieved, assessee has filed this appeal before the Tribunal.

5. With regard to the addition of Rs.90,00,000/-, we noticed that the assessee has surrendered the same during the course of survey proceedings and hence we do not find any infirmity in the decision rendered by the ld. CIT(A) on this issue.

6. As regards to the amount of Rs.59,009/-, we noticed that the same is related to the documents on the basis of which the assessee had surrendered Rs.90,00,000/-. It is only the differential amount and accordingly we uphold the decision of ld. CIT(A) in confirming the said addition.

7. With regard to the addition of Rs.2,88,14,556/-, we noticed that the Assessing Officer himself has observed that these documents represent amounts actually paid/payable by the assessee, meaning thereby that the Assessing Officer is also not sure that these amounts represents unexplained expenditure incurred by the assessee. We noticed earlier that it is the case of assessee that these amounts are only estimates prepared with regard to the expenses to be incurred. Thus, we are of the view that the Department has not established in a fool-proof manner that the amounts mentioned in the impounded documents were actually spent by the assessee. We also noticed that the Assessing Officer has not carried out any further verification to support his case. At the same time, we noticed that the assessee has also not brought any material on record to show that these amounts represent estimates prepared by him. Under these incomplete set of facts, we are of the view that this issue can be resolved by estimated addition on account of the impounded documents. Accordingly, we sustain an addition of 10% of the amounts aggregating to Rs.2,88,14,556/- and grant relief with regard to the remaining amount. The

order passed by the ld. CIT(A) on this issue would stand modified accordingly.

8. In the result, appeal filed by the assessee is partly allowed.

Pronounced in the open court on 25/10/2023.

Sd/-
(KAVITHA RAJAGOPAL)
Judicial Member

Sd/-
(B.R. BASKARAN)
Accountant Member

Mumbai; Dated : 25/10/2023

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Copy of the Order forwarded to :

1. The Appellant
2. The Respondent
3. The CIT(Judicial)
4. PCIT
5. DR, ITAT, Mumbai
6. Guard File.

BY ORDER,

//True Copy//

(Assistant Registrar)
ITAT, Mumbai