

आयकर अपीलीय अधिकरण, 'बी' न्यायपीठ, चेन्नई
IN THE INCOME-TAX APPELLATE TRIBUNAL 'B' BENCH, CHENNAI
श्री वी दुर्गा राव न्यायिक सदस्य एवं श्री जी. मंजुनाथा, लेखा सदस्य के समक्ष
Before Shri V. Durga Rao, Judicial Member &
Shri Manjunatha, G., Accountant Member

आयकर अपील सं./I.T.A. No.373/Chny/2023
निर्धारण वर्ष/Assessment Year: 2014-15

A. Raghuram,
No. 20, 3/1A, West Kamakoti Nagar,
Agastyar Street, Valasarawakkam,
Chennai 600 087.

Vs. The Deputy Commissioner of
Income Tax,
Central Circle 1(2),
Chennai.

[PAN:AANPA2155P]

(अपीलार्थी/Appellant)

(प्रत्यर्थी/Respondent)

अपीलार्थी की ओर से / Appellant by : Shri S. Sridhar, Advocate
प्रत्यर्थी की ओर से/Respondent by : Shri V. Nandakumar, CIT
सुनवाई की तारीख/ Date of hearing : 04.01.2024
घोषणा की तारीख /Date of Pronouncement : 21.03.2024

आदेश / O R D E R

PER V. DURGA RAO, JUDICIAL MEMBER:

This appeal filed by the assessee is directed against the order of the Id. Commissioner of Income Tax (Appeals)-18, Chennai, dated 08.03.2023 relevant to the assessment year 2014-15.

2. Brief facts of the case are that a search under section 132 of the Income Tax Act, 1961 ["Act" in short] was initiated and conducted in this assessee's case on 31.10.2013. The assessee filed the return of income on 16.04.2015, admitting total income of ₹.2,03,67,310/-. The case was

not processed under section 143(1) of the Act. The assessment proceedings were initiated by issuing notice under section 143(2) of the Act dated 15.07.2015. Notice under section 142(1) of the Act along with questionnaire was also issued to the assessee on 15.07.2015. After considering the statement recorded under section 132(4) of the Act and submissions of the assessee, the Assessing Officer has completed the assessment under section 143(3) r.w.s. 153B(1)(b) of the Act dated 30.03.2016 by assessing total income of the assessee at ₹. 8,09,10,860/- after making various additions.

3. With regard to the addition of ₹.4,00,00,000/- towards business income, upon gathering the cost of production and the sources to meet the same for the film "Arambam" during the search proceedings and post search investigation, the Assessing Officer arrived the cost of production at ₹.46,20,84,650/- against the source of ₹.42,16,00,000/-. When the above difference was pointed out during the statement recorded under section 132(4) of the Act on 26.12.2013, against question No. 3, the assessee had offered an additional income of ₹.4,00,00,000/- for the assessment year 2014-15 to cover up the commissions and omissions since the generation of the same occurred during the current year from the film which was released on 31.10.2013. Since the assessee has not

declared the additional income in his return of income, the same was added to the total income and taxed accordingly.

4. The assessee carried the matter in appeal before the Id. CIT(A). After considering the submissions of the assessee, the Id. CIT(A) confirmed the addition made by the Assessing Officer by observing as under:

7.1.3 I have considered the submissions of the appellant. During the course of search, incriminating material to the effect that the appellant had incurred Rs.46,20,84,650/- as cost of production of the film "Aarambam" was found. When the appellant was called upon to explain the source for the cost of production incurred, the appellant was not able to adduce full proof and there remained a sum of Rs.4 cr. as unexplained. In fact, the appellant has agreed to offer the said amount for tax in the statement recorded u/s 132(4) during the course of search. It is thus clear that the addition was not made on mere admission of the appellant but also based on the documents found during the course of search. Hence, the objections raised by the appellant against the addition are rejected. On merits, the appellant was not able to adduce source for the cost of production incurred. The appellant has not disputed the cost of production adopted by the AO. It is seen that in the case of Kishore Kumar Vs CIT 62 taxmann.com 215, 234 Taxman 771 (SC)], SLP dismissed against High Court's order where it was held that since assessee himself had stated in sworn statement during search and seizure about his undisclosed income, tax was to be levied on basis of admission without scrutinizing documents. It is seen that the assessee has not retracted his statement also. The statement was recorded under oath u/s 132(4) and has evidentiary value. In the case of Bannalal Jat Constructions (P.) Ltd. Vs ACIT [[2019] 106 taxmann.com 128 (SC)/[2019] 264 Taxman 5 (SC)], the Hon'ble Supreme Court held where High Court upheld addition made by authorities below relying upon statement made in course of search proceedings by director of assessee-company, since assessee failed to discharge its burden that admission made by director in his statement was wrong and said statement was recorded under duress and coercion, SLP filed against decision of High Court was to be dismissed. The important factor in this case is that there is incriminating material to the effect that the appellant had incurred Rs.46,20,84,650/- as cost of production of the film "Aarambam" which the assessee has not disputed. It is also not in dispute the sources that the assessee could explain is only to the extent of Rs.42,16,00,000/-. This is also not disputed by the AO. These materials are also corroborated by the

statement u/s 132(4) recorded from the assessee. Thus, the addition is directly coming from the incriminating material is apparent in this case. Under the given facts, circumstances and position of law, I have no other alternative except to confirm the addition of Rs.4,00,00,000 made. The appellant had made an alternative claim that the income returned should be given set off. What the assessee has admitted as profit or offered as income is only as per his books whereas he was not able to furnish evidence in respect of the source for the difference in cost of production. Therefore, there is no merit in alternative plea and hence, is rejected.

5. On being aggrieved, the assessee is in appeal before the Tribunal. By filing detailed written submissions, the Id. counsel for the assessee has submitted that the difference reckoned by the Assessing Officer between the cost of production of Tamil feature film "Arambam" as well as the source of expenditure for the production at ₹.4,00,00,000/- has been offered as income to cover up commissions and omissions. It was further submission that the said cost of production was inclusive of interest payments of ₹.3,67,28,650/-, but not inclusive of the amounts borrowed which constitutes one of the sources for the cost of production. Thus, the Assessing Officer has erroneously reckoned the interest on the said loans obtained at ₹.3,67,28,650/- forming part of the cost of production quantified, the loan amount relatable thereto was not considered as the source for the cost of production. It was also prayed to exclude the component of the income admitted in the return of income to the tune of ₹.2,03,67,310/- from the disputed addition.

6. On the other hand, by filing written submissions and supporting the

orders of authorities below, the Id. DR has submitted that the statement recorded under oath under section 132(4) of the Act having evidentiary value has not be retracted during assessment proceedings as well as appellate proceedings. It was further submission that the assessee has not filed return of loss as mandated under section 139(3) of the Act in the prescribed form for claiming the loss. Thus, it was pleaded that the Id. CIT(A) has rightly rejected the grounds raised by the assessee.

7. We have heard both the sides, perused the materials available on record and gone through the orders of authorities below including written submissions filed by both the Counsels. In this case, the assessee was a producer of cinematographic films. A search under section 132 of the Act was conducted in the premises of the assessee on 31.10.2013. During the course of search proceedings and post search investigation, the Assessing Officer gather the details of the cost of production and sources to meet the same for the film "Arambam" produced by the assessee. The Assessing Officer found that the total cost of production of the above film was ₹.46,20,84,650/-, whereas, the assessee had sources only for ₹.42,16,00,000/-. When the assessee was examined on oath during the course of search proceedings under section 132(4) of the Act, the assessee has agreed to offer the sum of ₹.4,00,00,000/- to cover up the

cost of production remained unexplained. However, while filing the return of income, the assessee did not offer the said income of ₹.4,00,00,000/- though admitted during the course of search. Thus, the Assessing Officer has brought the said sum of ₹.4,00,00,000/- to tax and added the same to the income returned, which was confirmed by the Id. CIT(A) on appeal.

8. We have perused the details of cost of production quantified by the Assessing Officer and the same reproduced as under:

Sl.No.	Artist payments/technician payment and production expenses	Description	Amount (Rs.)
1	Artists remuneration	1. Ajith Kumar 2. Arya 3. Rana 4. Other artists	15,00,00,000/- 2,25,00,000/- 40,00,000/- 1,54,75,000/-
2.	Technician's remuneration	1. Vishnu Vardhan, Director 2. N. Prakash, Cameraman 3. Yuvan Shankar Raja 4. Other technicians	2,25,00,000/- 44,00,000/- 1,25,00,000/- 2,96,17,000/-
3.	Production Expenses	1. Computer graphic works 2. Camera Raid Box 3. Costume purchase 4. Co-artists payment 5. Publicity expenses 6. Effects & mixing 7. Dubbing artist expenses 8. Other production expenses	84,00,000/- 9,00,000/- 20,00,000/- 8,50,000/- 1,50,00,000/- 5,00,000/- 13,62,64,000/-
4.	Interest payment	-	3,67,28,650/-
	Total		46,20,84,650/-

9. The Assessing Officer has determined the sources to meet the above expenditure at ₹.42,16,00,000/- and thus, the difference of cost of production and sources for the same was quantified at ₹.4,00,00,000/-and

held as unexplained expenditure. However, the said cost of production was inclusive of interest payments of ₹.3,67,28,650/-, but no details of borrowals was brought on record. When the Assessing Officer has agreed for the expenditure of interest payment, there must be loans borrowed by the assessee. However, no details were brought on record. Thus, we are of the opinion that the Assessing Officer has erroneously reckoned the interest expenditure of ₹.3,67,28,650/- while quantifying the cost of production without there being any borrowals. Accordingly, we remit the matter back to the file of the Assessing Officer to re-examine and quantify the cost of production.

10. In the written submissions, the Id. counsel has submitted that as per the computation of the income generated from the said feature film and the cost of production, there would be loss of ₹.4,04,84,650/-. As rightly argued by the Id. DR, the assessee should have filed return of loss as mandated under section 139(3) of the Act in the prescribed format for claiming the loss, which was not done in this case. Thus, this argument of the Id. counsel stands rejected.

11. The alternative plea of considering to exclude the component of the income admitted in the return of income to the tune of ₹.2,03,67,310/- from the disputed addition also stands rejected as no detailed explanation

was brought on record.

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

Order pronounced on 21st March, 2024 at Chennai.

Sd/-
(MANJUNATHA, G.)
ACCOUNTANT MEMBER

Sd/-
(V. DURGA RAO)
JUDICIAL MEMBER

Chennai, Dated, 21.03.2024

Vm/-

आदेश की प्रतिलिपि अग्रेषित/Copy to: 1. अपीलार्थी/Appellant, 2. प्रत्यर्थी/ Respondent,
3. आयकर आयुक्त/CIT, 4. विभागीय प्रतिनिधि/DR & 5. गार्ड फाईल/GF.