

**IN THE INCOME TAX APPELLATE TRIBUNAL
MUMBAI BENCH "F" MUMBAI**

**BEFORE SHRI OM PRAKASH KANT (ACCOUNTANT MEMBER)
AND
SHRI SANDEEP SINGH KARHAIL (JUDICIAL MEMBER)**

**ITA No. 1453/MUM/2024
Assessment Year: 2020-21**

Mukta A2 Cinemas Ltd.,
3rd floor, Behind Whistling Woods
In, Filmcity Complex,
Goregaon East,
Mumbai-400065.

**PAN NO. AAKCM 6668 B
Appellant**

Vs. Income Tax Officer, Central
Processing Centre-Bengaluru,
Income Tax Officer-16(1)(3),
Aayakar Bhavan,
New Marine Lines,
Mumbai-400020.

Respondent

Assessee by : Mr. Dharmesh Shah
Revenue by : Mr. Ankush Kapoor, CIT-DR

Date of Hearing : 18/06/2024
Date of pronouncement : 18/06/2024

ORDER

PER OM PRAKASH KANT, AM

This appeal by the assessee is directed against order dated 13.02.2024 passed by the Ld. Additional/Joint Commissioner of Income-tax (Appeals) – 3, Bangalore [in short ‘the Ld. Addl CIT(A)'] for assessment year 2020-21, raising following grounds:



1. *The Ld. CIT(A) has erred in law and in facts in dismissing the appeal without giving sufficient opportunity of hearing to the appellant which is bad and invalid in the eyes of law.*
2. *The Ld. CIT(A) has erred in law and in facts in not appreciating that the CPC-Bengaluru has dismissed the rectification application u/s 154 of the Act without complying with the principles of natural justice.*
3. *The Ld. CIT(A) has erred in law and in facts in confirming the rejection of the rectification application u/s 154 of the Act without appreciating that there is a mistake apparent on record resulting in double addition of income of Rs. 2,02,59,298/-*
4. *The Ld. CIT(A) has erred in law and in facts in not appreciating that on amount of Rs. 2,02,59,298/- which was already disallowed in A.Y. 2019-20 as pertaining to that year was inadvertently disallowed also in the year under appeal resulting into double disallowance. Hence, the said disallowance made was incorrect and ought to have been allowed.*

2. At the outset, the Ld. counsel for the assessee submitted that the Ld. Addl CIT(A) has passed the impugned order without providing sufficient opportunity of being heard and therefore, order of the Ld. Addl CIT(A) might be set aside and matter may be restored back to him for deciding afresh after considering submission of the assessee.

3. The Ld. Departmental Representative (DR) on the other hand objected to the proposal of the Ld. counsel for the assessee.

4. We have heard rival submission of the parties and perused the relevant material on record. In the case, the assessee filed an application for rectification before the Assessing Officer in relation to order passed by the Central Processing Centre(CPC) dated



29.03.2021. The said rectification was rejected by the Assessing Officer and against which the assessee preferred appeal, which was assigned to the Ld. Addl CIT(A). However, despite issuing various notices dated 14.10.2022, 23.02.2023 and 26.09.2023 by the Addl CIT(A), no compliance was made on the part of the assessee and therefore, the Ld. Addl CIT(A) adjudicated the appeal observing as under:

“10. In view of the above facts the appeal is decided as under:

On thorough perusal of the grounds of appeal raised and the submissions made by the appellant, in response to intimation u/s 143(1)(a), it is observed the appellant has filed the return of income on 25/01/2021 declaring the loss of Rs. 3,58,26,506/-. The AO CPC has passed the intimation order on 29/03/2021 by accepting the return of income filed. Thereafter the appellant filed an rectification request to the AO CPC for the claim of additional loss amounting to Rs. 2,02,59,298/-, the rectification requested is rejected by the AO CPC stating that an application for rectification can be filed only to correct mistakes apparent from records. In the rectification request filed, claim/additional claim of loss is being made in the rectification application. This is not a mistake apparent from records. Hence your rectification request cannot be entertained.

Aggrieved by the rejection of rectification application the appellant has filed the appeal against the intimation order. All the submissions submitted by the appellant is carefully perused and it is noticed that the appellant has declared the loss of Rs. 3,58,26,506/- in the return of income which was duly accepted by the AO CPC. Further the claim of the excessive loss after the processing of the return seems a after thought process. The appellant can easily file the revised return of income if there is any discrepancy in the original return of income before the due date which appellant fails to do. The contention of appellant cannot be accepted by in the rectification of the intimation order as there is no discrepancy in the intimation order. The appellant authority is relied on the judgement of the Hon'ble supreme court of India in the case of Goetze(India) Ltd Vs CIT (2006)284 ITR(SC): where



Hon'ble court has settled the issue of claiming any deduction stating that the appellant can revise the return of income within due date for raising any new claim which was not claimed in the original return of income.

Therefore, based on the above discussion, the appeal filed on this ground is dismissed.”

4.1 Before us, the Ld. counsel for the assessee submitted that the notice issued by the Ld. Addl CIT(A) dated 26.09.2023 was issued on e-mail ID which was not provided in Form No. 35 filed before the Ld. Addl CIT(A) and therefore, the assessee could not comply to the notice issued by the Ld. Addl CIT(A). The Ld. counsel appearing on behalf of the assessee given undertaking that in case the matter is restored back to the file of the Ld. Addl CIT(A), due compliance shall be made on behalf of the assessee. In view of the facts that submission of the assessee have not been considered by the Ld. Addl CIT(A) due to non-receipt of the notice and in the interest of substantial justice, we feel it appropriate to set aside the impugned order of the Ld. Addl CIT(A) and restore the matter back to him for deciding afresh after taking into consideration submission of the assessee and pass a reasoned order on merit. The ground No. 1 raised by the assessee is accordingly allowed. Since, we have already restored the matter back to the file of the Ld. CIT(A), the other grounds raised by the assessee are rendered academic and hence we are not adjudicate upon at this stage.



5. In the result, the appeal filed by the assessee is accordingly allowed for statistical purposes.

Order pronounced in the open Court on 18/06/2024.

**Sd/-
(SANDEEP SINGH KARHAIL)
JUDICIAL MEMBER**

**Sd/-
(OM PRAKASH KANT)
ACCOUNTANT MEMBER**

Mumbai;
Dated: 18/06/2024
Rahul Sharma, Sr. P.S.

Copy of the Order forwarded to :

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

//True Copy//

BY ORDER,
(Assistant Registrar)
ITAT, Mumbai