

**IN THE INCOME TAX APPELLATE TRIBUNAL
“C” BENCH, AHMEDABAD**

**BEFORE SMT. ANNAPURNA GUPTA, ACCOUNTANT MEMBER &
SHRI SIDDHARTHA NAUTIYAL, JUDICIAL MEMBER**

I.T.A. No.246/Ahd/2024
(Assessment Year: 2017-18)

Eylex Films Pvt. Ltd., 3 rd Floor, Chaitanya, KUnjilal Street, Upper Bazar, Jharkhand-834001	Vs.	Deputy Commissioner of Income Tax, Circle-2(1)(1), Ahmedabad
[PAN No.AACCE2522N]		
(Appellant)	..	(Respondent)

Appellant by :	Shri Dhinal Shah, A.R.
Respondent by:	Shri Arvind Kumar, CIT DR

Date of Hearing	22.08.2024
Date of Pronouncement	29.08.2024

ORDER

PER SIDDHARTHA NAUTIYAL - JUDICIAL MEMBER:

This appeal has been filed by the Assessee against the order passed by the Ld. Commissioner of Income Tax (Appeals), (in short “Ld. CIT(A)”), National Faceless Appeal Centre (in short “NFAC”), Delhi vide order dated 30.11.2023 for Assessment Year 2017-18.

2. The Assessee has taken the following grounds of appeal:-

“1. On the facts and circumstances of the case, the order passed by the Ld. Commissioner of Income-Tax (Appeals), NFAC is bad in law and facts.

2. The Learned Commissioner of Income Tax (Appeals), N/FAC has erred in confirming addition of Rs. 4,05,091/- on account of late payment of Employees contribution towards PF & ESI ignoring the fact that assessee has paid the same before filing of return of income u/s 139(1) of the income Tax Act, 1961.

3. The Learned Commissioner of Income Tax (Appeals), NFAC has erred in confirming the addition of Rs. 48,75,427/- of unsecured loan received by the company and subsequently repaid as unexplained cash credit u/s 68 of the Income Tax Act, 1961.

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4. *The Learned Commissioner of Income Tax (Appeals), NFAC has erred in confirming disallowance of Depreciation and Amortization Expenses and Film Distribution Expenses on adhoc basis and making addition of Rs. 53,11,008/- on estimated basis at the rate of 5 percent of the expenses claimed.*

5. *The Learned Commissioner of Income Tax (Appeals), NFAC has erred in confirming the disallowance of 30 percent of-film distribution expense of Rs. 7,50,58,013/- on the grounds of non-deduction of TDS u/ s 40(a)(ia) in contrary to the judgment of ITAT (Ahmedabad) in case of the assessee itself.*

6. *For that, other grounds if any would be urged at the time of the hearing.”*

3. The brief facts of the case are that the assessee company filed its return of income on 31.10.2017, declaring a total income of ₹57,18,050/-. The assessee is engaged in the business of running a cinema hall. The case was selected for complete scrutiny, and a notice under Section 143(2) of the Income Tax Act, 1961, was issued on 21.09.2018. During the course of assessment proceedings, the Ld. Assessing Officer observed that the assessee made late payment of ₹4,05,091/- towards employee contributions for PF and ESI, which are covered under Section 36(1)(va) of the Act, resulting in the addition of ₹4,05,091 to the total income. Further, the Ld. Assessing Officer observed that the assessee received an unsecured loan of ₹48,75,427/- from M/s. Vanchhit Distributors Pvt. Ltd. The assessee failed to furnish the required details, including the lender's financial statements and proof of creditworthiness, as mandated under Section 68 of the Act. Consequently, the loan was treated as unexplained cash credit, leading to the addition of ₹48,75,427/- to the income of the assessee. The Ld. Assessing Officer observed that the assessee claimed expenses amounting to ₹10,62,20,155/-, excluding depreciation and film distribution expenses. However, the assessee failed to submit detailed information for verification despite several opportunities. As a result, 5% of the expenses, amounting to ₹53,11,008/- were disallowed and added back to the income of the assessee.

Finally, the Ld. Assessing Officer observed that the assessee claimed a sum of ₹7,50,58,013/- as film distribution expenses, which were found to be royalty payments requiring deduction of TDS under Section 194J of the Act. In line with earlier assessment orders, 30% of these expenses, amounting to ₹2,25,17,404/- were disallowed by the Assessing Officer due to the failure to deduct TDS on part of the assessee. The assessment was completed under Section 144 of the Act on ex-parte basis.

4. In appeal before Ld. CIT(Appeals), again none appeared on behalf of the assessee. Accordingly, Ld. CIT(Appeals) confirmed the additions made by the assessing officer in the hands of the assessee, with the following observations:

“6.1 As stated earlier the appellant, in spite of offering sufficient and reasonable opportunity of being heard by issue and service of notice u/s. 250 of the I. T. Act as detailed above, failed to comply with the requirement of any of these notices issued. It is noted from the assessment order that the appellant even failed to respond to any of the notices issued by the A.O. during the course of assessment proceedings and therefore the assessment was finalized ex-parte u/s. 144 of the I. T. Act.

6.2 It is a general principle of law that law is made to protect only diligent and vigilant people. Equity aids the vigilant and not the indolent. Law will not protect people who are not careful about their rights, duties and legal obligations. Moreover, there should be certainty in law and matters cannot be kept in suspense indefinitely. The in-action on part of appellant during the course of assessment as well as appellate proceedings could have been avoided by exercise of due care and attention by the appellant, which was not done.

6.3 Considering the above facts of the case and in law, since the appellant failed to provide details and documentary evidences in support of the statement of facts and grounds of appeal raised in the present appeal, I am of the considered view that the additions made by the A.O. in the impugned assessment order are justifiable. The same are therefore confirmed. Accordingly all the grounds of appeal raised by the appellant stand dismissed.

7. *In the result, the appeal filed by the appellant is **dismissed.**”*

5. The assessee is in appeal before us against the aforesaid order passed by Ld. CIT(Appeals) confirming the additions made by the assessing officer. Before us, the counsel for the assessee submitted an affidavit furnishing the reasons for delay of 14 days in filing of the present appeal and also given the reasons as to why the assessee could not cause appearance before the assessing officer and Ld. CIT(Appeals) during the course of hearing. Vide the aforesaid Affidavit, it was submitted that the company received a notice dated 21st September 2018 for scrutiny assessment, which was duly responded to by a letter dated 12th December 2018. Thereafter, several other notices were issued to the assessee (dated 21st June 2019, Notice dated 2nd November 2019, Notice dated 13th November 2019 and Notice dated 21st November 2019), all of which were duly complied with by the assessee. However, the assessee company was unable to submit a response to the final show cause notice dated 20th December 2019 as the accountant suddenly left the company without providing the essential details, including passwords and login credentials. Despite the company's efforts to regain access by changing the password and login details on the Income Tax portal, the assessment order dated 28th December 2019 was passed, resulting in addition of ₹3,31,08,930/-. Following this, the company filed an appeal before the Ld. CIT(Appeals) on 23rd January 2020. However, notices from CIT(A) were not responded to, which was an inadvertent oversight. During this period, the company's business operations were severely impacted due to losses incurred during the COVID-19 pandemic, which led to the practical closure of business activities. Upon reviewing the e-filing portal, the company realized that an

ex parte order had been passed by the CIT(A) on 30th November 2023. As a result, the appeal before the Hon'ble ITAT was filed late by 14 days.

6. In view of the above circumstances, it was submitted before us that non-appearance before the assessing officer and Ld. CIT(Appeals) were due to genuine and bona fide reasons beyond the control of the assessee. The counsel for the assessee submitted that the assessee has a good case on merits and if given an opportunity, the assessee was in a position to file all necessary details in support of its contentions. The counsel for the assessee further submitted that so far as the addition on account of non-deduction of TDS on film distribution expenses of ₹ 7,50,58,013/- under section 40(a)(ia) of the Act is concerned, this issue has already been decided in favour of the assessee by the Ahmedabad Tribunal in assessee's own case for assessment year 2013-14 and 2014-15 in ITA numbers 1808/AHD/2017 and 388/AHD/2018. The copy of the order passed by Ahmedabad Tribunal has also been produced before us for our records. On going through the contents of the order, we observe that the issue regarding non-deduction of TDS on film distribution expenses was held to be outside the scope of section 194J of the Act, and accordingly, relief was afforded to the assessee on this issue. Therefore, looking into the instant facts, the circumstances highlighted by the assessee for non-appearance before the assessing officer and Ld. CIT(Appeals) and also looking into the fact that the issue of non-deduction of TDS on film distribution expenses/rights has been decided by the Ahmedabad Tribunal in the assessee's own case in its favour for assessment years 2013-14 and 2014-15, in the interest of justice, the matter

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is being restored to the file of assessing officer for de novo consideration, after giving due opportunity of hearing to the assessee.

7. In the result, the appeal of the assessee is allowed for statistical purposes.

This Order pronounced in Open Court on 29/08/2024

Sd/-
(ANNAPURNA GUPTA)
ACCOUNTANT MEMBER

Ahmedabad; Dated 29/08/2024

TANMAY, Sr. PS

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आदेश की प्रतिलिपि अग्रहित/Copy of the Order forwarded to :

1. अपीलार्थी / The Appellant
2. प्रत्यर्थी / The Respondent.
3. संबंधित आयकर आयुक्त / Concerned CIT
4. आयकर आयुक्त(अपील) / The CIT(A)-
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, अहमदाबाद / DR, ITAT, Ahmedabad
6. गार्ड फाईल / Guard file.

आदेशानुसार/ BY ORDER,

उप/सहायक पंजीकार (Dy./Asstt.Registrar)
आयकर अपीलीय अधिकरण, अहमदाबाद / ITAT, Ahmedabad