

**IN THE INCOME TAX APPELLATE TRIBUNAL,
MUMBAI BENCH SMC", MUMBAI**

BEFORE SHRI NARENDER KUMAR CHOUDHRY, JUDICIAL MEMBER

**ITA Nos.4699, 4700, 4701 & 4702/M/2024
Assessment Years: 2012-13, 2013-14,
2014-15 & 2015-16**

M/s. Western India Cinematographers Association, 24, 2 nd Floor, Om Heera Panna Mall, Oshiwara, Andheri (W), Mumbai Maharashtra - 400 053 PAN: AAAAW0689G	Vs.	NFAC, Delhi, Income Tax Officer, Ward 25(1)(5), Bandra Kurla Complex, Bandra (East), Mumbai - 400051
(Appellant)		(Respondent)

Present for:

Assessee by : Sh. Govind Javeri, Ld. A.R.
Revenue by : Shri V.K. Chaturvedi, Sr. D.R

Date of Hearing : 11-12-2024
Date of Pronouncement : 11-12-2024

O R D E R

Per : Narender Kumar Choudhry, Judicial Member:

These appeals have been preferred by the Assessee against the orders even dated 20.06.2024, impugned herein, passed by the National Faceless Appeal Centre/Ld. Commissioner of Income Tax (Appeals) (in short Ld. Commissioner) under section 250 of the Income Tax Act, 1961 (in short 'the Act') for the A.Y. 2012-13, 2013-14, 2014-15 & 2015-16.

2. The issues involved in the appeals under consideration are exactly similar except variation in the amounts. Hence, for the sake of brevity the same were heard together and are being disposed of by this composite order by taking into consideration the facts and circumstances and issues involved in ITA No.4699/M/2024 as a lead case and result of the same would be applicable mutatis mutandis to all the appeals under consideration.

3. Coming to ITA No.4699/M/2024, it is observed that the case of the Assessee was reopened u/s 147 of the Act by recording the following reasons for reopening:

“ 2. During the assessment proceedings of the assessee for A.Y. 2016-17 it was seen that the assessee is a Registered Trade Union / Association formed by various cinematographers of the Film and Television serial Industry. It was noticed from the details filed by the assessee that the assessee has received income from Current Subscription Received, Advance Subscription of previous years transfer to this year, Subscription receivable, Sale of periodicals, books sales & Other charges received etc., other fees received from Members & Workshop Fee etc. and Interest on Investment Accrued & received and claimed the above receipts in the head income from other sources and claimed exemptions u/s 10(24) of the I.T. Act-1961 during the A.Y. 2016-17. The receipts other than Interest Income were held as 'Income from Business & Profession' by the assessing officer and added back to the total income of the assessee.

3. Further, it is noticed from the submission filed by the assessee for A.Y. 2016-17 that the assessee is registered under the Indian Trade Union Act, 1926 from 13.04.1955. The assessee has been regularly receiving Subscription fees, Admission fees etc. The receipts of the assessee during the year should have been considered under the head Income from Business & Profession and offered for the Taxation. However, the assessee has not filed return of income for the assessment year 2012-13 relevant to financial year 2011-12.

4. On verification of ITS and AIR of the assessee, it is seen that the assessee has made huge cash deposit in the bank accounts the details of which is as under:

SI.	Information	Information Type	No of	Amount (In Rs.)
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No.	Code		transaction	
1	AIR-001	Deposited Cash of Rs.1000000 or more in a Saving Bank A/C	127	24,89,400/-
Total				24,89,400/-

All the above said transactions definitely call for computation in accordance with the provisions of the Act and the legitimate taxes are required to be paid by the assessee."

4. Consequently, notice dated 30.01.2019 u/s 148 of the Act was issued to the Assessee, in response to which the Assessee filed its return of income manually. Subsequently, a notice u/s 142(1) of the Act dated 25.02.2019 was issued, in response to which the Assessee by filing a letter requested for grant of time. Thereafter, a notice u/s 142(1) of the Act was issued, whereby the Assessee was asked to furnish the further details. Again, vide notice dated 15.06.2019 u/s 142(1) of the Act, the Assessee was show caused *"as to why the commission claimed u/s 10(24) of the Act of Rs.21,15,877/- should not be added to the total income of the Assessee"*, however, the Assessee made no compliance. Therefore, the Assessing Officer (AO) disallowed the amount of Rs.21,15,877/- which was claimed by the Assessee as exempt u/s 10(24) of the Act and also made the addition of Rs.3,73,523/- (Rs.2589400/- – Rs. Rs.21,15,877/-) as undisclosed credit of the Assessee and added the same u/s 68 of the Act by observing and holding *"that even after providing ample opportunity neither the Assessee nor the Assessee's representative appeared or furnished any reply. On perusing the return of income furnished by the Assessee it is observed that during the assessment year under consideration the Assessee being a registered trade union/association formed by various screen writers of the film, television, serial industry has filed its return of income at total income of "Rs. Nil" as against the net surplus income of Rs.21,15,877/- and has availed exemption u/s 10(24) of the Act. The Assessee is covered only by section 10(24) of the Act and therefore partial exemption only"*.

5. The Assessee, being aggrieved, challenged the said additions before the Ld. Commissioner on various grounds as mentioned in para-no.3 of

the impugned order *inter-alia* that adequate opportunity to the Assessee to represent in the assessment proceedings by the AO, has not been given.

6. The Ld. Commissioner not only dismissed such ground, however, also dismissed all the grounds raised by the Assessee reiterating the fact as observed by the AO in the assessment order that the Assessee has not filed its original return of income u/s 139 of the Act, though being a trade union was bound to furnish the same u/s 139(4C) of the Act for the A.Y. under consideration and has failed to adhere to "sine quo non" of provisions of section 139(4C) of the Act. The Ld. Commissioner ultimately affirmed the aforesaid additions as made by the AO by dismissing the appeal of the Assessee.

7. The Assessee, being aggrieved, is in appeal before this Tribunal.

8. Having heard the parties and perused the material available on record, it appears from the orders passed by the authorities below that the Assessee has not filed relevant documents/evidence as well as submissions in order to substantiate its claim, which resulted into making the additions under consideration and affirmation thereof by the Ld. Commissioner. It is categorically recorded by the authorities below that the Assessee has not filed any return of income in original u/s 139 of the Act. However, Sh. Govind, the Ld. Counsel of the Assessee has claimed that the Assessee has already filed the original return of income u/s 139 of the Act but the authorities below have recorded the fact contrary. Further, the Assessee has also filed the relevant documents through erstwhile counsels and submitted that may be the erstwhile counsels were unable to demonstrate the case properly and in its right perspective and therefore for substantial justice, the Assessee may be given an opportunity to substantiate its claim by filing relevant documents and submissions before either of the authorities below.

On the contrary, the Ld. D.R. refuted the claim of the Assessee and supported the orders passed by the authorities below by contending that the authorities below have rightly passed the orders under the peculiar facts and circumstances of the case and specifically in the absence of relevant documents, which the Assessee has failed to file.

This Court has considered the aforesaid rival claims of the parties and the observations made and conclusion drawn by the authorities below. It is a fact, as it appears from the orders passed by the authorities below, that the Assessee has not filed proper explanation along with supporting documents in order to establish its claim and therefore in the constrained circumstances, the authorities below, specifically the Ld. Commissioner, could not decide the issues involved in the right perspective and in proper manner. Therefore, for the just decision of the case and substantial justice, this Court is of the considered view that the case is required to be decided afresh, suffice to say by affording reasonable opportunity to the Assessee to substantiate its claim. Thus, the case is accordingly remanded to the file of the Ld. Commissioner for decision afresh, however, subject to deposit of Rs.1100/- in the Revenue Department, under "other heads" within 30 days of this order and without claiming any disallowance/deduction on the said amount.

The Assessee is also directed to file the copy of the original return of income filed u/s 139 of the Act as claimed, along with supporting affidavit duly sworn, for filing of the said return, before the Ld. Commissioner, who would be at liberty to verify the claim of the Assessee qua filing of the original return of income. The Assessee would be at liberty to raise the grounds afresh as raised before the Ld. Commissioner in the original appellate proceedings, which were subjected to the impugned order.

Thus, the appeal i.e. **ITA No.4699/M/2024** stands allowed for statistical purposes in the aforesaid terms.

10. In the result, in view of decision in ITA No.4699/M/2024, all the appeals under consideration stand allowed in the same terms.

Order pronounced in the open court on 11.12.2024.

**Sd/-
(NARENDER KUMAR CHOUDHRY)
JUDICIAL MEMBER**

* Kishore, Sr. P.S.

Copy to: The Appellant
The Respondent
The CIT, Concerned, Mumbai
The DR Concerned Bench

//True Copy//

By Order

Dy/Asstt. Registrar, ITAT, Mumbai.