

आयकर अपीलीय अधिकरण, हैदराबाद पीठ
IN THE INCOME TAX APPELLATE TRIBUNAL
Hyderabad ' DB-B ' Bench, Hyderabad

Before Shri Vijay Pal Rao, Vice-President
A N D
Shri Madhusudan Sawdia, Accountant Member

आ.अपी.सं / **ITA No.541/Hyd/2024**
(निर्धारण वर्ष/Assessment Year: 2017-18)

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|---|------------------------|---|
| M/s. Ushakiron Movies (P) Ltd Ramoji Film City, Hyderabad PAN:AAACU2689L (Appellant) | Vs. | ACIT Circle 5 (1) Hyderabad (Respondent) |
| निर्धारिती द्वारा/Assessee by: | Advocate V. Siva Kumar | |
| राजस्व द्वारा/Revenue by:: | Dr. Sachin Kumar, DR | |
| सुनवाई की तारीख/Date of hearing: | 13/02/2025 | |
| घोषणा की तारीख/Pronouncement: | 07/05/2025 | |

आदेश/ORDER

Per Vijay Pal Rao, Vice President

This appeal filed by the assessee is directed against the order dated 27/03/2024 of the learned CIT (A)-NFAC Delhi, relating to A.Y.2017-18.

2. The assessee has raised the following grounds of appeal:

1. The order of the learned Commissioner of Income-tax (Appeals) is erroneous in law and on the facts of the case.
 2. The learned Commissioner of Income-tax (Appeals) erred in confirming the disallowance of Rs.1,80,43,615/- being the actual amount of advances due and written off (Rs.1,00,00,000/- towards principal amount and Rs.80,43,615/- towards interest).
 3. The learned Commissioner of Income-tax (Appeals) ought to have appreciated that the amounts advanced by the appellant to producers of movies were integral part of the appellant's business activity and the amount written off during the year under account constituted loss incurred during the course of business allowable u/s.28 of the Act.
 4. Any other ground of appeal that may be pleaded with the prior approval by the Hon'ble Tribunal during the course of appellate proceedings.
 5. The appellant craves leave to add to, amend or modify the above grounds of appeal either before or at the time of hearing of the appeal, if considered necessary.
3. The assessee has also filed a modified ground No.3 as well as an additional ground of appeal as alternate plea as under:

3. The learned Commissioner of Income-tax (Appeals) ought to have appreciated that the amounts advanced by the appellant to producers of movies were integral part of the appellant's business activity and the amount written off during the year under account constituted loss incurred during the course of business allowable u/s.28 or Sec.37 of the Act.

ADDITIONAL GROUNDS OF APPEAL.

1. Alternatively, the learned Commissioner of Income-tax, (Appeals) ought to have appreciated that the amounts advanced by the appellant to producers of movies were integral part of the appellant's business activity and the amount written off during the year under account constituted loss incurred which is eligible for deduction u/s.36 of the Act.

4. The assessee company is engaged in the business of establishing an integrated film city with all necessary infrastructure for film production. The assessee filed its return of income for the year under consideration on 30/10/2017 declaring total income of Rs.27,87,35,960/- and agricultural income of Rs.8,21,346/-. The case was selected for scrutiny under CASS. The Assessing Officer inter alia made an addition/disallowance of claim of deduction of the amount of loan written off to the tune of Rs.1,60,26,000/-. The assessee challenged the action before the learned CIT (A) and reiterated its claim that the amount written off is an allowable claim as the same was advanced to the producers of the film which is inextricably related to the business of the assessee. However, the learned CIT (A) has confirmed the addition made by the Assessing Officer on the ground that the assessee has not satisfied the conditions provided u/s 36(1)(vii) r.w.s. 36(2) of the I.T. Act, 1961.

5. Before the Tribunal, the learned AR of the assessee has submitted that the assessee has explained the reasons for writing off the bad debts amounting to Rs.1,60,26,000/- and

furnished the list of clients whose amounts have been written off and charged to the P&L Account for the financial year 2016-17. The learned AR has further submitted that the assessee is in the business of providing film production facilities and loans/advances were given to the producers of the film who are also availing the services of the assessee and therefore, the advances/loans were given by the assessee for the purpose of business of the assessee. He has referred to the memorandum of association of the assessee company and submitted that one of the main business of the assessee company is to arrange the finance for production, exhibition, distribution of movies, purchase of machinery, equipment etc. The advances were given to the film producers in the course of normal business activities of the assessee and therefore, the outstanding amounts were written off during the year is an allowable deduction u/s 28/37 of the I.T. Act, 1961 as business loss. The learned AR has pointed out that for the A.Y 2016-17, the Assessing Officer allowed the claim of written off of the advances and interest there upon amounting to Rs.94,87,067/- while passing the assessment order u/s 143(3) of the Act placed at page No.53 of the paper book. He has relied upon the following decisions:

- i) *Hon'ble Madras High Court in the case of Ashok Leyland Ltd vs. ACIT (2022) 141 taxmann.com 171 (Mad.)*
- ii) *ITAT Mumbai Special Bench in the case of Dy. CIT vs. Shreyas S. Morakhia (2010) 40 SOT 4232 (Mum SB)*
- iii) *Hon'ble High Court of Bombay in the case of CIT vs. Shreyas S. Morakhia (2012) 19 taxmann.com 64 (Bom.)*

iv) *Bangalore Bench of the Tribunal in the case of Pranava Electronics (P) Ltd vs. Dy. CIT (2022) 40 Taxmann.com 9 (Bang.Trib.)*

6. On the other hand, the learned DR has submitted that the Assessing Officer has rightly disallowed the claim of the assessee when the conditions provided u/s 36(2)(i) are not satisfied. No deduction on account of bad debts written off shall be allowed unless such debts have been taken into account while computing the total income of any previous year. In the present case, the assessee is not in the business of finance and therefore, such advances cannot be allowed as deduction when becomes bad. He has relied upon the orders of the authorities below.

7. We have considered the rival contentions as well as the relevant material available on record. The assessee has given the loan of Rs.1.00 crore to M/s. Raja Rajeswari Pictures for production of the film vide loan agreement dated 1/4/2013. The assessee also offered credit up to Rs.30 lakhs for various services provided by the assessee to the borrowers. Though the assessee is in the business of providing infrastructure facilities for film production, however, there is no direct relation between the assessee's business activities and loan given by the assessee for production of feature films. The Assessing Officer has denied the claim of the assessee by giving findings in para 7 and 7.1 as under:

7. As far as allowability of this expenditure is concerned, perusal of the details reveal that the expenditure are specifically covered u/s 36(2)(i) of the Income Tax Act, 1961. As per the provisions of section 36(2)(i), no deduction towards written off debts shall be allowed unless the said debts has been taken into account in computing the income of any previous year. The assessee has given advance to film production in the F.Y. 2011-12 & 2013-14, for the production of the film, but it could not be released due to their financiers and party. Thus, in the process of recovery process after filing court case against them the amount was not recovered as the parties were virtually bankrupt. Therefore, assessee has debited an amount towards advance written off in the profit & loss account in the year under consideration.

7.1 In view of the above facts assessee is not eligible to claim the above amount as deduction (written off) since the same was never been credited to P&L Account. Advances write off is never been a part of income & not routed through Profit & Loss Account. Hence, its not a allowable expenditure & cannot be written off. Further, the assessee is also not in the business of lending money and hence second proviso is also not applicable in the assessee's case and as such, the claim of assessee is rejected. The amount of Rs. 1,60,26,000/- is accordingly, disallowed and added back in the income of assessee u/s 36 of the Income Tax Act, 1961.

[Addition: Rs. 1,60,26,000/-]

Computation of Assessed income:

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|--|----------------------------------|
| 1. Income Returned | : Rs. 27,87,35,960 |
| 2. Add: Advance written off | : Rs. 1,60,26,000 |
| 3. Add: Expenses related penal in nature | : Rs. 52,197 |
| | <u>: Rs. 29,48,14,157</u> |

Income assessed u/s 143(3) of the Act, computation sheet along with Demand notice u/s 156. Penalty proceedings u/s 270A of the Act for under reporting of income separately initiated.

8. Thus, the Assessing Officer has given the reasons for disallowing the claim of the assessee as the conditions provided u/s 36(2) are not satisfied being the advances were not taken into account as income of the assessee in the previous year.

9. In appeal, the learned CIT (A) has confirmed the disallowances made by the Assessing Officer while giving a similar reasoning in para No.6.4 to 6.10 as under:

6.4 This written submission is contrary to the submissions made before the AO. Before the AO, the appellant claimed the entire sum as Bad Debts written off as this sum was due for more than three years. In the written submission filed during the course of appeal, it is stated that this amount includes Principal amount of Rs.1,00,00,000/- and Interest portion of Rs.60,26,000/-. In order to get further details, the appellant was asked to submit confirmation letter from each Debtor that whether they offered the sum in their return of income as a profit u/s 41(1) of the IT Act. Further, the appellant was asked to substantiate under which provisions of the IT Act, they have claimed Advance written off as a deduction.

6.5 The appellant filed the following submission:

Submissions prayed before the Commissioner of Income Tax (Appeals)
National Faceless Appeal Centre, Delhi

Further to our earlier submissions and in response to the present notice cited above, we pray the following for your kind perusal ad consideration:

1. Party wise Ledger accounts of each advance:

1.1 M/s AA Arts B-18, Road No.10, Film Nagar Jubilee Hyderabad PAN:AGWPK8115C. The advance represents only interest charged to them.

Copy of Ledger account for the period 1st April 2011 to 31st March 2017 showing Interest charged Rs.18,00,000/- per year for the financial years 2013-14 and 2014-15, aggregating to Rs.36,00,000/-, offered to income in the relevant years, which is written off in the financial year 2016-17 (asst year 2017-18) as irrecoverable and there is no chance of recovery absolutely despite obtaining decree.

1.2 M/s Raja Rajeswari Pictures Plot# 71 & 72 Pragathi Nagar Colony, Yusufguda, Hyderabad PAN: AANCS7920D.

Copy of Ledger account for the period 1st April 2013 to 31st March 2017 showing (1) Amount of Advance given is Rs.1,00,00,000/- in the financial year 2013-14 and (2) Interest charged thereon for the financial years 2013-14 and 2014-15 amounting to Rs.44,43,615/- offered to income in the relevant years which in aggregate is Rs.144,43,615. As the party went into deep financial crisis without any means or resources and the recovery is completely remote. Hence the entire amount Rs.144,43,615 is written off in the books in the financial year 2016-17 as irrecoverable.

2. Copies of letters requesting confirmation, along with Ledger accounts showing zero balance to their account in our Books of account after write off, could not be delivered since the parties, M/s AA Arts and M/s Raja Rajeswari pictures **have completely abandoned their business** after production of their feature films were discontinued. Their whereabouts are not traceable and hence the confirmations could not be delivered to them at the address as per our records and our efforts to deliver the confirmation letters did not materialize in the above two cases. Copies of their accounts in our financial ledger duly showing write off are enclosed for your kind perusal.
3. Permanent Account Number (PAN) of the parties is furnished below:
 - 3.1 AA Arts: PAN: AGWPK8115C
 - 3.2 Raja Rajeswari Pictures: PAN: AANCS7920D

Present Address of the parties is not available as explained above.

4. (i) It is prayed that the Interest amount of Rs.36,00,000/- charged to the producer M/s AA Arts and Rs.44,43,615/- to M/s Raja Rajeswari pictures has already been offered as income in the relevant years as stated herein above. As the income offered already could not be recovered from the parties, the entire amount is written off and charged to profit and loss account as bad debts written off as permitted under Section 36 / Section 37 since the entire amount was written off as irrecoverable.

(ii) It is also prayed that the advance of Rs.1,00,00,000/- given to M/s Raja Rajeswari Pictures in the financial year 2013-14 was written off as irrecoverable in the financial year 2016-17, is to be allowed as under section 28 as "business loss" since the amount was extended as advance during the course of business for production of feature film which unfortunately did not get released as the produced expired.

6.6 It is noticed that the appellant company submitting contradictory replies before the AO and before CIT(A), which are listed as under:

1. The appellant debited a sum of Rs.1,60,25,816/- as **Advance written off** into the P&L account. It is not a Bad Debt written off.
2. Before the AO, the appellant claimed that entire sum of Rs.1,60,25,816/- was due as receivable from various parties **who have utilized the facilities available for film production**. The company had raised the bills and offered the same as business income in the respective assessment years. As the debt / receivable could not be collected for more than three years, it was written off during the AY 2017-18 and claimed as Bad Debt written off.
3. However, during the course of appeal proceedings, the appellant filed altogether a new claim stating that Rs.1,00,00,000/- was Advance and Rs.60,26,000/- as Interest on the Advance.
4. If so, only the Interest on Advance receivable from the Debtor can be claimed as Bad Debt written off and Advance written off cannot be debited to P&L account as it was a capital expenditure.
5. The appellant is relying upon multiple Sections i.e. Sec.36, 37 and 28 of the IT Act in support of their claim against these facts recorded above.
6. In order to get further clarity, the appellant was asked to get confirmation from those Debtors, whether they offered the sum u/s 41(1) of the IT Act, if any. The appellant replied that they were not traceable and hence, they could not get any confirmation.
7. After debiting entire sum of Rs.1,60,25,816/- as Bad Debts written off, the appellant claimed that Rs.1,00,00,000/- was Advance given and that amount is allowable as Business Loss u/s 28 of the IT Act. However, this reply is also against the facts on record. Attention is drawn to the written submission filed by the appellant reproduced above.
8. As per the written submission, the appellant company is engaged in the business of providing necessary infrastructure facilities for pre & post film production of feature films and in tourism and marketing for group company units. They are not engaged in the business of money lending to claim any deduction of Advance write off. It is for this reason, the AO rightly disallowed this amount debited wrongly into the P&L account.

6.7 In order to claim any Bad Debt write off, the appellant has to fulfill the provisions of Section 36(1)(vii) r.w.s. 36(2) of the IT Act. Prima-facie, such Bad Debt, if any, should have been taken into computation of Total Income in any of the previous assessment years. In the present case, the amount debited to P&L account was **Advances written off**.

6.8 In this connection, the decision of the Hon'ble Madras High Court in the case of **Ashok Leyland Ltd. Vs. ACIT [2022] 141 taxmann.com 171** is directly applicable wherein it is held that Advances written off cannot be claimed as business loss u/s 28 of the IT Act. Hon'ble High Court held that Advance given was a capital expenditure and the Advance written off was a capital loss.

6.9 Hence, this claim of Advance written off debited to P&L account is not allowable either u/s 36 or 37 or 28 of the IT Act. When the AO disallowed the sum, the appellant claimed that Rs.1,60,25,816/- includes Advance of Rs.1,00,00,000/- and Interest of Rs.60,25,816/-. The appellant tried to claim this sum as Business Loss u/s 28 of the IT Act against the facts on record. The appellant also failed to get any confirmation from the parties from whom the Interest was receivable. On account of such contradictory submissions, the entire sum of Rs.1,60,25,817/- debited to P&L account as Advance written off disallowed by the AO is **upheld**.

6.10 In view of the above, Ground Nos.2, 3, 4 & 5 are **dismissed**.

10. Thus, the learned CIT (A) has given the reasons for upholding the disallowances that the assessee has taken contradictory stand for claiming the deduction on account of bad debts written off and further the conditions provided u/s 36(1)(vii) r.w.s. 36(2) of the I.T. Act, 1961 are not satisfied for claiming the deduction on account of bad debts written off. The learned AR referred to the assessment order for the A.Y 2016-17 and submitted that the Assessing Officer while passing the scrutiny assessment order dated 17/12/2018 has accepted the claim of the assessee on account of bad debts written off. We find that the Assessing Officer for the A.Y 2016-17 has passed the assessment order as under:



GOVERNMENT OF INDIA
MINISTRY OF FINANCE
INCOME TAX DEPARTMENT
OFFICE OF THE ASSISTANT COMMISSIONER OF INCOME TAX
CIRCLE 16(2),HYDERABAD

(58)

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| To, USHAKIRON MOVIES PRIVATE LIMITED RAMOJI FILM CITY ANAJPUR, RAMOJI FILM CITY HAYATHNAGAR MANDAL RANGA REDDY DISTRICT 501512, Telangana India | |
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|--------------------|----------------|--|----------------------|
| PAN: AAACU2689L | AY: 2016-17 | Order No: ITBA/AST/S/143(3)/2018-19/1014355883(1) | Dated: 17/12/2018 |
|--------------------|----------------|--|----------------------|

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|--|--|
| Name of the assessee | USHAKIRON MOVIES PRIVATE LIMITED |
| Address of the assessee | RAMOJI FILM CITY ANAJPUR, RAMOJI FILM CITY HAYATHNAGAR MANDAL, RANGA REDDY DISTRICT 501512, Telangana, India |
| Status | COMPANY |
| Range/Circle/Ward | CIRCLE 16(2),HYDERABAD |
| Resident/Resident but not Ordinary resident/ Non-resident | Resident |
| Date of Hearing | 31/08/2018, 31/08/2018, 18/09/2018, 08/10/2018, 09/10/2018, 19/11/2018 |
| Section/Sub-section under which assessment is made | 143(3) |
| Date of Order | 17/12/2018 |

ASSESSMENT ORDER

The assessee-company has filed its return of income for the assessment year 2016-17 on 14.10.2016 admitting income at Rs. 12,63,89,230/-. Later the assessee-company filed its revised income of return on 29.03.2018 admitting income of Rs. 12,63,89,230/-.

2. Thereafter, the case was selected for scrutiny under CASS. Accordingly, a notice u/s. 143(2), dt 11.08.2018 was issued to the assessee-company. Subsequently notices u/s.142 (1) were issued from time to time to submit the information called for.

3. In response to the notices so issued u/s 143(2) and 142(1), the assessee-company furnished the information / details as called for electronically. After going through the information/ documents furnished, the assessment is completed by accepting the income returned.

(59)

MOHAN BABU MOGILI
CIRCLE 16(2),HYDERABAD

Copy to:

Assessee

MOHAN BABU MOGILI
CIRCLE 16(2),HYDERABAD

11. Thus, it is manifest that the Assessing Officer has not discussed any issue but the order is passed summarily accepting the returned income as declared in the revised return of income filed by the assessee. Therefore, this order would not help the case of the assessee on the issue of disallowance of claim of bad debts written off. The assessee has relied upon various judgments in support of the claim and there is no quarrel that if the advances are given by the assessee in the normal course of business of the assessee and then the non-recovery of those advances leading to written off on the part of the assessee would be an allowable claim because the said loss is directly related to the business of the assessee and the interest, if any, on the amounts advances are offered to tax as business income of the assessee in the preceding years. Therefore, to apply the analogy that the advances are given under the normal course of business of the assessee or as a commercial expediency, then the writing off of such advances on becoming bad is an allowable claim. The assessee has not filed any record to show that the interest income has been offered to tax by the assessee as business income in the preceding years so as to consider the transaction of the loan and advances as directly connected with the business activities of the assessee. Accordingly, in the facts and circumstances of the case, we are of the considered opinion that the matter requires a proper verification and examination of the relevant facts regarding the nature of the loan given by the assessee as well as the interest, if any, offered by the assessee to tax as business income of the assessee. Hence, the matter is remanded to the record of the

Assessing Officer for fresh adjudication after examination of the relevant record to be produced by the assessee in support of the claim that the loan and advances given by the assessee are in the normal course of the business of the assessee, the Assessing Officer shall decide the issue as per law.

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

Order pronounced in the Open Court on 07th May, 2025.

Sd/-

Sd/-

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| (MADHUSUDAN SAWDIA) ACCOUNTANT MEMBER | (VIJAY PAL RAO) VICE-PRESIDENT |
|--|---|

Hyderabad, dated 07th May, 2025

Vinodan/sps

Copy to:

| S.No | Addresses |
|------|--|
| 1 | Ushakiron Movies (P) Ltd, SP2 Building, Ramoji Film City, Abdullapurmet, Hyderabad, Telangana 505512 |
| 2 | ACIT, Circle 5(1) 2 nd Floor, B Block, I.T. Towers, AC Guards, Masab Tank, Hyderabad 500004 |
| 3 | Pr. CIT - Hyderabad |
| 4 | DR, ITAT Hyderabad Benches |
| 5 | Guard File |

By Order