IN THE INCOME TAX APPELLATE TRIBUNAL
CAMP AT SURAT

Before: Shri Rajpal Yadav, Judicial Member
And Shri Amarjit Singh, Accountant Member

ITA No. 180/Ahd/2015
Assessment Year 2006-07

The ACIT, Circle-2(1)(1), Room No. 223, Aayakar Bhavan, Majura Gate, Surat-395001 (Appellant)	Vs	Valentine Cine Vision Ltd., Dumas Road, Piplod, Surat-395007 PAN: AAACV3889R (Respondent)

Revenue by: **Mr. Shiva Sewak , Sr. D.R.**
Assessee by: **Mr. Mehul Shah , A.R.**

Date of hearing : 09-03-2017
Date of pronouncement : 23-03-2017

आदेश/ORDER

PER : AMARJIT SINGH, ACCOUNTANT MEMBER:-

This Revenueôs appeal for A.Y. 2006-07, arises from order of the CIT(A)-II, Surat dated 11-11-2014 in appeal no. CAS-II/49/2014-15, in proceedings under section 143(3) r.w.s. 147 of the Income Tax Act, 1961; in short ñthe Actò

2. The Revenue has raised substantive following grounds:-

> *"1. On the facts and circumstances of the case and in Law, the Ld. CIT(A) has erred in deleting the disallowance made by the AO on account of deduction of Rs.1,14,00,000/- claimed by the assessee towards Entertainment Tax.*
>
> *2. On the facts and circumstances of the case and in law, the Ld. CIT(A) has erred in holding that the payment towards Entertainment tax is eligible to deduction u/s. 43B irrespective of year in which liability was raised, despite the fact that Sec. 43B is applicable only when payment is otherwise allowable under the Act which can be only after it is an ascertained liability."*

3. In this case, the return of income declaring income of Rs. 82,48,402/- was filed on 31st December, 2006. The assessment was finalized u/s. 143(3) of the act on 30th December, 2008. Subsequently, the case was reopened u/s. 147 of the act by issuing notice u/s. 148 of the act on 28th March, 2008. The assessee company was engaged in multiplex theatre with three screens along with restaurants, gaming zone etc. The assessing officer said on verification of the asset side of the balance sheet of the assessee company, it was noticed that the company had shown an amount of Rs. 1.14 crores under the head ñloans and advances entertainment tax (in escrow amount)ò He further stated that during the year under consideration the assessee company had filed this deduction directly in the computation of total income without routing the same through the P & L account. It was further noticed that this amount was not actually credited to the government account and the amount was remained under the escrow a/c in the balance sheet therefore this case was reopened u/s. 147 of the act. During the course of re-

assessment proceedings, the assessee was asked to explain that why Rs. 1.14 crores should not be added to the income of the company on the ground that same was not actually credited to the govt. account which was remained under the escrow account in the balance sheet of the assessee. In this connection, the assessee has furnished its reply which is reproduced as under:-

> *"At the outset, we would like to mention that your contention that 'the said amount was not actually credited to Government account' is wrong and factually incorrect. We have submitted the copy of receipt / certificate from Mamlatdar (Tahsildar) towards receipt of Entertainment Tax of Rs.1,14,00,000/- by them. You have chosen to ignore the document issued by the Local Authority.*
> *Further your contention that 'Company has availed the deduction directly in the computation of total income without routing the same to the Profit & Loss Account and hence deduction can not be allowed', is also legally and technically wrong. The provisions of section 43B clearly says* ***"any sum payable by the assessee by way of tax, duty, cess or fee, by whatever name called, under any law for the time being in force shall be allowed (irrespective of the previous year in which liability of pay such sum was incurred by the assessee according to the method of accounting regularly employed by him) only in computing the income referred to it in section 28 of that previous year in which such sum to route through Profit & Loss Account or otherwise.***
> *In view of the above, we strongly contend that the there is no reason for above sum of Rs.1,14,00,000/- to be added in the income of the company. We are in total disagreement with your views on the matter for the reasons explained above.*
>
> *Here, we also bring to your notice that Order dtd. 19.02.2014 passed by yourself disposing off our objections for reopening of case u/s. 147 & issue of notice u/s. 148 of the Act is also bad in law as you have contradicted yourself in reasons recorded by in para 3.1(i) & (ii). On one hand you are saying liability should be crystallized and in next para, you are saying liability is there but should be discharged Whereas, there is nothing of this in the provisions of section. Further, again here also, you have conveniently mentioned that judgement cited by us is in agreement with view of department. Whereas, it*

> *clearly lays down the principle that deduction is to be allowed on payment basis irrespective of method accounting followed by the assessee.*
>
> *Hence, we totally deny that Rs.1,14,00,000/- should be added in the income of the company and also request to stop coercive and unwarranted practice leading to litigation.*

The assessing officer has stated that reply of the assessee company was not found forceful and convincing therefore he made addition of Rs. 1.14 crore to the total income of the assessee on the ground that same was not routed though P & L a/c and same was shown as a liability in escrow a/c. Aggrieved against the order of the assessing officer, the assessee preferred appeal before the Ld. CIT(A). The ld. CIT(A) has allowed the appeal of the assesseee by observing as under:-

> *"6. The only issue involved in this case is, a disallowance to the extent of Rs.1,14,00,000/- being payment of Entertainment Tax claimed by the appellant (in the computation of income) on payment basis, in view of provision to section 43 B of the I T Act, denied by the assessing officer, on the ground that it has not been routed through P & L account.*
>
> *6.1 The appellant - company has a multiplex in Surat. There has been a dispute regarding payment of Entertainment Tax between the Multiplexes and the Government of Gujarat. The State Government had fixed a time frame within which multiplexes had to start their operations. Exemption from the Entertainment Tax was granted to such multiplexes which became operational within the time frame fixed by the Statement Government. The appellant - company alongwith other multiplex owners, who did not meet the said time frame, litigated the matter against the State Government claiming exemption from the Entertainment Tax:*

6.2 On the other hand, the State Government levied the Entertainment Tax on such multiplexes at 100% of the ticket value i.e. if the multiplex sold the ticket/s for Rs. 100/- the State Government held that they were expected to collect Rs 100/-as Entertainment Tax on a hundred rupee ticket.

6.3 When the matter travelled to the Hon 'ble High Court, the Court held that only 50 % of the ticket value (Rs 50) for a hundred rupee ticket, would be payable as Entertainment Tax. Pending final decision, the Hon'ble High Court issued interim order directing the appellant - company and other Multiplexes to pay the outstanding Entertainment Tax computed as above in installments. Following the Order of the High Court, the appellant - company made the said payment as under :-

Sr. No.	*Asstt Year*	*Amount paid by the appellant company*
1	*2006-07*	*Rs 1.14 crores*
2	*2009-10*	*Rs. 1.715 crores*
3	*2010-11*	*Rs 2 crores*
	Total	*Rs 4.855 crores*

6.4 In the books of accounts of the appellant - company, the aforesaid amount was continuing as ' advance " till assessment year 2009-10. However, in the computation of income, deductions to the extent of Rs. 1.14 crores (in asstt year 2006-07) and a deduction of Rs 1.715 crores (in Asstt Year 2009-10) were claimed on payment basis,, in view of provision of section 43B of the Income Tax Act.

6.5 During the assessment year 2010-11, this amount was transferred from the advance to P& L account by the appellant and the total payment to the extent of Rs.4.855 crores was debited. Out of this', a sum of Rs. 2 crores pertained to assessment year 2010-11, which was paid by the appellant -company in assessment year 2010-11. The remaining amount of Rs. 2.855 crores was paid during

the assessment years 2006-07 (under appeal) and 2009-10 as above.

6.6 In the computation of income, however, the appellant reduced a sum of Rs 1.715 crores only, on the ground that it was claimed in assessment year 2009-10. The sum of Rs 1.14 crores which was claimed in assessment year 2006-07 was not reduced by the appellant, which the appellant - company claimed to be a technical mistake.

*6.7 During the appellate proceedings and also before the assessing officer, the appellant filed a receipt of Rs 1. 14 crores pertaining to asstt year 2006-07 towards the Entertainment Tax. The auditors of the appellant - company have also clarified that this payment was through oversight mentioned as **'Escrow account** " in the balance sheet even though no such Escrow account was opened or maintained and the Order of the Hon'ble High Court also did not direct operating an Escrow account.*

6.8 The appellant - company in the background of these facts, claimed that a sum of Rs. 1. 14 crores claimed as deduction in assessment year 2006-07 should be allowed in view of the provisions of section 43 AB of the Act. The appellant further stated that the appellants [x]s failure to reduce this amount (supra) in assessment year 2010 -11 was only a technical mistake and therefore, this amount may be added in assessment year 2010-11 .

*6.9 The facts of the case and the arguments of the appellant - company have been examined. It is true that appellant disputed the liability to pay the Entertainment Tax and that is why the appellant showed the said payment as **advance** " in the balance sheet and did not route it through the Profit & Loss a/c. However, in the computation of income, it was claimed on payment basis in view of provisions of section 43B of the Income Tax Act. The said deductions on payment basis has apparently been allowed in the assessment year 2009-10 as there was no scrutiny assessment in that particular year.*

6.10 The final order of the Hon'ble High Court Was passed on 26.06.2009 (i.e. in assessment year 2010-1 T). However, the matter has been taken to the Supreme Court. The interim order passed by the Gujarat High Court was dated 13.11.2005. i.e. it falls in assessment year 2006-07 and the payments in assessment years

2006-07, 2009-10, and 2010-11 have been made in pursuance of order of the Hon 'ble High Court. The receipt issued by the State Government also indicates that the payment has been made towards the liability of Entertainment Tax.

6.11 Section 43B of the Income Tax Act provides that the deduction for payment of tax is to be allowed in the computation of income in the assessment year in which, the amount is actually paid by the assessee notwithstanding the year in which, the liability arises.

612 In view of the clear provision of the Income Tax Act (supra), the appellant is allowed the deduction to the extent of Rs. 1.14 crores claimed in asstt year 2006-07 on payment basis. Since this amount has not been added by the assessee in the computation of income for assessment year 2010-11, the assessing officer should withdraw the excess deduction allowed in assessment year 2010-11."

4. During the course of appellate proceedings before us, ld. departmental representative supported the order of the assessing officer. On the other hand, ld. counsel relied on the order of the ld. CIT(A) and furnished paper book containing judicial pronouncements, letter regarding payment of entertainment tax filed with Mamlatdar, certificate issued by Mamlatdar, evidences of payment of entertainment tax, acknowledgement of return of income along with computation of return and audited financial statement.

5. We have heard both the sides and perused the material on record. we noticed that the claim of the assessee regarding payment of Entertainment Tax of Rs.1,14,00,000/- was rejected by the assessing officer on the ground that it had not been routed through P & L account. We further noticed that in the books of accounts of the

assessee the aforesaid amount was continuing as ' advance " till assessment year 2009-10 because of pending litigation in the High Court on payment of entertainment tax to the state government. We find that in the computation of income, deductions to the extent of Rs. 1.14 crores (in Asst.Year 2006-07) and a deduction of Rs 1.715 crores (in Asstt. Year 2009-10) were claimed by the assessee on payment basis in view of provision of section 43B of the Income Tax Act. In this connection, we observed that because of clear provision of section 43B of the act the assessee was allowed the deduction to the extent of Rs. 1.14 crore claimed in asstt. year 2006-07 on payment basis. We further observed that this amount remained to be added by the assessee in the computation of income for assessment year 2010-11, for which the assessing officer has been directed by the Ld.CIT(A) to withdraw the excess deduction allowed in assessment year 2010-11. Looking to the above facts and circumstances, we do not find any reason to interfere in the findings of the Ld.CIT(A) .

6. In the result, the appeal of the revenue is dismissed.

Order pronounced in the open court on 23-03-2017

Sd/-	**Sd/-**
(RAJPAL YADAV)	**(AMARJIT SINGH)**
JUDICIAL MEMBER	**ACCOUNTANT MEMBER**

Ahmedabad : Dated 23/03/2017

आदेश क□□□त□ल□प **अ**े**षत** / Copy of Order Forwarded to:-

1. Assessee
2. Revenue
3. Concerned CIT
4. CIT (A)
5. DR, ITAT, Ahmedabad
6. Guard file.

By order/आदेश से,

उप/सहायक पंजीकार

आयकर अपील□य अ□धकरण,

अहमदाबाद