



TC (A) No. 1976 of 2008

IN THE HIGH COURT OF JUDICATURE AT MADRAS

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DATED : 19.01.2022

CORAM :

THE HONOURABLE MR. JUSTICE R. MAHADEVAN
and
THE HONOURABLE MR. JUSTICE MOHAMMED SHAFFIQ

Tax Case (Appeal) No. 1976 of 2008

M/s. Pyramid Films International
7, West Road
West CIT Nagar
Chennai - 600 035

.. Appellant

Versus

The Deputy Commissioner of Income Tax
City Circle V (Inv.)
121, Nungambakkam High Road
Chennai - 600 034

.. Respondent

Appeal filed under Section 260-A of The Income Tax Act, 1961 against the Order dated 15th July 2008 passed in I.T. (SS) A.No.52/MDS/02 and IT (SS) A.No.96/MDS/04 on the file of the Income Tax Appellate Tribunal, Chennai 'B' Bench.

For Appellant : Mrs. S. Sriranjani
for Mr. N. Muthukumar

For Respondent : Mr. Swaminathan, Senior Standing Counsel
assisted by Mrs.V.Pushpa,
Junior Standing Counsel



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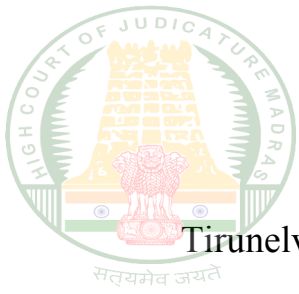
JUDGMENT

R. Mahadevan, J.

This appeal is filed by the appellant/assessee questioning the legality and validity of the order dated 15th July 2018 passed by the Income Tax Appellate Tribunal, Chennai "B" Bench, relating to the block assessment period 01.04.1987 to 17.03.1997.

2. The factual background of the case, which prompted the appellant to file this appeal, are necessary for deciding the issue involved herein and are set out hereunder:

2.1 The appellant is a partnership firm consisting of one V. Natarajan and Ghanshyam Hemdev, as partners and engaged in the production of feature films. During the course of such business, they entered into an agreement dated 10.03.1995 with M/s.Nirmala Arts, represented by its Proprietrix Nirmala Raju for grant of Telugu dubbing and distribution, exhibition and exploitation rights of the Tamil movie titled "Love Birds" produced by the appellant, for a total consideration of Rs.60,01,000/-. Subsequently, on 25.11.1995, the appellant assigned the rights of the said movie to M/s.GV Films Limited for a total sum of Rs.35,00,000/- in respect of Salem and Dharmapuri areas and for a total consideration of Rs.15,00,000/- in respect of



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Tirunelveli and Kanyakumari areas, on royalty minimum guarantee basis.

WEB COPY 2.2 While so, on 17.03.1997, a search was conducted as contemplated under Section 132 of The Income Tax Act, 1961 (in short, 'the Act'), in the business and residential premises of the said V. Natarajan. During the course of the same, several incriminating materials including books of account of the assessee firm were recovered. Sworn statements under section 132(4) were also recorded from the said V.Natarajan and his brothers. On the basis of search report, proceedings under Section 158BC read with Section 158BD were initiated against the assessee firm and they were called upon to file their return for the block period in question. In response, the assessee filed their return in Form 2B on 17.05.1998 indicating income as 'Nil'.

2.3 Thereafter, the assessment was finalised, based on the sworn statement of the said Natarajan, one of the partners of the assessee, recorded on 09.04.1997 under Section 131 of the Act. According to his statement, all the areas were sold and the consideration for the same were received, in terms of the agreements entered into between the parties. However, it was noticed that in the agreement dated 25.11.1995, the consideration agreed upon by the assessee was Rs.35 lakhs, whereas, in the books of account for the year 1995-96 (seized material - S22), they mentioned as if they received only Rs.25 lakhs. During enquiry, the assessee stated that Rs.10 lakhs was waived



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as the cheque given for the same at the time of release of the movie, was not

honoured and further action was not taken, as the picture had failed; and that, a

confirmation letter dated 22.11.1999 received from M/s.GV Films was also

filed to that effect. Therefore, the assessee stated that the sum of Rs.10 lakhs

should not be treated as a concealed income and it does not warrant initiation

of the proceedings under Sections 158BC read with Section 158BD of the Act.

2.4 The assessing officer did not accept the explanation offered by the appellant and noticed from the seized material (S22) during the course of search that the amount of Rs.35 lakhs was received by the appellant/ assessee on various dates between 23.08.1995 and 11.01.1996 and duly credited to the ledger account, even prior to the release of the said film on 15.01.1996. Hence, the assessing officer brushed aside the plea of the assessee that the film did not hit the box office and it resulted in reduction of the amount received from the agreement holder, by concluding that if the film hit the box office, as per the agreement, further amount over and above the one indicated in the agreement would have been received; on the other hand, if the film did not fare well or the collection was poor, even then, the assignee has an obligation under the agreement to pay the minimum guarantee amount; and therefore, the question of alleged waiver of the amount cannot be accepted. The assessee also pleaded that if at all the differential amount of Rs.10 lakhs was taken as the accrual



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income from the film, the same should atleast be allowed to be written off as a bad debt. However, the Assessing Officer held that when the assessee did not take any legal steps, such as initiation of arbitration proceedings etc., for recovery of the so-called waiver amount, the question of treating it as bad debt would not arise. Accordingly, the Assessing Officer treated the said sum of Rs.10 lakhs each for Salem and Tirunelveli and Kanyakumari areas, as unaccounted items of receipt and therefore, added to the undisclosed income under section 158BB(1) for the assessment year 1996-1997. On the same reasoning, the Assessing officer added the unaccounted income of Rs.14,25,000/- representing the differential amount in respect of the agreement dated 10.03.1995 entered into between the appellant and M/s.Nirmala Arts.

2.5 During the course of the same assessment proceedings, based on the statement of the said Natarajan, the Assessing Officer found that the assessee said to have incurred the expenditure for the production of the film "*Ettupatti Raasa*" to the tune of Rs.72,90,000/- and it was debited to the account of the firm "Kasturi Manga Creations". The Assessing Officer thus, concluded that the breakup details of the expenses incurred to the tune of Rs.72,90,000/- received by Kasthoori Manga Creations had not been furnished. Further, as on the date of search namely 17.03.1997, the expenses incurred by M/s. Kasturi Manga Creations had not been recorded in the books



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of accounts of the assessee. Above all, the expenses said to have incurred through M/s. Kasturi Manga Creations had not been entered into the books and documents before the date of search and therefore, the Assessing Officer disallowed the alleged expenditure said to have been incurred by the Assessee through M/s. Kasturi Manga Creations and added the amount of Rs.72,90,000/- as well under Section 158BB(1) of the Act. In effect, the Assessing Officer disallowed the claim of the assessee and determined the total undisclosed income at Rs.107,15,000/-, vide assessment order dated 29.09.2000.

2.6 Aggrieved by the order of assessment, the assessee filed an appeal before the Commissioner of Income Tax (Appeals) VI, Chennai in I.T.A. No. 362/2002/02 VI. Before the Appellate Authority, it was contended by the appellant that during the relevant block assessment year, the appellant firm produced and released a film by name "*Ettupatti Raasa*" and an amount of Rs.72,90,000/- has been debited under the head "Kasturi Manga Creations". In order to ascertain the correctness of the said submission, the Appellate Authority sought for a report from the Assessing Officer as to whether M/s.Kasturi Manga Creations had recorded the receipt of Rs.72.90 lakhs from the appellant, in their books. Accordingly, a report dated 10.12.2001 was submitted by the Assessing Officer stating that M/s. Kasturi Manga Creations



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has shown the receipt of Rs.72.90 lakhs received from the appellant during the

assessment year 1996-1997. In the light of the same, the Commissioner of Income Tax (Appeals), partly allowed the appeal by deleting the addition of Rs.72.90 lakhs, treating it as business expenditure. As against this portion of the order passed by the Appellate Authority, the Assessing Officer did not prefer any appeal and it has reached a finality.

2.7 As far as the waiver of a portion of consideration for distribution of the film "Love Birds", it was contended by the appellant-assessee before the Commissioner of Income Tax (Appeals) that although there were written agreements for assignment, the full amount mentioned thereof was not received as the film did not click at the box office and therefore, they received only Rs.30 lakhs from M/s.GV Films as against Rs.50 lakhs and therefore, they waived Rs.20 lakhs. Similarly, M/s. Nirmala Arts paid only Rs.45,76,000/- as against the agreed amount of Rs.60,01,000/- and hence, there was a waiver of Rs.14,25,000/-. However, the Appellate authority refused to accept the plea of waiver on the ground that the payments agreed to be made to the appellant / assessee were on minimum guarantee basis, which has nothing to do with the film becoming a hit or flop in the box office. Therefore, the appellate authority agreed with the findings of the Assessing Officer that there was a failure on the part of the appellant-assessee in not



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making any attempt to recover the balance amount by initiating appropriate

legal proceedings and ultimately, concluded that the Assessing Officer was

right in bringing to tax the entire amount covered in the agreements entered into between the parties. Accordingly, it was held by the Appellate authority that the addition of Rs.34.25 lakhs was proper.

2.8 Being dissatisfied with the order so passed by the Commissioner of Income Tax (Appeals), the appellant / assessee preferred further appeal before the Income Tax Appellate Tribunal, Chennai 'A' Bench by contending that the Appellate Authority ought to have allowed the appeal in entirety by deleting the addition of Rs.34.25 lakhs determined by the Assessing Officer. It was the main contention on the side of the appellant before the Tribunal that the amounts, which were not received from the assignees, were treated by the assessee as bad debts, but the Appellate Authority refused to believe the same. The appellant/ assessee further contended that a debt turned to bad debt consequent to dishonour of cheques and reversal of entries in the books of accounts are sufficient enough to allow the deduction. When the appellant decided to waive the amounts and treat the unreceived amounts as bad debts, they cannot be expected to initiate arbitration or other proceedings for recovery of the same. Therefore, the appellant prayed the Tribunal to allow the appeal and set aside the order passed by the Appellate Authority, confirming



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the order of the Assessing Officer.

WEB COPY 2.9 The Tribunal, by order dated 09.06.2003 dismissed the appeal by holding that the appellant, as assignor, entered into three agreements with third parties as assignees, for conferring distribution rights of the film "Love Birds". When the agreed amounts were not received by the appellant / assessee, then they ought to have entered into a revised agreement, once the film did not do well in the box office. The Tribunal further held that there was nothing on record to show that the third parties approached the appellant for waiver. In the absence of any evidence to show that the amounts were waived or the assignees sought for waiver, the plea of the appellant / assessee could not be accepted. Accordingly, the Tribunal rejected the appeal of the assessee and thereby confirmed the order of the Appellate Authority.

2.10 Assailing the order of the Tribunal, dated 09.06.2003, the appellant filed T.C.(A) No. 47 of 2004 before this Court. By order dated 17.07.2007, this Court disposed of the appeal and remanded the matter back to the Tribunal for fresh consideration. The relevant portion of the said order reads as follows:-

"..... In the present case, part of the amounts derived from the agreements were shown for regular assessment, and in respect of the balance amounts not received as per the agreements, it was not shown and offered for assessment. Later, the block assessment was made in consequence of the search and while marking the block assessment, the Assessing



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Officer noticed that the balance amount of Rs.34.25 lakhs was not offered for tax and hence he was of the view that it was an undisclosed income for the block period. No details were available on the record in respect of the same. The Tribunal which is the highest fact finding authority ought to have considered the same as to how the impugned amount could be considered as undisclosed income under Chapter XIVB of the Act, or not. Unfortunately, we lack the precious finding on the crucial factor related to answering the above questions of law. Without the precious finding, it is very difficult for this Court to determine the issue.

6. In view of the foregoing reasons, in the interest of justice, we set aside the order of the Tribunal, with a direction to rehear the matter and consider the scope of Chapter XIVB as well as the impact of the regular assessment made by the Assessing Officer in the assessee's own case for the assessment year 1996-1997, for the purpose of determining as to whether the said impugned amount would come under undisclosed income as contemplated under Chapter XIVB of the Act, or not, and pass orders in accordance with law, after giving opportunity to the assessee."

2.11 Pursuant to the order of remand passed by this Court, mentioned supra, the Tribunal passed the order dated 15.07.2008 rejecting the appeal filed by the assessee, however, set aside the order passed by the Appellate Authority insofar as it relates to imposition of penalty and remanded the matter back to the Assessing Officer with a direction to re-consider and decide the question of penalty afresh after giving due notice to the assessee. Challenging the said order of the Tribunal insofar as it relates to confirmation of the order of the Appellate Authority relating to addition of undisclosed income of



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Rs.34,25,000/-, the present tax case appeal is filed by the assessee.

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3. By order dated 27.01.2009, this appeal was admitted on the following substantial question of law:

"Whether on the facts and circumstances of the case the Income Tax Appellate Tribunal is right in law in confirming the addition of Rs.34,25,000/- as undisclosed income, assessable under Section 158 BC of the Income Tax Act, 1961?"

4. The learned counsel appearing for the appellant/assessee would contend that the order of the Tribunal, confirming the findings of the Appellate Authority as well as the Assessing Officer, in refusing to accept the plea of waiver raised by the appellant, is improper. The learned counsel drew the attention of this Court to the letter dated 24.11.1999 sent by M/s.Nirmala Arts wherein, it was specifically stated that out of the total consideration of Rs.60,01,000/- covered in the agreement entered into with the appellant, they paid only Rs.45,76,000/- leaving an outstanding of Rs.14,25,000/- and therefore, M/s.Nirmala Arts requested the appellant to write off the balance amount of Rs.14,25,000/- by referring to the failure of the film in the box office. Similarly, a reference was made to the letter dated 25.09.2000 written by the Chairman and Managing Director of M/s.GV Films Limited stating that as per the mutual agreement between them and the appellant, they did not pay



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the balance sum of Rs.10,00,000/- out of originally agreed sum of Rs.15,00,000/- due to poor performance of the film in the box office. Thus, according to the learned counsel, the Tribunal, as also the appellate Authority and the Assessing Officer, have failed to consider the letters issued by the assignees confirming the waiver of the amounts.

5. The learned counsel for the appellant also submitted that the question of any addition to the block assessment would arise only if there are materials seized during the search pointing out the failure of the assessee to disclose certain income. In other words, to attract Section 158BC of the Act, it must be shown that there is a direct nexus emanated from the documents seized during the search and the undisclosed income said to have been suppressed by the assessee. In the absence of any material seized during the search, invocation of Section 158BC of the Act is improper and unsustainable in law. On the other hand, the Tribunal erred in concurring with the findings of the Appellate Authority as also the original authority, without regard to the parameters laid down under Chapter XIVB as to what constitute the 'undisclosed income'. Therefore, the learned counsel prayed for setting aside the order of the Tribunal, confirming the addition of Rs.34,25,000/- as undisclosed income.



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WEB COPY6. Per contra, the learned Senior Standing Counsel appearing for the respondent would contend that the undisclosed income determined by the Assessing Officer is based on the materials seized during the course of search. The addition determined by the Assessing Officer has a direct nexus to the documents seized and therefore, it cannot be said to be perverse. This was appreciated by the Tribunal in Para No.12 of the order, which is impugned in this appeal. In this context, the learned counsel relied on the decision of the Honourable Supreme Court in the case of **Assistant Commissioner of Income Tax, Chennai vs. A.R. Enterprises** reported in **(2013) 350 ITR 489**. In that case, a search was conducted in the premises of another concern in which the books of accounts of the assessee were seized. After such search, the assessee filed its return beyond the period of due date viz., after initiation of block assessment proceedings. The Assessee also contended that they have paid Advance Tax in three instalments and therefore, it cannot be said that the income had not been disclosed or there was no intention to disclose the income. The Assessing Officer refused to accept the return and determined the undisclosed income of the assessee. On appeal, the Honourable Supreme Court upheld the order of the Assessing Officer by observing that even though advance taxes were paid, when the assessee did not file their return of income



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on the due date, the Assessing Officer was correct in assuming that the assessee would not have disclosed its total income. In the present case also, there was no return filed by the assessee and on the basis of the incriminating materials seized during search, the undisclosed income was determined. The Tribunal has elaborately dealt with the contentions of the appellant with respect to waiver and rightly rejected the assessee's appeal. The learned counsel therefore prayed for dismissal of this appeal.

7. We have heard the learned counsel appearing for both sides and also perused the materials placed before us.

8. It is an admitted fact that on 17.03.1997, a search was conducted by the officials attached to the Income Tax Department in the residence as well as business premises of one of the partners of the appellant / assessee. During the course of such search, certain incriminating materials were recovered and those documents clinchingly establish that the appellant evaded to disclose the lawful income earned during the course of their business. Consequently, proceedings under section 158 BC r/w section 158 BD were initiated and notice was issued to the appellant calling upon them to submit their response as to why the undisclosed income for the block period namely 01.04.1987 to



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17.03.1997 should not be assessed. In response, the assessee submitted a Nil return for the block period. Thereafter, the Assessing Officer proceeded to determine the undisclosed income at Rs.1,07,15,000/-. On appeal, the Commissioner of Income Tax (Appeals) set aside the additions to the extent of Rs.72,90,000/- and upheld the addition to the tune of Rs.34,25,000/-. As against the order passed by the Appellate Authority setting aside the addition of Rs.72,90,000/-, the Assessing Officer has not filed any appeal and it has become final.

9. In this appeal, the only question remains to be answered is as to whether the plea of waiver raised by the appellant with respect to the amount of Rs.34,25,000/- is justified or it has to be added by treating it as undisclosed income, as contemplated under Section 158 BC of the Income Tax Act, 1961. In this context, it is necessary to look into the relevant provisions of the Act and they are as follows:-

"Computation of undisclosed income of the block period.

158 BB. (1) The undisclosed income of the block period shall be the aggregate of the total income of the previous years falling within the block period computed in accordance with the provisions of this Act, on the basis of evidence found as a result of search or requisition of books of account or other documents and such other materials or information as are available with the Assessing Officer and relatable to such



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evidence, as reduced by the aggregate of the total income, or as the case may be, as increased by the aggregate of the losses of such previous years, determined:-

(a) where assessments under Section 143 or 144 or Section 147 have been concluded, prior to the date of commencement of the search or the date of requisition, on the basis of such assessments;

(b) where returns of income have been filed under section 139 or in response to a notice under sub-section (1) of section 142 or section 148 but assessments have not been made till the date of search or requisition, on the basis of the income disclosed in such returns;

(c) where the due date for filing a return of income has expired, but no return of income has been filed,----

(A) on the basis of entries as recorded in the books of accounts and other documents maintained in the normal course on or before the date of the search or requisition where such entries result in computation of loss for any previous year falling in the block period; or

(B) on the basis of entries as recorded in the books of account and other documents maintained in the normal course on or before the date of the search or requisition where such income does not exceed the maximum amount not chargeable to tax for any previous year falling in the block period;

(ca) where the due date for filing a return of income has expired, but no return of income has been filed, as nil, in cases not falling under clause (c);

(d) where the previous year has not ended or the date of filing the return of income under sub-section (1) of section 139 has not expired, on the basis of entries relating to such income or transaction as recorded in the books of account and other documents maintained in the normal course on or before the date of the search or requisition relating to such previous years;

(e) where any order of settlement has been made under sub-section (4) of section 245D, on the basis of such order;

(f) where an assessment of undisclosed income had been made earlier under clause (c) of section 158BC, on the basis of such assessments



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(2) In computing the undisclosed income of the block period, the provisions of sections 68, 69, 69A, 69B and 69C shall, so far as may be, apply and references to 'financial year' in those sections shall be construed as references to the relevant previous year falling in the block period including the previous year ending with the date of search or of the requisition

(3) The burden of proving to the satisfaction of the Assessing Officer that any undisclosed income had already been disclosed in any return of income filed by the assessee before the commencement of search or of the requisition, as the case may be, shall be on the assessee.

(4) For the purpose of assessment under this Chapter, losses, brought forward from the previous year under Chapter VI or unabsorbed depreciation under sub-section (2) of section 32 shall not be set off against the undisclosed income determined in the block assessment under this Chapter, but may be carried forward for being set off in the regular assessments.

Procedure for block assessment.

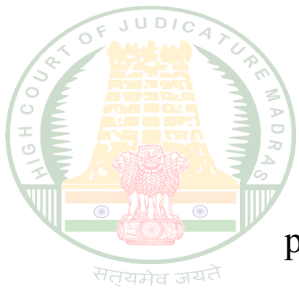
158BC. Where any search has been conducted under Section 132 or books of account, other documents or assets are requisitioned under section 132A, in the case of any person, then,----

(a) the Assessing officer shall----

(i) in respect of search initiated or books of accounts or other documents or any assets requisitioned after the 30th day of June, 1995, but before the 1st day of January, 1997, serve a notice to such person requiring him to furnish within such time not being less than fifteen days,

(ii) in respect of search initiated or books of account or other documents or any assets requisitioned on or after the 1st day of January, 1997, serve a notice to such person requiring him to furnish within such time not being less than fifteen days but not more than forty-five days,

as may be specified in the notice a return in the prescribed form and verified in the same manner as a return under clause (i) of sub-section (1) of section 142, setting forth his total income including the undisclosed income for the block



period;

Provided that no notice under section 148 is required to be issued for the purpose of proceeding under this Chapter;

Provided further that a person who has furnished a return under this clause shall not be entitled to file a revised return;

(b) the Assessing Officer shall proceed to determine the undisclosed income of the block period in the manner laid down in section 158BB and the provisions of section 142, sub-sections (2) and (3) of section 143 (section 144 and section 145) shall, so far as may be, apply;

(c) the Assessing Officer, on determination of the undisclosed income of the block period in accordance with this chapter, shall pass an order of assessment and determine the tax payable by him on the basis of such assessment

(d) the assets seized under section 132 or requisitioned under section 132A shall be dealt with in accordance with the provisions of section 132B.

Undisclosed income of any other person.

158BD. Where the Assessing Officer is satisfied that any undisclosed income belongs to any person, other than the person with respect to whom search was made under section 132 or whose books of account or other documents or any assets were requisitioned under section 132A, then the books of account, other documents or assets seized or requisitioned shall be handed over to the Assessing Officer having jurisdiction over such person and that Assessing Officer shall proceed (under section 158BC) against such other person and the provisions of this Chapter shall apply accordingly.

Levy of interest and penalty in certain cases.

158BFA. (1) Where the return of total income including undisclosed income for the block period, in respect of search initiated under section 132 or books of account, other documents or any assets requisitioned under section 132A on or after 1st day of January, 1997, as required by a notice under



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clause (a) of section 158BC is furnished after the expiry of the period specified in such notice, or is not furnished, the assessee shall be liable to pay simple interest at the rate of one per cent of the tax on undisclosed income, determined under clause (c) of section 158BC, for every month or part of a month comprised in the period commencing on the day immediately following the expiry of the time specified in the notice, and----

(a) where the return is furnished after the expiry of the time aforesaid, ending on the date of furnishing the return; or

(b) where no return has been furnished, on the date of completion of assessment under clause (c) of section 158BC

(2) The Assessing Officer or the Commissioner (Appeals) in the course of any proceedings under this Chapter, may direct that a person shall pay by way of penalty a sum which shall not be less than the amount of tax leviable, but which shall not exceed three times the amount of tax so leviable in respect of the undisclosed income determined by the Assessing Officer under clause (c) of section 158BC

Provided that no order imposing penalty shall be made in respect of a person, if--

(i) such person has furnished a return under clause (a) of section 158BC

(ii) the tax payable on the basis of such return has been paid or, if the assets seized consist of money, the assessee offers the money so seized to be adjusted against the tax payable;

(iii) evidence of tax paid is furnished along with the return; and

(iv) an appeal is not filed against the assessment of that part of income which is shown in the return;

Provided further that the provisions of the proceeding proviso shall not apply where the undisclosed income determined by the Assessing Officer is in excess of the income shown in the return and in such cases the penalty shall be imposed on that portion of undisclosed income determined, which is in excess of the amount of undisclosed income shown in the return



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(3) No order imposing a penalty under sub-section (2) shall be made--

(a) unless an assessee has been given a reasonable opportunity of being heard;

(b) by the Assistant Commissioner or Deputy Commissioner or the Assistant Director or Deputy Director as the case may be, where the amount of penalty exceeds twenty thousand rupees except with the previous approval of the Joint Commissioner or the Joint Director, as the case may be

(c) in a case where the assessment is the subject-matter of an appeal to the Commissioner (Appeals) under section 246 or section 246A or an appeal to the Appellate Tribunal under section 253, after the expiry of the financial year in which the proceedings, in the course of which action for the imposition of penalty has been initiated, are completed or six months from the end of the month in which the order of the Commissioner (Appeals) or, as the case may be, the Appellate Tribunal is received by the Principal Chief Commissioner or Chief Commissioner or the Principal Commissioner or Commissioner, whichever period expires later;

(d) in a case where the assessment is the subject-matter of revision under section 263, after the expiry of six months from the end of the month in which such order of revision is passed;

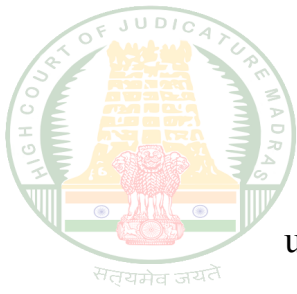
(e) in any case other than those mentioned in clauses (c) and (d), after the expiry of the financial year in which the proceedings, in the course of which action for the imposition of penalty has been initiated, are completed, or six months from the end of the month in which action for imposition of penalty is initiated, whichever period expires later;

(f) in respect of search initiated under section 132 or books of account, other documents or any assets requisitioned under section 132A, after the 30th day of June, 1995 but before the 1st day of January, 1997.

Explanation.-- In computing the period of limitation for the purpose of this section,--

(i) the time taken in giving an opportunity to the assessee to be reheard under the proviso to section 129;

(ii) the period during which the immunity granted



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under section 245H remained in force; and

(iii) the period during which the proceedings under sub-section (2) are stayed by an order or injunction of any court shall be excluded

(4) An income tax authority on making an order under sub-section (2) imposing a penalty, unless he is himself an Assessing Officer, shall forthwith send a copy of such order to the Assessing Officer."

10. It is the main contention on the side of the appellant / assessee that pursuant to the three agreements entered into with the film distributors/assignees, the appellant received only a portion of the amounts mentioned in the agreements and not the entire amounts, the details of which are mentioned below:-

Name of the purchaser	Area	Agreed amount (Rs.)	Paid Amount (Rs.)
M/s.G.V.Films	Salem	35 lakhs	25 lakhs
M/s.G.V.Films	Tirunelveli & Kanyakumari	15 lakhs	5 lakhs
M/s.Nirmala Arts	Telegu rights	60,01,000	45,76,000

The agreement holders did not pay the entire amount to the appellant, as the film did not fare well in the box office. Hence, the appellant did not insist for payment of the balance amount and they waived the same. This reasoning of the appellant / assessee was not supported by any material evidence, but was contrary to the documents seized during the course of search and hence, the



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same was not accepted by the Assessing Officer, Appellate Authority as well

as the Tribunal. Placing reliance on the documents seized during the search,

the Tribunal categorically rendered its findings at paragraphs 12 and 13 of the

order impugned herein, which read as follows:-

"12. Before adverting to the legal aspect and other details, it is apt to discuss various details considered in assessment proceeding. In this case, Shri. Natarajan in his sworn statement dated 09.04.1997 recorded under Section 131 during post search enquiries stated that all the areas were sold as per the written agreement entered into with the parties and the consideration for the areas assigned were received as mentioned in the agreement such as on signing of agreement during the course of production and at the time of release (answer to qn.no.7). He has also deposed that the consideration did not include the print cost. As per assessing officer, the letter of arrangement dated 25.11.1995 entered into by the assessee with G.V. Films in respect of distribution of the picture Love Birds in Salem area, the consideration agreed upon was Rs.35,00,000/- (seized material No. ANN/GSG/B&D/S1). As per the general ledger for F.Yr.95-96 (seized material No. ANN/GSD/B&D/S22) at page No.9 account of G.V. Films for Salem area, Rs.25 lakhs is shown as total consideration received for this area. Shri. Natarajan was examined under Section 131 on 30.09.1997 and asked to explain why only Rs.25 lakhs were account for in his books. He stated that G.V. Films had given a cheque for Rs.10 lakhs at the time of release of the film and that this was not honoured and further steps were not taken by him as the picture failed. During the course of assessment proceedings, the assessee stated that the above balance amount of Rs.10 lakhs was waived and he filed a copy of the confirmation letter dated 22.11.199 received from M/s. GV Films certifying that due to very poor collection they were unable to pay the balance amount of Rs.10 lakhs. The representative stated that the above sum of Rs.10 lakhs should not be treated as concealed income as the assessee did not receive the above



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money.

13. The contention of the assessee was not accepted in view of his earlier deposition that all the areas were sold as per agreement and the consideration was also received as per the agreement. The letter arrangement dated 25.11.1995 makes it clear the agreement was on minimum guarantee basis for a consideration of Rs.35 lakhs. Shri. Natarajan himself had explained the nature and scope of the distribution agreement entered on minimum guarantee basis vide his sworn statement dated 29.05.1997, saying that the minimum guarantee basis implies that once the film hits at the box office, further receipts would be collected from the distributors (called over flow receipts) and in case the film fails at the box office, the amount fixed as the minimum guarantee will become the outright sale price and there will not be any scope for further receipts (answer to question no.5). As per ledger account of G.V. Films at page 9 of the seized material S22 that the amount of Rs.35,00,000/- has actually been received by means of cheque, DD and pay order on various dates between 23.08.1995 and 11.01.1996 and duly credited to the ledger account. So, all these payments have been received prior to the release of the film "Love Birds" i.e., 15.01.1996. There is an entry in the ledger account without date and with the narration of cheque cancel Rs.5,00,000/-. The page no. of the day book/journal in which this entry would have been originally passed had not been indicated in the said book. Likewise, there is another debt with the date 13.01.1996 of Rs.5 lakhs to this Account."

11. Therefore, it is evident that on the basis of the statement made by the one of the partners of the assessee viz., Natarajan and the entries made in the documents seized during the search, the Assessing Officer has determined the undisclosed income of the assessee at Rs.34,25,000/-. In other words, the undisclosed amount determined by the Assessing Officer has a direct nexus



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with the incriminating materials seized during the search. We also agree with

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the findings of the Tribunal that the three agreements that had been entered into by the assessee with the distributors clearly indicate that the same have nothing to do with the flop of the film at the box office or otherwise. We have also noticed that clause 4 of the agreement between the appellant / assessee and the assignee provides a default clause that in case of default in payment, the appellant is at liberty to proceed against the defaulter. Whereas, it was stated before the lower authorities that the appellant did not proceed to recover the balance amount and that, they waived the same. The Tribunal, on examination of the ledger account pertaining to G.V. Films, which was seized during the search, has concluded that the amount of Rs.35,00,000/- were received by the assessee on various dates between 23.08.1995 and 11.01.1996 and the same were duly accounted. In view of the same, the Tribunal has come to a definite conclusion that the appellant already received the entire amount from the distributors much before the release of the film and therefore the question of waiver would not arise. Such a factual finding arrived at by the Tribunal, based on the material evidence, cannot be found fault with, in the opinion of this court.



WEB COPY12. In the decision in **A.R.Enterprises case**, referred to above on the

side of the respondent, it was held by the supreme court as follows:

“39.Thus, for the purposes of computation of undisclosed income under Chapter XIVB, an assessee can rebut the Assessing Officer's finding of undisclosed income by showing that such income was disclosed in the return of income filed by him before the commencement of search or the requisition. In other words, when section 158BB(3) is read with section 158B(b), which defines undisclosed income, we reach the conclusion that for income to be considered as disclosed income, the same should have been disclosed in the return filed by the assessee before the search or requisition. In our opinion, on failure to file return of income by the due date under section 139 of the Act, payment of advance tax *per se* cannot indicate the intention of an assessee to disclose his income.”

13. Applying the aforesaid observation of the supreme court to the facts of the present case, wherein the assessee filed their returns only after the conduct of inspection by the Enforcement wing officials and the materials seized disclosed the unaccounted income of Rs.34.25 lakhs and the appellant did not pinpoint anything by supportive material to rebut the same, we find no reason to differ with the finding so rendered by the Tribunal. The judgment of the Andhra Pradesh High Court rendered in **Srinivasa Ferro Alloys Ltd v. Assistant Commissioner of Income -Tax, [2014] 368 ITR 424**, relied on the side of the appellant, is factually distinguishable and not applicable to the facts



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of the present case. Therefore, we answer the substantial question of law raised

WEB COPY herein, against the appellant/assessee.

14. Resultantly, the Tax Case (Appeal) fails and it is dismissed. No costs.

(R.M.D., J.) (M.S.Q., J.)

19.01.2022

Index : Yes/No

Internet : Yes/No

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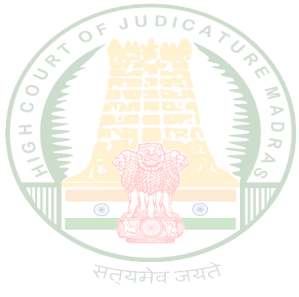
1.The Income Tax Appellate Tribunal, Chennai 'B' Bench

2.The Deputy Commissioner of Income Tax

City Circle V (Inv.)

121, Nungambakkam High Road

Chennai - 600 034



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