आयकर अपीलीय अधिकरण "J" न्यायपीठ मुंबई में।

IN THE INCOME TAX APPELLATE TRIBUNAL "J" BENCH, MUMBAI

श्री पी.एम. जगताप, लेखा सदस्य एवं श्री संजय गर्ग, न्यायिक सदस्य के समक्ष ।
BEFORE SHRI P.M. JAGTAP, AM AND SHRI SANJAY GARG, JM

आयकर अपील सं./I.T.A. No.7580/Mum/2011
(**निर्धारण वर्ष /** Assessment Year : 2008-2009

Mr. Jackie Shroff, 101 First Floor, Ritu Apartments, Bandstand Road, Bandra (West), Mumbai – 400 050.	**बनाम**/ Vs.	I.T.O.- 11(1)(2), Aayakar Bhavan, M.K. Marg, Mumbai.20
स्थायी लेखा सं./PAN : AAJPS6596A		
(अपीलार्थी /**Appellant**)	..	(प्रत्यर्थी / **Respondent**)

आयकर अपील सं./I.T.A. No.8057/Mum/2011
(**निर्धारण वर्ष /** Assessment Year : 2008-2009

I.T.O.- 11(1)(2), Aayakar Bhavan, M.K. Marg, Mumbai.20	**बनाम**/ Vs.	Mr. Jackie Shroff, 101 First Floor, Ritu Apartments, Bandstand Road, Bandra (West), Mumbai – 400 050.
स्थायी लेखा सं./PAN : AAJPS6596A		
(अपीलार्थी /**Appellant**)	..	(प्रत्यर्थी / **Respondent**)

Assessee by	Shri Pankaj Jain
Revenue by :	Shri S.D. Srivastava

सुनवाई की तारीख /**Date of Hearing : 31-12-13**
घोषणा की तारीख /**Date of Pronouncement : 07-02-14**

आदेश / ORDER

PER P.M. JAGTAP, A.M. :
पी.एम. जगताप, लेखा सदस्य

These two appeals, one by the assessee being ITA No. 7580/Mum/2011 and the other by the Revenue being ITA No. 8057/Mum/2011, are cross appeals which are directed against the order of ld. CIT(A) –3, Mumbai dated 09-09-2011.

2. First, we shall take up the appeal of the Revenue being ITA No. 8057/Mum/2011which involves a solitary issue relating to the deletion by the ld. CIT(A) of the addition of Rs. 53,86,566/- made by the A.O. on account of advance received by the assessee and credited in the books of account.

3. The assessee in the present case is a film actor who filed his return of income on 26-9-2008 declaring total income of Rs. 11,31,443/-. In the P&L account filed along with the said return, a sum of Rs. 96,17,000/- was credited on account of professional fees. However, the amount of Rs. 53,86,566/- received by the assessee from film producers as advance, which was reflected in the balance sheet, had not been included in the said professional fees. Since the assessee was following cash system of accounting, he was called upon by the A.O. to explain why the advance amount received from the film producers for his performance as an actor in their films should not be treated as his income for the year under consideration. In reply, it was submitted on behalf of the assessee that the amount of Rs. 53,86,566/- received from the film producers was in the nature of advance and the same was to be adjusted against the contracted amount of professional fees only on the completion and release of the corresponding films as per the practice consistently followed. It was pointed out that even tax deducted at source from the said amount was not claimed by the assessee during the year under consideration and credit for the same was claimed only in the relevant year wherein the corresponding amount was offered to tax on completion and release of the film. It was contended that if the practice consistently followed by the assessee is not accepted and advance amount of Rs. 53,86,566/- is brought to tax in the hands of the assessee on receipt basis, the receipts of Rs. 96,17,000/- offered by the assessee on the basis of completion and release of films will have to be reduced as the said amount was not received

by the assessee in the year under consideration but the same was received in the earlier year. The A.O. did not find merit in this submission made by the assessee and for the reasons given in page 3 of his assessment order, he made the addition of Rs. 53,86,566/- to the total income of the assessee on account of advance received from the producers treating the same as income of the assessee for the year under consideration.

4. The addition of Rs. 53,86,566/- made by the A.O. on account of advance received from the producers was challenged by the assessee in an appeal filed before the ld. CIT(A) and besides reiterating the submissions made before the A.O., it was brought to the notice of the ld. CIT(A) by the assessee that the practice followed by him of declaring the professional fees received from the producers on the basis of completion and release of film was consistently accepted in the earlier years. It was also submitted that if the addition made by the A.O. on this issue was to be sustained, the relief may be given to the assessee in later years when the same amount was offered as income on the basis of completion/release of the film. The ld. CIT(A) found merit in the submissions made on behalf of the assessee and deleted the addition made by the A.O. on this issue by observing as under:-

> "I have considered the facts and perused the material on record. I find that the appellant has been consistently following cash system of Accounting for his professional receipts. This system of accounting has also been accepted by the CIT (A) in there appellate order from AY 96-97 to AY 04-05. However, for AY 05-06, the basic method of accounting of receipt on cash basis has been accepted. However, the addition which were contested on the basis of without prejudice ground were came to be confirmed. The AR argued that observation of the CIT (A)for AY 06-07 are factually incorrect a the order passed by the CIT (A) f or AY 05-06 has actually accepted the method of accounting followed by the appellant if that be the case the CIT (A) should have confirmed the addition of Rs. 1,34,40,137 being the amount actually received during the year and not the amount of Rs. 56,58,062 which are the amount which were taxed by the AO during the year and the amount which were also offered by the assessee during the year. Therefore, the appellate order for AY 06-07 cannot be made the basis to hold that the method of accounting adopted by the assessee which has been consistently followed by him and also accepted in appeal. It is seen that

> the appellant has been offering income on film completion basis. The change in method of accounting at this stage would only disturb the method being followed and the appellant would be given set off the advances so faxed in succeeding assessment years for which income is shown on the film completion method for which return of income for AY 09-10 and 10-11 is stated to have already filed. Considering these facts and the respectfully following the CIT (A) orders for earlier years from AY 96-97 10 AY 04-05 and in accounting principle also accepted during AY 05-06, The addition of Rs. 53,85,566 is therefore deleted. This ground of appeal is therefore allowed."

5. We have heard the arguments of both the sides and also perused the relevant material available on record. It is observed that a similar issue had come up for consideration in assessee's own case before the Tribunal for A.Y. 2005-06 and vide its order dated 29-8-2012 passed in ITA No. 6457 & 6468/Mum/2008, the Tribunal decided the same vide para No. 8 as under:-

> "8. We have considered the arguments of both the counsels and also perused the orders of lower authorities and the Paper Book submitted by the assessee. We find that for the year under consideration, the assessee has offered income for the year which includes an amount of Rs. 28,48,000/- out of opening advances to which an amount of Rs. 53,52,000/- has been added out of current year's advance totaling to Rs. 82,00,000/-. The total advances received during the year under consideration are at Rs. 1,10,10,062/-. We do not agree with the submission of the counsel that similar practice has been accepted in the past by the department as in our considered view the provisions of sec 145 of the Act have been amended w.e.f 01.04.1997 where in it has been provided that for the purposes of computing the income under the head ' profits & gains of business or profession' the assessee can follow either cash system or mercantile system of accounting thereby prohibiting the hybrid system of accounting, which the assessee was following in earlier years. The CIT[A] while giving relief to the assessee in earlier years has failed to consider the amendment brought under section 145 of the Act . We cannot follow the decisions of the revenue authorities which are inconsistent with the provisions of sec. 145 of the Act. In our considerate view, the method of computing the income by the assessee, is faulty. It is the case of the assessee that the advances are taken as income in the year of the release of the Films which in itself is a faulty practice as the release of the films are not in the hands of the assessee as it is the sole prerogative of the producers of the films, where as the assessee is enjoying the fruits of the advances from the day he gets them. In the film line, producers sign actors and pay for their services as per their Box Office reputation, therefore any payment received by the Actor is according to his USP at the Box Office which is determined at the time of the signing of the agreements. We find that during the year under consideration the assessee has received Rs.1,10,10,062.00 out of which he has already offered Rs.53,52,000.00 in the computation of income . The counsel pointed

> out that the assessee has also offered Rs 27,58,062.00 in A.Y 2006-07 and Rs.2,50,000.00 in A.Y 2007-08 out of the advance of Rs. 1,10,10,062.00 . In our humble opinion this issue needs further verification at the assessment stage, we therefore restore this issue back to the files of the AO. The AO is directed to verify the claim of the assessee that he has offered out of the total advance of Rs. 1,10,10,062.00, Rs 27,58,062.00 in A.Y 2006 -07 and Rs.2,50,000.00 in A.Y 2007-08 and if found correct only the balance amount should be taxed in the year under consideration, to avoid double taxation of the same income . This will also cover the decision of the Delhi Bench in the case of ACIT vs Fox Mondal & Co., in ITA 3377 / Del / 2006 relied upon by the assessee."

6. A similar issue again came up for consideration in assessee's own case for A.Y. 2006-07 and vide its order dated 21-11-2012 passed in ITA No. 7843/Mum/2010, the Tribunal followed its order for A.Y. 2005-06 and directed the A.O. to verify the claim of the assessee that he has offered out of the total advance of Rs. 1,79,31,626/-, a sum of Rs. 97,58,062/- in A.Y. 2006-07 and to tax only the balance amount if the claim of the assessee is found to be correct on such verification. The A.O. was also directed by the Tribunal to tax the advance amount, if any, pertaining to the earlier years which had remained untaxed in that year by reopening the assessment.

7. At the time of hearing before us, the ld. Counsel for the assessee has furnished a statement showing that the substantial amount of the advance received in the year under consideration has already been offered to tax in the subsequent years i.e. assessment years 2009-10, 2010-11 and 2011-12. Accordingly, respectfully following the decision of the co-ordinate Bench of this Tribunal for A.Y. 2005-06 and 2006-07, we restore this issue to the file of the A.O. for deciding the same afresh as per the same direction as given by the Tribunal for A.Y. 2006-07. The Revenue's appeal is accordingly treated as allowed for statistical purpose.

8. Now, we shall take up the appeal of the assessee being ITA No. 7580/Mum/2011 which involves a solitary issue relating to the addition of

Rs. 45,42,290/- made by the A.O. and confirmed by the ld. CIT(A) by way of disallowance of interest.

9. In the P&L account filed along with the return of income, the assessee had debited interest expenditure of Rs. 45,43,290/-. During the course of assessment proceedings, the claim of the assessee for deduction on account of the said interest was examined by the A.O. On such examination, he found that substantial amounts of Rs. 2.31 crores and Rs. 9.01 crores were advanced by the assessee to his wife Mrs. Ayesha Shroff and her concern M/s Quest Film respectively. The A.O., therefore, held that the funds borrowed by the assessee on interest were utilized for non-business purpose and therefore the assessee was not entitled to claim deduction on account of interest paid on such borrowed funds as per the provisions of section 36(1)(iii) of the Act. He therefore disallowed the claim of the assessee for deduction on account of interest.

10. The disallowance made by the A.O. on account of interest expenditure was disputed by the assessee in an appeal filed before the ld. CIT(A) and it was submitted on behalf of the assessee before the ld. CIT(A) that out of the total loans of Rs. 4 crores borrowed during the year under consideration, a sum of Rs. 1.35 crores was utilized to repay the loans taken in the earlier years which were already treated as loans taken for the purpose of assessee's business in those years. As regards the amount advanced to Mrs. Ayesha Shroff and her concern M/s Quest Film, it was contended on behalf of the assessee that the said advances were given for commercial purpose and the same could not be equated with the utilization of borrowed funds for non-business purpose. It was contended that the said advances were given to Mrs. Ayesha Shroff and M/s Quest Film in order to enable them to repay the loans taken by them and if the said parties had failed to discharge their liability, it would have greatly damaged the image of the assessee as a film star adversely affecting his profession. It was contended that the funds borrowed thus were

utilized by the assessee for the purpose of his business and interest paid thereon was deductible as business expenditure u/s 36(1)(iii) of the Act. The ld. CIT(A) did not find merit in the submissions made on behalf of the assessee on this issue and confirmed the disallowance made by the A.O. on account of interest for the following reasons given in para 2.3 of his impugned order:-

> "I have considered the facts and perused the material on record. The claim of the AR that loans were taken as Appellant was a star of substantive repute and the 'image' of Appellant was crucial which was to be preserved at any cost. Nonpayment of dues would have a substantial impact on his image' and consequently, his reputation as a film artist. It was also seen that Appellant's submission did not discuss details of earlier year loans or purposes thereof which had to be repaid by later loans. It is seen that out of the loan of Rs. 4 Crore, loans of Rs. 1 .35 Crores were utilised for repayment of loan taken from Bank of India and Indusind Bank in earlier years which were diverted to his wife's proprietary concern and same were held to be non-business purpose by the CIT(A) in ÀY06-07, and 07-08. Further the balance loan amount of Rs. 2.65 Crores is also given to M/s. Quest films a proprietary concern of Mrs. Ayesha Shroff wife of the appellant. Further the repayments of loan were also out of loan taken earlier and given to Ayesha Shroff wife of the appellant and utilised for personal purposes. Therefore, the appellant has failed to correlate that the total amounts borrowed, how loans were taken and how these were utilized for the business purpose. It is seen that the appellant has not charged any interest on these amount of loan advanced to M/s. Quest film. Nor the appellant is indulging in money lending business. It is also seen that some portion of loan of earlier years pertained to Appellants residence which is personal in nature. Further, in so far as Appellants claim that loan having been given to in earlier years to Appellants own company is concerned, though relying on Hon'ble Supreme Court decision in S.A. Builders, Appellant has not established as to how these loans were for the purpose of business and/or in commercial expediency. It is also to be noted that Hon'ble Supreme Court in its decision has stated that no businessman can be compelled to maximize its profits. The I.T. authorities must put themselves in the shoes of the assessee and see how a prudent businessman would act. However, the Hon'ble Supreme Court has not stated that a prudent businessman would be incurring losses year after year by utilizing interest bearing loans for advancing monies or loans interest-free. Mere reliance on the Hon'ble Court's decision would not suffice when Appellant has failed to establish the facts of its case and failed to satisfy the pronouncement of the Court. The AR has also cited various decision stating that the AO should establish nexus between the funds with the interest to the amounts

> advanced free of interest. However, this can be done only when primary details are furnished by Appellant. lnspite of having been called to do so, the Appellant has not filed any details material to the issue even during appellate proceedings. Instead, reliance is placed only on the appellate orders regarding earlier assessments for AYs. 96-97 to 98-99 and 05-06. Whereas in AY 06-07, these loan were considered taken as for non business purpose, therefore the case laws relied are not be applicable in the case of the appellant. Therefore, I am fully in agreement with the finding of the AO that the loan were taken for repaying personal liability and that said loan were not utilized for the purpose of the appellant's business or profession. Further the Principle of resjudicata is not applicable in Income Tax proceedings. However, even before application of the principle of consistency, the facts of the impugned appeal need to be stated clearly and understood. In absence thereof, similarity or not with the precedence cited cannot be established. The Appellant has also not established that the loans advanced by him were for purposes of business and/or in commercial expediency. In so far as the loans taken are concerned, AO has categorically observed that the loans were for personal purposes. In the facts and circumstances of the case, it is held that there is no cause for disturbing the disallowance and consequent addition made by the AO in regard to interest. This ground of appeal is therefore dismissed."

11. The ld. Counsel for the assessee at the outset invited our attention to the copy of balance sheet of the assessee as on 31st March, 2008 placed at page 1 of his paper book to point out that own capital and interest free funds were available with the assessee to the following extent:

Mr. Jackie Shroff's Capital Account	Rs. 65,188,281/-
Unsecured loans (interest free)	Rs. 33,540,280/-
Advances received for films	Rs. 20,604,566/-

He submitted that own funds and interest free funds aggregating to Rs. 11.92 crores thus were available with the assessee at the relevant time and since the same were more than the total amount of Rs. 11.30 crores advanced by the assessee to his wife Mrs. Ayesha Shroff and her concern M/s Quest Film, there was no utilization of the borrowed funds for the purpose of giving the said advances. He submitted that the only borrowed funds of Rs. 3.92 crores as reflected in the balance sheet as on 31st March, 2008 were borrowed by the assessee on interest and the same having been utilized by the assessee for the purpose of his business and not for giving the interest free advances to Mrs. Ayesha Shroff and her concern M/s Quest Film, the interest paid thereon is allowable as business expenditure as claimed by the assessee.

12. The ld. D.R., on the other hand, strongly relied on the orders of the authorities below in support of the Revenue's case that the assessee having utilized the borrowed funds for non-business purpose, interest paid thereon cannot be allowed as business expenditure of the assessee.

13. We have considered the rival submissions and also perused the relevant material available on record. It is observed that the interest expenditure claimed by the assessee was disallowed by the A.O. on the ground that the funds borrowed by the assessee on interest were not utilized for the purpose of his business but the same were utilized for giving loans/advances to his wife Mrs. Ayesha Shroff and her concern M/s Quest Film. Before the ld. CIT(A), the main contention raised by the assessee was that there was commercial expediency in giving the loans/advances to Mrs. Ayesha Shroff and M/s Quest Film and therefore interest paid on borrowed funds utilized for giving the said loans/advances was allowable as business expenditure. For the detailed reasons given in his impugned order, the ld. CIT(A) did not accept the claim of the assessee of commercial expediency in giving loans/advances to Mrs. Ayesha Shroff and M/s Quest Film and after considering the reasons so given by the ld. CIT(A), we find ourselves in agreement with the view of the ld. CIT(A). At the time of hearing before us, the ld. Counsel for the assessee has raised an alternative plea that the assessee having sufficient own funds and interest free funds available with him at the relevant time to give loans/advances to Mrs. Ayesha Shroff and her concern M/s Quest Film, there was no case of utilization of interest bearing borrowed funds for giving the said loans/advances and such interest free borrowed funds having been utilized by the assessee for the purpose of his business, the interest paid thereon is allowable as business expenditure.

Although he has filed the balance sheet of the assessee as on 31st March, 2008 along with the relevant schedule to support and substantiate this new plea, we are of the view that the same requires verification by the A.O. We, therefore, restore this issue to the file of the A.O. for deciding the same afresh after verifying the claim of the assessee that sufficient own funds and interest free funds were available to give loans/advances to Mrs. Ayesha Shroff and her concern M/s Quest Film. Needless to observe that the A.O. shall afford sufficient opportunity of being heard to the assessee. The appeal of the assessee is accordingly treated as allowed for statistical purpose.

14. In the result, the appeal of the Revenue as well as that of the assessee are treated as allowed for statistical purpose.

Order pronounced in the open court on 7th February, 2014.

आदेश की घोषणा खुले न्यायालय में दिनांकः 07-02-2014 को की गई ।

Sd/-
(SANJAY GARG)
न्यायिक सदस्य JUDICIAL MEMBER

sd/-
(P.M. JAGTAP)
लेखा सदस्य / ACCOUNTANT MEMBER

मुंबई Mumbai; दिनांक Dated 07-02-2014

व.नि.स./ RK , Sr. PS

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

1. अपीलार्थी / The Appellant
2. प्रत्यर्थी / The Respondent.
3. आयकर आयुक्त(अपील) / The CIT(A)—23, Mumbai.
4. आयकर आयुक्त / CIT – 12, Mumbai
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, मुंबई / DR, ITAT, Mumbai C Bench
6. गार्ड फाईल / Guard file.

आदेशानुसार/ BY ORDER,

सत्यापित प्रति //True Copy//

उप/सहायक पंजीकार (Dy./Asstt. Registrar)
आयकर अपीलीय अधिकरण, मुंबई / ITAT, Mumbai