

For the foregoing reasons, the impugned notice issued by the respondent under section 148 as well as all proceedings pursuant thereto, are hereby quashed and set aside.

Summary – The Mumbai ITAT in a recent case of Jackie Shroff., (the Assessee) held that where assessee actor advanced money to a production house run by his wife to produce films in which he acted as hero so as to boost his career, however, films were not successful and his wife suffered loss and advances given by assessee could not be recovered, money advanced by assessee was in nature of business expediency and same was to be allowed as deduction either under section 37(1) or under section 28(i) as business loss

Facts

- The assessee was a professional actor. The assessee had given advances of certain amount to a production house, of run by the assessee's wife, AS. for production of films. Since AS did not have any independent source of income the assessee supported her initially to start up the production house and also acted in her films. She had also taken loans from various institutional/non-institutional lenders for production of films. The films produced by the 'AS' failed on box office due to which 'AS' suffered losses and she was not in a position to repay the assessee and other lenders. The assessee had to rescue her, as non-payment of loans would have resulted into criminal proceedings against her which would have created a serious crisis in his carrier as a film artist having substantial reputation. The assessee had claimed monies given to her wife as business loss and *suo moto* written off said monies given as bad advances.
- The Assessing Officer rejected the claim of the assessee and brought to tax the advances written off by the assessee as income of the assessee holding that assessee was only a professional actor and he was not in business of giving loans or advances. Further, the Assessing Officer was of the view that money advanced by the assessee to his wife was exclusively personal in nature.
- On appeal, the Commissioner (Appeals) held that the loans given by the assessee was business advances and not personal loans. However, the Commissioner (Appeals) held that though these amounts were advanced in the normal course of business the mere *suo moto* write off of the same could not be allowed as deduction, and, thus, sustained the order of the Assessing Officer.
- On second appeal :

Held

- The findings of the Commissioner (Appeals) that the monies advanced by the assessee are in the nature of business advances have not been challenged by the revenue. However, he sustained the disallowance only for the reason that the assessee has *suo moto* written off the advances and such *suo moto* write off is not allowable as deduction under section 36(1)(vii)/37(1).

- The assessee is entitled to claim a benefit under appropriate head even though it has been wrongly claimed under a particular head. In the case on hand though the assessee made his claim that it should be allowed as bad debt the advances written off by the assessee are allowable as business loss under section 28(i), since the assessee has proved that loans were advanced for commercial reasons and it is not a personal loan.
- In the assessee's case the moneys were advanced to QF which is the proprietary concern of AS and also in her individual capacity to build up the career of the assessee as well as to promote the business of AS and also to recover the moneys already advanced to her which is all goes to show that the moneys were advanced as a measure of commercial expediency. When the moneys are advanced as measure of commercial expediency such advances are in the nature of business advances and the write off of such advances by the assessee should be allowed as deduction under section 37(1) or section 28(i) as business loss.
- It is the submission of the assessee that till date the moneys advanced to QF and also to AS could not be recovered and there is no possibility of recovery in near future and therefore the amounts write off by the assessee have to be allowed as business loss appears to be justified.
- In view of above discussion, the Commissioner (Appeals) having held that the amount advanced by the assessee are business advances is wrong in holding that the said advances cannot be held as deduction as the assessee had written off advances *suo moto*. One is in agreement with the Commissioner (Appeals) that the advances written off by the assessee are business advances and there is no challenge by the revenue to this finding. Once the advances are held to be business advances they are allowable as deduction either under section 37(1) or under section 28(i) as business loss and deduction cannot be denied on the ground that the assessee had *suo moto* written off the advances. Thus, the finding of the Commissioner (Appeals) to that extent is reversed and the Assessing Officer is directed to allow the claim of write off of advances by the assessee as business loss under section 28.