

IN THE INCOME TAX APPELLATE TRIBUNAL

“H” BENCH, MUMBAI

BEFORE HON’BLE SHRI SANDEEP GOSAIN, JM

& HON’BLE SHRI N. K. PRADHAN, AM

आयकरअपीलसं./ I.T.A. No. 3115/Mum/2016

(निर्धारणवर्ष / Assessment Year: 2006-07)

DCIT 1(1)(1) Room no. 579, Aayakar Bhavan, M.K. Road, Mumbai-400 020.	बनाम/ Vs.	Smt Smita Jayedev Thackeray, Plot No. 70, Laxmi, N.S. Road No. 8, Hatkesh Society, J. V. P. D. Scheme, Vile Parle (w), Mumbai- 400 049
स्थायीलेखासं ./जीआइआरसं ./PAN/GIR No.		ABWPT1026G
(अपीलार्थी/ Appellant)	:	(प्रत्यर्थी / Respondent)

C.O. No. 308/Mum/2016

(निर्धारणवर्ष / Assessment Year: 2006-07)

Smt Smita Jayedev Thackeray, Plot No. 70, Laxmi, N.S. Road No. 8, Hatkesh Society, J. V. P. D. Scheme, Vile Parle (w), Mumbai-400 049	बनाम/ Vs.	DCIT 1(1)(1) Room no. 579, Aayakar Bhavan, M.K. Road, Mumbai-400 020.
(अपीलार्थी/ Appellant)	:	(प्रत्यर्थी / Respondent)

अपीलार्थीकीओरसे/ Appellant by	:	Shri Manoj Kumar Singh, DR
प्रत्यर्थीकीओरसे/ Respondent by	:	Shri Ajay R. Singh, AR

सुनवाईकीतारीख/ Date of Hearing	:	28/08/2018
घोषणाकीतारीख / Date of Pronouncement	:	26/11/2018

आदेश / ORDER

Per Sandeep Gosain, Judicial Member:

The present appeal as well as cross objection have been filed by the revenue as well as assessee are against the order of Commissioner of Income Tax (Appeals)-2, Mumbai dated 29.01.16 for AY 2006-07.

2. Since, the facts raised in this appeal as well as C.O. filed by the revenue and the assessee are identical, therefore for the sake of convenience; they are clubbed, heard and disposed of by this consolidated order.

3. First of all we take up appeal in **ITA No. 3115/Mum/2016** filed by revenue for AY 2006-07.

4. At the very outset, Ld. DR appearing on behalf of the revenue drawn our attention towards letter dated 10.05.18 which relates to condonation of delay in filing appeal before Hon'ble ITAT. Ld. AR submitted that the present appeal was filed within the time as mentioned in the said application.

5. On the other hand, Ld. AR requested for dismissal of the said application.

6. We have heard the counsels for both the parties on the application for seeking condonation of delay and while taking into consideration the contents of application filed by the revenue, we find that although the registry had pointed out that there was delay in filing appeal, but vide letter dated 10/05/18, the revenue explained that on verification of records, it was found that order of FAA was received on 25.02.16 and appeal was filed on 25.04.16 and in this way, there was no delay in filing the appeal. Hence, this application is **allowed** and appeal is admitted to be *heard on merits*.

7. As per the facts of the present case, the return of income was filed by the assessee on 27.10.2006 declaring total loss of

Rs. 2,85,90,573/-. Subsequently, the case was reopened by issue of notice u/s 148 of the I.t. Act on 07.11.08 accepting the returned income. Thereafter the case was selected for scrutiny and after serving statutory notices and seeking reply of the assessee, order of assessment u/s 143(3) r.w.s. 147 of the I.T. Act was passed on 19.12.11, thereby determining the total income/loss at Rs. (-) 1,42,50,692/-. In the assessment order the AO made disallowance under rule 9A of Rs. 1,43,39,881/- to the total income of the assessee.

Aggrieved by the order of AO, assessee preferred appeal before Ld. CIT(A) and Ld. CIT(A) after considering the case of both the parties partly allowed the appeal of the assessee.

Now before us, the revenue as well as assessee have preferred their respective appeal/ cross objection. Firstly we are dealing with the appeal filed by the revenue.

8. The solitary ground raised by the revenue is against challenging the order of Ld. CIT(A) in allowing the cost of production in accordance with rule 9A(4) of the rule, while ignoring rule 9A(5) of the I.T. Act.

9. We have heard counsels for both the parties at length and we have also perused the material placed on record as well as the orders passed by revenue authorities.

Before we decide the merits of the case, it is necessary to evaluate the orders passed by Ld. CIT(A). The Ld. CIT(A) has dealt with the above grounds raised by the revenue in para no. 1 to 4 of its order. The operative portion of the order of Ld. CIT(A) is contained in para no. 4(4.1 to 4.4) of its order and the same is reproduced below:-

4.1 I have gone through the assessment order dated 19-12-2011, wherein the Ld. AO had added a sum of Rs.1,43,39,881/- to the loss of Rs.2,85,90,573/- of the appellant and thereby arrived total income / loss of (-) Rs.1,42,50,692/-. Further, as per provisions of section 9A(7)(ii) and 9A(4) of the Income-tax Rules 1962, the appellant is not eligible to claim under Censorship Act and no right of exhibition are sold, in such case the cost of production cannot be allowed and the same will be allowed in the next year.

4.2 Against this the AR of the appellant argues that the Censor Certificate obtained by the appellant on 08-09-2004 i.e., during the F.Y.2004-05 relevant to

A.Y.2005-06. Accordingly, as per Rule 9A(4) the appellant is eligible to claim the cost of production in the A.Y.2006-07. While passing the order in the A.Y.2006-07, the AO has not allowed the cost of production. Meanwhile while filing the return of income for A.Y.2007-08 under abandoned caution the appellant company has claimed the cost of production as deduction while computing the income wherein also the AO has not allowed the cost of production as a deductible one.

4.3 I have gone through the Rule 9A(4) and the Rule stipulate that even after getting the Censor Certificate, if the film has not been released or sold, the cost of production shall be carried forward as deduction in the next year. In the appellant case, the Censor Certificate was obtained in the A.Y.2005-06 accordingly, the appellant is eligible to claim cost of production in the A.Y.2006-07. However, it was not allowed by the Ld.AO. Further, the AO has relied on sub-rule 9A(7)(ii).

4.4 From the above facts one thing is very clear that the cost of production was not allowed to the appellant in the year production i.e., in the F.Y.2004-05 relevant to A.Y.2005-06. Further, as per Rule 9A(4), the appellant has claimed cost of production in the F.Y.2005-06 relevant to A.Y.2006-07, which was not entertained by the AO. In the meanwhile the appellant while filing the return of income for A.Y.2007-08, has claimed the said

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Smt Smita Jayedev Thackeray,***

production cost and the same was not considered as deduction. As a matter of accounting principle when income has been offered the cost of production has to be allowed. As per Rule 9A(4), the appellant has rightly claimed the cost of production in the A.Y.2006-07, which is supposed to be allowed by the AO. Therefore, I am in agreement with the argument of the appellant and accordingly, I direct the AO to give necessary deduction for the cost of production as per Rule 9A(4) of the Income-tax Rules 1962.

After having gone through the facts of the present case as well as considering the orders passed by revenue authorities and submissions made by both the parties, we find as per the facts of the present case that although it is an undisputed fact that no receipts in respect of exhibition and sale of rights of the film were credited by the assessee in the books of accounts, but the AO while mentioning the provisions of rule 9A(7)(ii) and 9A(4) of the Act had stated that where as film is certified and release by the censor in any year, but no rights of exhibition are sold, then in that eventuality, the cost of production be allowed as a deduction in the year of certification, but allowed in the next year

as a deduction. The AO nowhere mentioned in clear terms as to how the provisions of rule 9A(7)(ii) and 9A(4) of the Act are applicable to the facts of the present case. Whereas on the contrary, Ld. CIT(A) in its very clear terms has categorically mentioned that censor certificate was obtained by the assessee on 08.09.04 i.e. during FY 2004-05 relevant to A.Y.2005-06 and accordingly, as per Rule 9A(4) the assessee is eligible to claim the cost of production in the A.Y. 2006-07. It was correctly held that as a matter of accounting principle when income has been offered the cost of production has to be allowed and therefore while relying upon Rule 9A(4), the assessee has rightly claimed the cost of production in the year under consideration.

Moreover, no new facts or contrary judgments have been brought on record before us in order to controvert or rebut the findings so recorded by Ld. CIT(A). Therefore, we see no reasons to interfere into or deviate from the findings recorded by the Ld.CIT(A). Hence, considering the facts of the case as well as following the decision of the Coordinate Benches and in order to maintain judicial consistency, we are of the considered view that

the findings so recorded by the Ld. CIT (A) are judicious and are well reasoned. Resultantly, this ground raised by the revenue stands **dismissed**.

Now we take up C.O. No. 308/Mum/2016 filed by assessee.

10. Since we have already decided the appeal filed by revenue in ITA No. 3115/Mum/2016 on merits. Therefore following our own decision in ITA No. 3115/Mum/2016, we hold that since the additions made by the AO has already been deleted on merits, therefore there is no need to decide the C.O. filed by the assessee on merits more particularly when the same were not passed before Ld. CIT(A)

11. In the net result, the appeal as well as cross objection filed by the revenue and assessee stands **dismissed**.

Order pronounced in the open court on 26th Nov, 2018

Sd/-
(N. K. Pradhan)
लेखासदस्य / Accountant Member
मुंबई Mumbai; दिनांक Dated :
Sr.PS. Dhananjay

Sd/-
(Sandeep Gosain)
न्यायिकसदस्य / Judicial Member

26.11.2018

*I.T.A. No. 3115/Mum/2016
and C.O. No. 308/Mum/2016
Smt Smita Jayedev Thackeray,*

आदेशकीप्रतिलिपिअग्रेषित/Copy of the Order forwarded to :

1. अपीलार्थी/ The Appellant
2. प्रत्यर्थी/ The Respondent
3. आयकरआयुक्त(अपील) / The CIT(A)
4. आयकरआयुक्त/ CIT- concerned
5. विभागीयप्रतिनिधि, आयकरअपीलीयअधिकरण, मुंबई/ DR, ITAT,
Mumbai
6. गार्डफाईल / Guard File

आदेशानुसार/ BY ORDER,

उप/सहायकपंजीकार

(Dy./Asstt.Registrar)

आयकरअपीलीयअधिकरण, मुंबई/ ITAT, Mumbai