

आयकर अपीलीय अधिकरण, 'बी' न्यायपीठ, चेन्नई
IN THE INCOME TAX APPELLATE TRIBUNAL
'B' BENCH, CHENNAI

श्री महावीर सिंह, उपाध्यक्ष एवं श्री मंजुनाथ. जी, लेखा सदस्य के समक्ष

BEFORE SHRI MAHAVIR SINGH, VICE PRESIDENT AND
SHRI MANJUNATHA.G, ACCOUNTANT MEMBER

आयकर अपील सं./ITA No.: **124/CHNY/2020**

निर्धारण वर्ष/Assessment Year: 2009-10

Shri G. Krishnamurthy,
No.31, 1st Main Road,
2nd Cross, Royala Nagar,
Ramapuram,
Chennai – 600 089.

The DCIT,
vs. Media Circle-1,
Chennai – 34.

PAN: ARVPK 2699F

(अपीलार्थी/Appellant)

(प्रत्यर्थी/Respondent)

अपीलार्थी की ओर से/Appellant by
प्रत्यर्थी की ओर से/Respondent by

: None
: Shri D. Hema Bhupal, JCIT

सुनवाई की तारीख/Date of Hearing : 30.05.2023

घोषणा की तारीख/Date of Pronouncement : 30.05.2023

आदेश /ORDER

PER MAHAVIR SINGH, VICE PRESIDENT:

This appeal by the assessee is arising out of the order of the Commissioner of Income Tax (Appeals)-14, Chennai in ITA No.08/CIT(A)-14/2012-13 dated 13.11.2019. The assessment was framed by the DCIT, Media Circle-I, Chennai for the assessment

year 2009-10 u/s.143(3) of the Income Tax Act, 1961 (hereinafter the 'Act'), vide order dated 26.12.2011.

2. At the outset, it is noted that the assessee filed this appeal on 20.01.2020 and initially one or another advocate appeared without vakalath till 10.03.2022. After that the matter was fixed for hearing on various occasions 13 times and none present on behalf of assessee despite service of notice through RPAD. It is to be pointed out that the appeal fixation is also displayed in the official website of ITAT i.e., itat.gov.in. We feel that the assessee seems not interested in prosecuting the appeal. Hence, we decided to decide the appeal based on material available on record on merits, after hearing Id. Senior DR.

3. The first issue in this appeal of assessee is as regards to the order of CIT(A) confirming the action of AO in reopening the assessment. We have heard Id. Senior DR and gone through facts and circumstances of the case. We noted that the assessment is framed u/s.143(3) of the Act and no reopening is done and hence, this ground is without any basis and hence, dismissed.

4. The second issue in this appeal of assessee is as regards to the order of CIT(A) confirming the disallowance of loss from 'Thee' movie amounting to Rs.8,78,539/-. The AO applied Rule 9B of the Income Tax Rules. and asked the assessee to file censor certificate and proof of release of said film. The assessee before AO orally stated that the said film was released in February, 2009 and therefore consented to apply Rule 9B of the Income Tax Rules which worked out at Rs.8,78,539/-. Aggrieved, assessee preferred appeal before CIT(A). The CIT(A) confirmed the action of the AO by observing in para 6 as under:-

“6. The assessee has also submitted proof that an amount of Rs.5,73,902/- had been offered to taxation in AY 2010-11 from the distribution of the same movie and that the disallowance should be restricted to Rs.3,04,637/- only. The submission of the assessee is considered. The assessee has clearly violated the provisions of Rule 9B wherein the expenditure incurred towards any movie is restricted only to the extent of income admitted in a case where the film release happens in the last three months of the financial year. Considering the requirement of enforcing the provisions of law in the strict and limited understanding, the plea of the assessee cannot be accepted. The disallowance of Rs.8,78,539/- for AY 2009-10 is upheld.

Aggrieved now, assessee is in appeal before us.

5. We have heard Id. Senior DR and gone through facts and circumstances of the case. We noted that there is no material available that the assessee has followed the provisions of Rule 9B of the Income Tax Rules, wherein expenditure incurred towards

distribution of any movie restricted only to the extent of income admitted and in the absence of the same, we have no alternative except to confirm the order of CIT(A). Hence, this issue of assessee's appeal is dismissed.

6. The next issue in this appeal of assessee is as regards to the order of CIT(A) confirming the action of the AO in disallowing the claim of deduction of expenses by invoking the provisions of section 40(a)(ia) of the Act, for non-deduction of TDS on various items.

The following are the items:-

S.No.	Disallowances made by AO	Amount
1	Disallowance u/s 40(a)(ia)	
	i. Professional Charges	4230000
	ii. Publicity Charges	
	a. Real Image Media Technologies	305070
	b. Madras Safire Printers	434731
	c.The Safire Cine Printograph	76715
	d.Vasantha Achagam	104000
	e.K.Dharani	800000
2	Interest expenses	450000
3	Balance interest	60821
4	Film Lab expenses	290955
	Total	6752292

7. Brief facts are that the AO invoking the provisions of section 40(a)(ia) of the Act for non-deduction of TDS on the above payments made disallowance of amount of interest of Rs.4,50,000/-

professional charges at Rs.42,30,000/-, publicity at Rs.17,06,427/- and another amount of interest expenditure of Rs.60,821/- thereby total disallowance made at Rs.64,47,248/-. Aggrieved assessee preferred appeal before CIT(A).

8. The assessee before CIT(A) filed certain details and stated that the professional charges paid to various artists amounting to Rs.42,30,000/- have been included by the artists in their respective returns of income and similarly, the publicity charges of Rs.17,06,427/- were included by the respective advertising companies. But, he could not give any detail in regard to interest payment of Rs.4,50,000/-. Even the assessee before AO or before CIT(A) could not submit any of the details or any evidences, apart from mere statement that those parties have included the alleged receipts in their returns of income and hence, the CIT(A) confirmed the action of the AO and sustained the addition on account of the following (1) professional expenditure of Rs.42,30,000/- (2) interest expenditure of Rs.4,50,000/- (3) interest of Rs.60,821/- and out of publicity expenses of Rs.17,06,427, the CIT(A) restricted the balance to be disallowed at Rs.10,90,981/- and deleted the addition of Rs.6,15,446/-. Aggrieved assessee came in appeal before Tribunal.

9. We have heard Id. Senior DR and gone through facts and circumstance of the case. We noted that the assessee could not file any evidence in support of the claim made that the other parties in regard to the interest paid, publicity charges, professional charges were included by the respective recipients in their returns of income, therefore we are unable to accept the claim made by assessee before us in his grounds of appeal. Admittedly the assessee has not deducted TDS and as the assessee failed to file any evidence in regard to his claim that the recipients have declared in their returns of income the alleged receipts, we are confirming the order of CIT(A) and dismiss this issue of assessee's appeal.

10. In the result, the appeal filed by the assessee is dismissed.

Order pronounced in the open court on 30th May, 2023 at Chennai.

Sd/-

(मंजुनाथ. जी)

(MANJUNATHA.G)

लेखा सदस्य/ACCOUNTANT MEMBER

Sd/-

(महावीर सिंह)

(MAHAVIR SINGH)

उपाध्यक्ष /VICE PRESIDENT

चेन्नई/Chennai,

दिनांक/Dated, the 30th May, 2023

RSR

आदेश की प्रतिलिपि अग्रेषित/Copy to:

1. अपीलार्थी/Appellant

2. प्रत्यर्थी/Respondent

3. आयकर आयुक्त /CIT

4. विभागीय प्रतिनिधि/DR

5. गार्ड फाईल/GF.