IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 05.01.2016

CORAM:

THE HONOURABLE **MR.JUSTICE M.JAICHANDREN**
AND
THE HONOURABLE **MRS.JUSTICE S.VIMALA**

Tax Case (Appeal) No.583 of 2007

M/s. Tiruvengadam Investments Pvt. Ltd.,
604 Anna Salai,
Chennai – 600 006 ... Appellant

vs.

The Assistant Commissioner of Income Tax,
Company Circle III (2),
Chennai – 600 034 ... Respondent

Tax Case Appeal filed under Section 260A of the Income Tax Act, 1961, as against the order of the Income Tax Appellate Tribunal, 'B' Bench, Chennai, dated 17.02.2006 passed in I.T.A.No.1913/Mds/2005.

For Appellant : Mr. A.S.Sriraman

For Respondent : Mr. M.Swaminathan

J U D G M E N T

(Judgment of the Court was delivered by M.Jaichandren, J.,)

This Tax Case Appeal has been filed by the Assessee / appellant herein, as against the order of the Income Tax Appellate

Tribunal, 'B' Bench, Chennai, dated 17.02.2006, made in I.T.A.No.1913/Mds/2005.

2. The brief facts, which are necessary for the disposal of the above appeal, are as follows:-

The appellant is a company, incorporated during the year 1988, with the main object of doing business as investors and dealers in immovable properties. The main object also permits it to invest in partnership firms and to carry on the business of production of audio-visual presentations, cinema and radio commercials etc.,

2.1. The assessee had filed return of income, for the assessment year 2001-2002, on 31.10.2001, claiming a total loss of Rs.4,06,91,278.00. The return was processed, under Section 143 (1) of the Income Tax Act, 1961 (hereinafter referred to as "the Act") and subsequently, the case had been taken up for scrutiny and a notice under Section 143 (2) of the Act had been issued.

2.2. The assessee had claimed to have produced a feature film, in English and Telugu languages, titled as "The Return of Thief of Bagdad" and "Abu, Bagdad Gajadonga", respectively. The Assessee could not complete the production of the above said films, for various reasons like the misdeeds of the crew of the project, resulting into communal unrest, nonavailability of sufficient infrastructure and equipments like the camera, conflict among the local and foreign crew, funds crunch, etc. While filing the return of income, the Assessee had claimed an expense of Rs.9,63,87,293.00, under the head "Film Production Expenses". The assessee had been asked to give an explanation, by the Assessing Officer, as to why the entire film production expenses should not be disallowed, as the project had been postponed only temporarily. Consequent to the said communication, the assessee had withdrawn the claim relating to the entire film production expenses.

2.3. The assessment for the assessment year 2001-02 was completed by the Assessing Officer and the Assessing Officer had rejected the claim of "Film Production Expenses", in view of the fact that the said expenses were claimed under the said head, in terms of Sections 28 and 37 (1) of the Act and in view of the abandonment of the said feature film project in the previous year.

2.4. The disallowance of the said claim was upheld both by the Commissioner of Income Tax (Appeals), as well as by the Income Tax Appellate Tribunal, vide the orders, dated 20.07.2005 and 17.02.2006, respectively.

3. Aggrieved by the order of the Income Tax Appellate Tribunal, the Assessee has preferred the present Appeal, raising the following substantial questions of law:-

> "1. Whether the Tribunal is correct in concluding that the first appeal was not competent on the issue of claim revenue expenses / business loss relating to the shelving of film production project in the computation taxable total income for the assessment year under consideration irrespective of forceful submission of revised Balance Sheet and Profit and Loss A/c before the respondent and irrespective of the remand report of the respondent?
>
> 2. Whether the Tribunal is correct in concluding that Rule 27 of Appellate Tribunal Rules 1863 would justify and permit the respondent to issue the said issue of competence of the Appellant to question the disallowance of claim revenue expenses / business loss relating to the shelving of film production project in the compuataion of taxable total income for the assessment year under consideration in the first appellate stage before them even though there was no cross appeal or cross objection filed by the respondent and irrespective of the correspondences exchanged between the appellant and the

respondent at the assessment stage in this regard and the remand report?

3. Whether the Tribunal is correct in not considering the entire facet of the claim of revenue expenses / business loss relating to the shelving of film production project in terms of Section 37 (1) and Section 28 of the Act in the compuatation of taxable total income for the assessment year under consideration especially with reference to the details and evidences placed on record?

4. Whether the Tribunal is correct in concluding that the claim of film production expenses relating to the abandoned project under consideration was not established to be allowable in the computation of taxable total income in the previous year relating to the assessment year under consideration?"

4. At the outset, the learned counsel for the assessee / appellant had submitted that, in the light of the Circular No.16/2015, issued by the Central Board of Direct Taxes in F.No.279/Misc./140/2015-ITJ, dated 06.10.2015, the claim for deduction of "Film Production Expenses", in terms of Sections 28 and 37 (1) of the Act, for the assessment year 2001-02 should be allowed in favour of the appellant.

5. In such circumstances, the order, dated 17.02.2006, made by the Income Tax Appellate Tribunal, in I.T.A.No.1913/Mds/2005, is set-aside and the matter is remitted back to the file of the Assessing Officer, to verify as to whether the assessee / appellant herein had claimed "Film Production Expenses", as Revenue Expenditure, during the assessment year 2001-2002, or in any of the previous or subsequent years, as per the Circular No.16/2015, issued by the Central Board of Direct Taxes in F.No.279/Misc./140/2015-ITJ, dated 06.10.2015. If no such claim had been made by the Assessee, the claim of the assessee, with regard to the "Film Production Expenses", as Revenue expenditure, for the assessment year 2001-2002, may be allowed. The Assessee, in addition to the records available before the Assessing Officer, shall also file an affidavit stating that it had made no such claim for any of the previous or subsequent years. Accordingly, this Tax Case Appeal is disposed of, with the above observation.

(M.J.J.) (S.V.J.)
05.01.2016

Internet : Yes/No
Index : Yes/No
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To

1. The Income Tax Appellate Tribunal,
   'B' Bench, Chennai
2. The Commissioner of Income Tax (Appeals),
   Chennai
3. The Assistant Commissioner of Income Tax,
   Company Cirlce III (2), Chennai – 34

<u>M.JAICHANDREN, J.</u>
<u>and</u>
<u>S.VIMALA, J.</u>

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<u>T.C.A.No.583 of 2007</u>

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