IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION

INCOME TAX APPEAL NO.1320 OF 2018

Pr.Commissioner of Income-Tax-2 … Appellant

V/s.

Radan Multimedia Ltd. … Respondent

Mr.Suresh Kumar with Ms.Mohinee Chougule for the Appellant.
Mr.D.K.Seth i/by Mr.Mehul Rathod for the Respondent.

CORAM : AKIL KURESHI AND
S.J.KATHAWALLA, JJ.
DATE : JUNE 10, 2019.

P.C.:-

1. Revenue has filed this appeal against the judgment of the Income Tax Appellate Tribunal (“Tribunal” for short). Following questions are presented for our consideration:-

> “1. (a) Whether on the facts and circumstances of case and in law, the ITAT was right in restricting the disallowance on purchase of films to 20% even after observing that the purchases were bogus and without recording any perverse findings against the order of CIT (A)?
> (b) Whether on the facts and circumstances of case and in law, the ITAT was right in restricting the disallowance on purchases to

> 20%, wherein assessee has first claimed 100% depreciation in the original return, revised the claim as purchases of films in the appellate proceedings?"
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> 2. Whether on the facts and circumstances of the case and in law, the ITAT was right in setting aside the matter of claim of financial charges pertaining to Hire purchase of machineries, to the file of AO, by assuming the finance charges to be loans, without recording any perverse finding against the order of CIT (A)?"

3. In so far as question No.1 (a and b both) is concerned, the same pertains to a sum of Rs.1.04 crores added by the Assessing Officer holding that the purchase of films claimed by the assessee was bogus. The Tribunal restricted the additional to 20% of such sum by making following observations:-

> "12. However, we notice that the assessee has claimed that it has declared the sales of films picturised by using the films of Rs.1.04 crores referred above. There should not be any doubt that the pictures could not be produced without the use of films and if the sale of pictures is assessed, then the corresponding expenditure should be allowed. Even though the assessing officer has considered the sales also as bogus, he did not exclude the value of sales from the income of the assessee. Since the purchase of films have not been proved by the assessee, we are of the view that this issue should be settled by disallowing some

> portion of the purchases in order to take care of the deficiencies in the purchase claim. Accordingly, we direct the assessing officer to disallow 20% of the film cost of Rs.1.04 crores, since the assessing officer has assessed the sale of pictures. We order accordingly."

3. It can thus be seen that the Tribunal noticed that Assessing Officer while holding that purchasing the films was bogus and therefore, consequential sale of films was non existent, had not excluded the value of the sale from income of the assessee. It was on this background the Tribunal restricted the addition to 20% of the entire amount. No question of law arises.

4. Question No.2 pertains to the finance charges on lease finance paid by the assessee to the financial institutions. The Assessing Officer held that the claim of purchase of machinery with the aid of such finances was not genuine. The Tribunal however was of the opinion that even if such finances were not used for purchase of machinery as previously claimed by the assessee, if it was used for the purpose of his business the finance

charges would be allowable business expenditure. However, the entire issue was placed before the Assessing Officer for examination in the light of such observations. We do not find any error in view of the Tribunal. The issue in any case has been placed back before the Assessing Officer for carrying out full inquiry. In the result, the appeal is dismissed.

(S.J.KATHAWALLA, J.) **(AKIL KURESHI, J.)**

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