IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATE: 08.03.2021

CORAM:

THE HON'BLE MR. JUSTICE M.DURAISWAMY
AND
THE HON'BLE MRS.JUSTICE T.V.THAMILSELVI

T.C.A.No. 120 of 2014

Commissioner of Income Tax,
Media Circle,
Chennai - 600 034. ... Appellant

v.

Ch. Sekhar (HUF)
No.32, Valmiki Street,
Saligramam,
Chennai - 600 034
PAN : AAQHS 6938 H ... Respondent

Appeal preferred under Section 260A of the Income Tax Act, 1745, against the order of the Income Tax Appellate Tribunal, Madras, "D" Bench, dated 13.06.2013 in I.T.A.No.745/Mds/2012 for the Assessment Year 2006-2007 as against the order of the Commissioner of Income Tax IV,Chennai 3rd Floor,New Block,Ayankar Bhavan,Nungambakkam,Chennai dated 27.03.2012 in PAN NO.AAQHS6938 H for the Assessment Year 2006-2007 as against the order of the Income Tax officer,Media Ward III,chennai dated 29.12.2009 in PAN NO.AAQHS6938 H for the Assessment Year 2006-2007.

For Appellant : Mr. M.Swaminathan
Senior Standing Counsel
and Mrs. V. Pushpa

For Respondent : Mr. Sri Niranjani Srinivasan

JUDGMENT
(Judgment was delivered by M. DURAISWAMY, J.)

Challenging the order passed in I.T.A.No.745/Mds/2012 in respect of the Assessment Year 2006-2007 on the file of the Income Tax Appellate Tribunal, Chennai,"D" Bench (for brevity, the Tribunal), the Revenue has filed the above appeal.

2.1 The assessee filed its return of income for the assessment year 2006-07 belatedly on 13.03.2007 returning a loss of Rs.4,14,575/-. The gross loss for the year was Rs.32,26,125/- against which, the assessee set off short term capital gain of Rs.28,11,550/-. Subsequently, a notice under section 148 was issued on 11.4.2008. In response to which, the assessee filed a return of income on 25.8.2009, returning a loss of Rs.4,14,575/- . Thereafter, a notice under section 143(2) was issued on 25.8.2009. The assessment was completed on 29.12.2009 under section 143(3) read with section 147 determining the total income at Rs. 8,85,425/-. The assessee has claimed Rs.35 lakhs towards cost of acquisition of a film, but has paid only Rs. 2 lakhs towards cost of acquisition of the film. Since the Assessing Officer did not examine the issue in the light of the scrutiny proceedings, the Commissioner of Income Tax has invoked proceedings under section 263 to examine the issue.

2.2. At the time of revision proceedings under section 263, the Commissioner of Income Tax held that the order of the Assessing Officer was erroneous and prejudicial to the interest of revenue on this issue, since the Assessing Officer failed to examine the said issue in the light of the provisions of Rule 9B which prescribes the amount of deduction to be allowed where the assessee acts as a distributor of film rights.

2.3 According to the Revenue, the assessee can claim only the amount paid towards the cost of acquisition of films and the computation of deduction in respect of expenditure on acquisition of distribution rights of feature films is specifically prescribed in Rule 9B(1) and sub rule (2) to sub rule (4) of the Act. The Commissioner of Income Tax pointed out that the assessee had actually paid Rs.2 lakhs as against the cost of acquisition of film "Ninne Cherukunta" at Rs.35 lakhs. The assessee had admitted realization form exhibition to the extent of Rs.2,80 lakhs and after adjusting the purchase cost of Rs.35 lakhs, claimed business loss of Rs.33.20 lakhs. The Commissioner of Income Tax by applying Rule 9B held that the assessee had paid only Rs.2 lakhs and the same has to be adjusted against the realization amount of Rs.2.80 lakhs and directed the Assessing Officer to disallow the sum of Rs.33 lakhs.

2.4 Aggrieved over the order passed by the Commissioner of Income Tax, the assessee preferred an appeal before the Income Tax Appellate Tribunal, and the Tribunal by its order dated 13.06.2013, held that the assessee was following mercantile system of accounting. Section 43(2) clearly stipulates "paid" means actually paid or incurred according to the method of accounting upon the basis of which the profits or gains are computed under the head "Profits and Gains of Business or Profession". In these circumstances, the Tribunal held that the order of the Assessing Officer is not erroneous and prejudicial to the interest of revenue warranting invocation of revisionary powers vested on Commissioner of Income Tax under section 263 of the Act and allowed the appeal filed by the assessee. Aggrieved over the said order, the Revenue has filed the above appeal.

3. The above appeal was admitted on the following substantial questions of law:

> " (i) Whether the Tribunal erred in relying upon section 43(2) of the Act to allow the deduction on account of expenditure towards acquisition of distribution rights without actual payment, overlooking Explanation to Rule 9B(1) of the Income Tax Rules?
>
> (ii) Whether the Tribunal was justified in holding that there is no jurisdictional issue so as to enable the Commissioner of Income Tax to invoke section 263 of the Income Tax Act?"

4. On a careful consideration of the materials available on record and the submissions made by the learned counsel on either side, it could be seen that as per Explanation to Rule 9B, the cost of acquisition means the amount paid by the film distributor to film producer under an agreement. In the case on hand, admittedly, the assessee was following mercantile system of accounting. Therefore, as per section 43(2), the "paid" will include what is incurred as per the method of accounting followed by the assessee for computing the income from business. The revenue has not disputed that the assessee was following the mercantile system. Therefore, the assessee was well within his right to claim the whole of the sum mentioned in agreement as part of the cost of acquisition. The Assessing Officer had called for the relevant agreement during the course of original assessment proceedings and the assessee also submitted the same before the Assessing Officer. The Assessing Officer during the course of original assessment proceedings, considered the issues and gave the allowances to the assessee. Revisionary powers were invoked by the Commissioner of Income Tax based on letter of the Assessing Officer and not based on an independent assimilation of facts. The Tribunal has rightly observed that the Commissioner of Income Tax was only trying to stamp his approval to a change of opinion of the Assessing Officer. The Tribunal has rightly came to the conclusion that the original order of the Assessing Officer did not suffer from any error which was prejudicial to the interests of revenue, warranting invocation of revisionary powers vested on the Commissioner of Income Tax under section 263 of the Act.

5. For the reasons stated above, we do not find any merits in the Appeal. The substantial questions are decided against the Revenue and in favour of the assessee. Hence, the Tax Case Appeal is liable to be dismissed. Accordingly, the same is dismissed. No costs.

Sd/-
Assistant Registrar(CS)

//True Copy//

Sub Assistant Registrar

Rj

TO
THE INCOME TAX APPELLATE TRIBUNAL,
CHENNAI,D BENCH

2.THE COMMISSIONER OF INCOME TAX IV,CHENNAI 3RD FLOOR,NEW BLOCK,AYANKAR BHAVAN,NUNGAMBAKKAM,CHENNAI
3.THE INCOME TAX OFFICER,MEDIA WARD III,CHENNAI

+1cc to Mr.G.Baskaran , Advocate SR.No. 14625
+1cc to Mr.M.Swaminathan, Advocate SR.No. 15064

T.C.A.No. 120 of 2014

A.SK(31.03.2021)