

आयकर अपीलीय अधिकरण, मुंबई "बी" खंडपीठ
Income-tax Appellate Tribunal -"B" Bench Mumbai
सर्वश्री राजेन्द्र, लेखा सदस्य एवं अमरजीत सिंह, न्यायिक सदस्य
Before S/Sh.Rajendra, Accountant Member and Amarjit Singh, Judicial Member
आयकर अपील सं./I.T.A./5629/Mum/2012, निर्धारण वर्ष /Assessment Year: 2009-10

Mr. Moti Sagar Office No.6, New Shantivan Bldg. Oberoi Complex, SAB TV Lane New Link Road, Andheri -East Mumbai-400 053. PAN:AAPPS 2468 F	Vs.	ACIT- 11(1) Mumbai-400 020.
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(अपीलार्थी /Appellant)

(प्रत्यर्थी / Respondent)

राजस्व की ओर से / **Revenue by:** Shri Suman Kumar -DR
अपीलार्थी की ओर से / **Assessee by:** Shri Birendra Dutta
सुनवाई की तारीख / **Date of Hearing:** 29/11/2016
घोषणा की तारीख / **Date of Pronouncement:** 06.01.2017

आयकर अधिनियम, 1961 की धारा 254(1) के अन्तर्गत आदेश

Order u/s.254(1) of the Income-tax Act, 1961 (Act)

लेखा सदस्य, राजेन्द्र के अनुसार/ PER Rajendra A.M.-

Challenging the order dated 20.07.12 of CIT(A)-3 Mumbai the assessee has filed the present appeal. Assessee, an individual filed his ROI on 30.09.2009 declaring total income of Rs.1.10 crores. The AO completed the assessment on 23.12.2011, u/s. 143(3), determining his income at Rs.1.52 crores.

2.The effective Ground of appeal is about addition of Rs.41.66 lakhs. During the assessment proceedings the AO found that the assessee had entered into an agreement for sale of a TV serial vide agreement dt.10.4.2008 for Rs.50.00 lakhs, that the assessee had offered income of Rs.8.33 lakhs for the year under consideration. The AO directed the assessee to reconcile the income as per agreement and income offered for tax. The assessee stated that he had proposed to offer the income proportionately from the year under consideration to AY 2014-15 (Rs.8.33 lakhs) per year.

3.After considering the submission of the assessee the AO referred to the terms of contract, (Cl.15),(Cl.3),(Cl.6) and held that there was nothing in the agreement that allowed termination of the agreement by the licensor, that the deliverables and performance of obligations under the agreement were completed at the time of signing the agreement, that there was no deferment of contractual obligation to any future date, that the rescinding of the contract vested only with the licensee and not with the assessee, that the agreement was conclusively

binding on the assessee, that the entire income, being the contract values, had fructified on the date of signing and execution of agreement, that there was no scope of any kind of deferment of income, that the entire consideration was received during the year. Therefore, he made addition of Rs.41.66 lakhs (Rs.50 lakhs – Rs.8.33 lakhs offered by the assessee for the year under appeal). The AO also placed reliance on AS-9 and referred to the case of Union Land & Building Society (P.) Ltd. (83ITR794).

4. Aggrieved by the order of the AO, the assessee preferred an appeal before the First Appellate Authority (FAA) before whom he made elaborate submissions. After considering the assessment order and the contentions of the assessee the FAA held that the assessee had entered into an agreement with Moser Baer for the period dt. 31.5.09 to 31.5.14, that being a licensor he was the sole and absolute owner of the Home video rights, that he had sold his rights to the licensee, that he had received Rs.50.00 lakhs during the year under consideration, that he had sold the license as per agreement for a period of 6 years, that he had handed over deliverables to the buyer, that the consideration received by him was in lieu of transfer of sale of rights and goods, that the AO was right in bringing to tax the entire consideration received during the year under appeal to tax. Finally, he upheld the order of the AO.

5. During the course of hearing before us, the Authorised Representative (AR) argued that the AO had wrongly treated the transaction as sale of goods, it was payment of royalty to the assessee, that Home video licensing rights were to come back to the assessee after a period of 6 years, that the assessee received royalty for using the asset, royalty was intangible asset. He referred to the case of K.E. Gnanavelraja (361ITR446) and T.N.K. Govindrajulu Chetty (165 ITR 231). On a query by the Bench he stated that the assessee had offered income of Rs.8.33 lakhs in all the subsequent years, that orders for AY.s 2011-12 to 2013-14 were passed u/s. 143(3) of the Act, that the AO had taxed income of Rs.8.33 lakhs in all these years as well as in the year 2010-11, when an intimation u/s. 143(1) was issued, that the AO had doubly taxed the same income. He referred to para 6-7 of the Agreement and stated that Home Video Licensing agreement could not be construed as agreement for sale, that the agreement clearly stipulated the parties as licensor and licensee and not seller and buyer, that he was following mercantile system of accounting and revenue was recognised based on accrual basis. As per Accounting Standard-9 income from royalty has to be recognized proportionately over a period of time, that the agreement proved receipt of money in advance,

that receipt would not constitute income, that the time of receipt would not alter the character of receipt. DR supported the order of the FAA.

6. We have heard the rival submissions and perused the material before us. We find that the assessee had entered into an agreement with Moser Baer India Ltd., that he received Rs.50 lakhs in pursuance of the Agreement, that he distributed the income over a period of 6 years, that a sum of Rs.8.33 lakhs (being 1/6th) was recognised as income for the year under appeal, that the balance amount of Rs.41.66 lakhs was deferred for the remaining 5 years and was recognized as liability in the balance sheet, that he offered income of Rs.8.33 lakhs in the subsequent AY.s and same was taxed by the AO.s in those years. Before proceeding further we would like to refer to para 6 and 7 of the Agreement and same read as under :-

“6.2. Effect of Event of Default.

6.2.1. In addition to any other rights available under this agreement or any other legal recourse available to Licensee, on the occurrence of an event of default, licensee shall have the right to withhold the consideration proportionate to the said film.

6.2.2 the Licensor fails to cure the event of Default within the stipulated 10(Ten) Days, the Licensor may offer to replace the said Title with another Cinematograph Title of same value ("Alternative Titles"), which Licensee may agree to but shall not be under obligation to accept the Licensor shall provide source material of such Alternative Tiles agreed by Licensee within 15 days from the date of such agreement and due amendment of Schedule 1 of the present agreement.

6.2.3. If the Licensor fails to provide Alternative Titles acceptable to Licensee as set out in Clause 6.2.2 above, Licensee shall at its sole discretion restrict the scope of the license and reduce the Consideration payable in respect thereof in the same proportion. If the consideration for the said Title has already been made by Licensee to the Licensor, the Licensor shall reimburse licensee with the same within 15 days along with Interest @ 12 % per annum from the date of payment of the Consideration till the date of payment and/or realization.

6.2.4. Notwithstanding the foregoing, in any Event of Default, Licensee shall have the right but not the obligation to terminate this Agreement forthwith and on such termination, the Licensor shall be liable to reimburse Licensee for the entire consideration amount paid by Licensee to the Licensor within 15 days along with interest @ 12% per annum from the date of payment of the consideration till the date of payment and /or realization.”

A perusal of the above conditions reveal that the agreement could be terminated within a period of 6 years and amount had to be refunded. The assessee had allowed licensee to use the rights and therefore, the payment received by it has to be treated as royalty. The assessee is following mercantile system of accounting and is entitled to recognise his revenue on accrual basis. The rights of the TV Serial were to come back to the assessee after a period of 6 years. Thus, it is not a case of sale. But receipt is directly related to royalty received by the assessee from the licensee. AS-9 allows deferment of royalty income. Thus, in our opinion the

assessee had rightly offered the incomes in six AY.s proportionately. Therefore, reversing the order of the FAA and considering the peculiar facts and circumstances of the case, we decide the effective Ground of appeal in favour of the assessee .

As a result, appeal filed by the assessee is allowed.
फलतः निर्धारिती द्वारा दाखिल की गई अपील मंजूर की जाती है।

Order pronounced in the open court on 06th January, 2017.
आदेश की घोषणा खुले न्यायालय में दिनांक 06 जनवरी, 2017 को की गई।

Sd/-

(अमरजीत सिंह / Amarjit Singh)

न्यायिक सदस्य / JUDICIAL MEMBER

मुंबई Mumbai; दिनांक Dated : 06.01.2017.

Jv.Sr.PS.

Sd/-

(राजेन्द्र / Rajendra)

लेखा सदस्य / ACCOUNTANT MEMBER

आदेश की प्रतिलिपि अग्रेषित/Copy of the Order forwarded to :

1.Appellant /अपीलार्थी

2. Respondent /प्रत्यर्थी

3.The concerned CIT(A)/संबद्ध अपीलीय आयकर आयुक्त, 4.The concerned CIT /संबद्ध आयकर आयुक्त

5.DR "B " Bench, ITAT, Mumbai /विभागीय प्रतिनिधि, खंडपीठ, आ.अ.न्याया.मुंबई

6.Guard File/गार्ड फाईल

सत्यापित प्रति //True Copy//

आदेशानुसार/ BY ORDER,

उप/सहायक पंजीकार Dy./Asst. Registrar

आयकर अपीलीय अधिकरण, मुंबई /ITAT, Mumbai.