<u>आयकर अपीलीय अधिकरण, मुंबई “डी ” खंडपीठ</u>
Income-tax Appellate Tribunal “D”Bench Mumbai
सर्वश्री राजेन्द्र, लेखा सदस्य एवं रविश सूद, न्यायिक सदस्य
Before S/Sh.Rajendra,Accountant Member & Ravish Sood, Judicial Member
आयकर अपील सं./I.T.A./3377/Mum/2016, निर्धारण वर्ष /Assessment Year: 2005-06

M/s. Mega Bollywood Pvt.Ltd. The Plaza, 11th Floor, 55, Gamdevi Mumbai-400 007. **PAN:AAACY 0507 D**	Vs.	DCIT-Central Circle-3(3) 19th Floor, AIR India Building Mumbai-400 021.

(अपीलार्थी /**Appellant**) (प्रत्यर्थी / **Respondent**)

Revenue by: Shri Darshani Gohil-DR
Assessee by: Shri Purushottam Kumar
सुनवाई की तारीख / **Date of Hearing: 21/12//2017**
घोषणा की तारीख / **Date of Pronouncement: 12/03/2018**

आयकर अधिनियम,1961 की धारा 254(1)के अन्तर्गत आदेश
Order u/s.254(1)of the Income-tax Act,1961(Act)

<u>लेखा सदस्य ,राजेन्द्र के अनुसार /PER RAJENDRA,AM-</u>

Challenging the order dated 29/04/2016 of the CIT(A)-51, Mumbai the assessee has filed the present appeal.Assessee-company,a world-right-controller of various films and Financer of Films,filed its return of income on 31/10/2005,declaring **Loss** of Rs.1.38 crores.The Assessing Officer(AO)completed the assessment on 19/12/2007 u/s. 143(3) of the Act,determining its income at Rs.61.57 lakhs.

2.It was brought to our notice that the matter has travelled to the Tribunal for the second time, that in the first round of litigation the issue of addition of Rs. 2 crores to the income of the assessee was restored back to the file of the AO for fresh adjudication by the Tribunal (ITA/6180/Mum/08,dtd. 16.11.2009),that in the second round the AO again added the same amount while completing the assessment,that the FAA confirmed the addition,that the AO also initiated the penalty proceedings invoking the provisions of section 271(1)(c)of the Act,that he levied a penalty of Rs.73,18,500/- vide his order dated 28/03/2014,that the FAA upheld the penalty order of the AO,that in the quantum appeal the Tribunal allowed the appeal of the assessee and deleted the addition made by the AO and confirmed by the FAA(ITA/2822/Mum/2012 dtd.26/08/2016).

3.After considering the paragraph 8 of the said order,it is clear that the quantum appeal stands decided in favour of the assessee.We are reproducing the relevant paragraph and it reads as under:

> "8. We have heard the rival submissions and perused the relevant materials on records as placed before us including the orders of the authorities below and various circulars and decisions relied by the ld counsel of the assessee. The assessee entered into an agreement of financing dated 18.09.1999 with M/S BMB Productions for lending money for the production of a film "Hum Tumhare Hain Sanam" which was under production at the time of advancing money and the money was advanced accordingly during the various stages of production. Copy of the agreement is placed at page 89 to 100 of the paper book. Upon perusal of the said agreement it is clear that this was agreement to finance the production of film specifying the various terms and conditions of financing, modalities of repayment, and security given to safeguard the money lent. Clause no. 1 provides for the various rights given to the assessee as worldwide controller such as sale of distribution rights including copyrights, right for exploitation of film by distribution, exhibition in cinema, TV, Satellite rights , Video rights and there such as DVD dubbing etc. Clauses no 6 to 9 provided for the sharing of revenue between the assessee and BMB Productions, rights as worldwide controller and repayment and security of money advanced and also the course to be followed in the event of default in honouring the commitments under the agreement. It is abundantly clear from the above that the rights were given to the assessee only as financer to secure the repayment of money advanced by sharing the revenue from the film as provided in the clause 6 and no where the assessee was given exclusive and absolute rights of ownership and right to receive the 100 revenue from the film. Thus one thing is very clear that the assessee was not the exclusive and absolute owner of the rights but a mechanism was devised to make the repayment of the loan taken from the assessee. We also find that the assessee received the share of revenues from the film and adjusted the same towards the advance recoverable. On 8.11.2002 the assessee granted a license of "Exclusive Non Standard Television and Pay per View Rights" to SET India Pvt. Ltd. for a consideration of Rs.2.20 Crore under tripartite agreement between assessee, BMB Productions and SET India Pvt Ltd. The entire amount was offered by the assessee to taxation by crediting the income in the profit and loss account and was not credited to advance recoverable. As on 1.4.2004 the advance outstanding was Rs. 4,26,97,250/-. When the advance was not recovered through the modes as mentioned in the agreement dated 18.09.1999, then the assessee purchased the rights in films on perpetual basis for a consideration of Rs. 2.00 on the belief that if the circumstances turns favourable the film may fetch revenues in future and charged the same to the profit and loss account but valued the stock at nil at the year end. The ld. AR submitted that there was hardly any value of the stock and thus same was valued at nil. We also find that in the subsequent years i.e A.Y. 2007-08 and 2008-09 the good amount of receipts/incomes were received from distribution of film and accordingly offered for tax in those year. From the above it is clear that the payment of Rs. 2.00 Cr is not a prior period expenses nor the assessee was owner of the exclusive rights of the films in terms of agreement dated 18.09.1999 and therefore the conclusions as drawn by the CIT(A) is not correct to this extent. From the facts of the case it is clear that the assessee has purchased the rights in AY 2005-06 for Rs. 2.00 Cr as corroborated by the fact that in the assessment years 2007-08 and 2008-09 the assessee received income from distribution of films and offered the same to the income tax. We find merit in the argument of the assessee that the advance given to BMB Productions was a trading advance given in the ordinary course of business and the same was an allowable business loss if written off in the books of accounts and we are not in agreement with the CIT(A) that the whole exercise was undertaken to neutralise the income Rs. 2.20 received from SET India Pvt Ltd which offered to tax in AY 2003-04. Moreover the case of the assessee is also supported by the decisions referred and relied by the ld AR.The Hon'ble High Court of Andhra Pradesh in the case of P. Satyanarayana v. commissioner of Income-tax (supra) has held that where a film distributor advanced certain amounts to the producer of a film for the purpose of production of the

motion picture under an agreement which provided for realization of the amount advanced by him after exhibition of films and the same could not be realized in full out of the collections through exhibition of such films, and by an agreement the distributor agrees to take a part of the amount from the producer and writes off the balance, the loss arising to the distributor thereby is a trading loss incurred in the course of business and incidental thereto and hence he is entitled to deduction under s. 28 of the I.T. Act, 1961. The Hon'ble High court of Madras in the case of commissioner of Income-tax v. Sethu a Film Distributors (supra) has held that the Tribunal's finding that the assessee had advanced moneys in the course of money-lending business was based on valid materials;

> *(ii) that once it was found that the assessee had been engaged in the commercial business activity of advancing moneys to various producers, as film financier, apart from the business of distribution of pictures, the advances were so given only in the nature of lending moneys for interest and the loss, if any, had occurred incidentally to the business and, therefore, it was allowable as business loss.*

The Hon'ble High Court of Madras in the case of Commissioner of Income-tax v. Crescent Films (P.) Ltd(supra) held that, in the instant case, the sum of Rs. 7,50, 000 paid by the distributor would have been lost to the assessee, had the picture not been completed. In order to ensure that the picture was completed, the assessee had agreed to lend money and that lending was a separate transaction and was not part of the distribution arrangement. The money so lent having become irrecoverable by reason of the picture failing at the box office and the producer being unable to repay his debts, the money so lost to the assessee was rightly held by the Commissioner and the Tribunal to be a trading loss.
The Hon'ble Supreme Court in the case of Badridas Daga v. Commissioner of Income(supra) held that when a claim is made for a deduction for which there is no specific provision under section 10(2), whether it is admissible or not will depend on whether, having regard to accepted commercial practice and trading principles, it can be said to arise out of the carrying on of the business and be incidental to it. The loss for which a deduction is claimed must be one that springs directly from the carrying on of the business and is incidental to it, and not any loss sustained by the assessee even if it has some connection with his business. If that is established, then the deduction must be allowed, provided that there is no provision against it, express or implied, in the Act.
The Hon'ble Bombay High Court in the case of T. J. Lalvani v. Commissioner of Income-tax has held that the Tribunal conclusion that the loan transaction was not in the course of the assessee 's business was not correct. The two circumstances mentioned by the Tribunal were not sufficient to warrant such a conclusion. There was, therefore, no evidence for the finding recorded by the Tribunal that the loss in question had not been incurred by the assessee in the course of his business so as to be deductible under the provisions of the Indian Income-tax Act; and it is not necessary that in order that an expenditure should be in connection with the carrying out of a business or incidental to it, it must be necessarily referable to any specific or direct transaction in the course of the carrying on of the business. The financing by the assessee of the business of Lookmanji and of all its import of goods on Lookmanji's licences was an activity of the assessee in the course of his business and the loss arising on the loan, therefore, was a loss, which had occurred in connection with the business of the assessee and incidental to it and was, thereföre, claimable by the assessee as a deduction. Though it was difficult to treat it as coming under section 10(2)(xv), it was claimable both as a trading loss under section 10(1) or as a debt of the business which had become irrecoverable under section 10(2)(xi)."

Considering the above,we are of the opinion,that the order imposing penalty u/s. 271 (1)(c)of the Act would not survive.Effective ground of appeal is decided in favour of the assessee.

As a result, appeal filed by the assessee stands allowed.
फलतः निर्धारिती द्वारा दाखिल की गई अपील मंजूर की जाती है.
Order pronounced in the open court on 1st March,2018.
आदेश की घोषणा खुले न्यायालय में दिनांक 01 मार्च, 2018 को की गई ।

Sd/-	**Sd/-**
(रविश सूद /Ravish Sood)	(राजेन्द्र / **RAJENDRA)**
न्यायिक सदस्य / **JUDICIAL MEMBER**	**लेखा सदस्य / ACCOUNTANT MEMBER**

मुंबई Mumbai; दिनांक/Dated : 12.03.2018.
Jv.Sr.PS.

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 " D " Bench, ITAT, Mumbai /विभागीय प्रतिनिधि, खंडपीठ,आ.अधि.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.**