

आयकर अपीलीय अधिकरण, 'बी' न्यायपीठ, चेन्नई
IN THE INCOME TAX APPELLATE TRIBUNAL, 'B' BENCH, CHENNAI
श्री ए. मोहन अलंकामणी, लेखा सदस्य एवं श्री धुव्वुरु आर.एल रेड्डी, न्यायिक सदस्य के समक्ष
BEFORE SHRI A.MOHAN ALANKAMONY, ACCOUNTANT MEMBER
AND SHRI DUVVURU RL REDDY, JUDICIAL MEMBER

आयकर अपील सं./I.T.A.Nos. 2187 to 2190/Chny/2015
(निर्धारण वर्ष / Assessment Years: 2006-07 to 2009-10)

The Deputy Commissioner of Income Tax, Central Circle-1(1), Chennai - 34.	Vs	Shri M J Antony, 59/1047, Vallakuzhi Aashirvaad Cinemas, Krishnaswamy Road, Ernakulam – 682 035.
		PAN: ADDPA6348P
(अपीलार्थी/Appellant)		(प्रत्यर्थी/Respondent)

&
C.O. Nos.20 to 23/Chny/2016
(in ITA Nos. 2187 to 2190/Chny/2015)

Shri M J Antony, 59/1047, Vallakuzhi Aashirvaad Cinemas, Krishnaswamy Road, Ernakulam – 682 035.	Vs	The Deputy Commissioner of Income Tax, Central Circle-1(1), Chennai - 34.
PAN: ADDPA6348P		
(अपीलार्थी/Appellant)		(प्रत्यर्थी/Respondent)

निर्धारिती की ओर से /Assessee by	:	Shri Iype Mathew, CA
राजस्व की ओर से /Revenue by	:	Shri Srinivasa Rao, CIT

सुनवाई की तारीख /Date of hearing	:	09.05.2018
घोषणा की तारीख /Date of Pronouncement	:	17.07.2018

आदेश / ORDER

Per BENCH:-

These appeals by the Revenue are directed against the orders passed by the learned Commissioner of Income Tax (Appeals)-18, Chennai all dated 18.08.2015 in ITA No.171/14-15,

172/14-15, 173/14-15 & 174/14-15 for the assessment years 2006-07, 2007-08, 2008-09 & 2009-10 respectively, all passed U/s.250(6) r.w.s. 153C & 153A of the Act. The assessee has also raised a cross objections against the orders of the Ld.CIT(A) for the assessment years 2006-07, 2007-08,2008-09 & 2009-10.

2. Since the issues involved in the Revenue's appeals are identical and the issues involved in the cross objections of the assessee are in support of the order of the Ld.CIT(A) on merits and against the order of the Ld.CIT(A) on jurisdiction, the Revenue's appeals as well as the cross objections of the assessee are taken up together for hearing and disposed off by this common order.

3. **Revenue's Appeals:**

The Revenue has raised three identical grounds in its appeals however the cruxes of the issues are that the Ld.CIT(A) has erred in deleting the addition made by the Ld.AO towards non-deduction of tax at source invoking the provisions of Section 40(a)(ia) of the Act for the relevant assessment years 2006-07 to 2009-10.

4. **Assessee's Cross objections:**

The assessee has raised several identical grounds in its cross objections however they are in support of the orders of the Ld.CIT(A) on merits and against the orders of the Ld.CIT(A) for confirming the assessment made U/s.153C of the Act on jurisdiction.

5. The brief facts of the case are that the assessee is an individual engaged in the business of producing cine films in the name of his proprietary concern M/s. Ashirvad Cinemas, partner in M/s. A & A Productions and director in certain private limited companies.

6. During the course of assessment proceedings U/s.153C r.w.s. 153A of the Act, for the assessment year 2006-07, it was observed by the Ld.AO that the assessee had indirectly paid remuneration to Shri V. Mohanlal Rs.25 lakhs and Rs.20 lakhs for acting in his film 'Rasathanthram' and 'Naran' respectively. The arrangement was that the assessee was to receive Rs.25 lakhs and Rs.20 lakhs from M/s. Anurag Pictures as his revenue due to business transactions which he directed to be paid to Shri V. Mohanlal towards remuneration payable for the film

'Rasathanthram' and 'Naran' respectively. Similarly for the subsequent assessment years 2007-08 & 2008-09 M/s. Anurag Pictures had paid to Shri V. Mohanlal on behalf of the assessee Rs.25 lakhs each for the film Baba Kalyani & Ali Bhai and Rs.30 lakhs for the assessment year 2009-10 towards remuneration for the film Innatha Cintha Vishayam respectively.

7. The Ld.AO opined that since tax was not deducted at source, provisions of Section 40a(ia) of the Act would be applicable in the case of the assessee and accordingly disallowed the same as allowable deduction after including the amount receivable from M/s. Anurag Pictures as the income of the assessee since the same was not accounted in the books of accounts of the assessee.

8. However on appeal, the Ld.CIT(A) deleted the addition by holding that the provisions of Section 40(a)(ia) of the Act, would not be applicable in the case of the assessee because the appellant had neither credited the amount receivable from M/s. Anurag Pictures as his income nor claimed the amount paid to Shri V. Mohanlal as expenses.

9. The Ld. DR argued before us by stating that the assessee had failed to book the revenue receivable from M/s. Anurag Pictures as his income and has also failed to disclose the expenditure being the payment made by M/s. Anurag Pictures on behalf of the assessee to Shri V. Mohanlal towards remuneration for acting in the movie produced by him and deduct tax at source. Therefore it was pleaded that the orders of the Ld.AO may be reinstated and the order of the Ld.CIT(A) may be set aside which is erroneous. The Ld.AR on the other hand relied on the orders of the Ld.CIT(A) and argued in support of the same. The Ld.AR further submitted that if the Bench decides the matter against the assessee, then the appeals may be remitted back to the file of Ld.AO to verify whether Shri V. Mohanlal has paid tax by including the amount received from the assessee as his income and if found so, delete the addition made by the Ld.AO invoking the provisions of Section 40(a)(ia) of the Act.

10. We have heard the rival submissions and carefully perused the materials on record. From the facts of the case, it is evident that the assessee had not recorded the entries in his books of accounts with respect to the income receivable from M/s. Anurag Pictures and the expenditure incurred by him being the payment made by

M/s. Anurag Pictures to Shri V. Mohanlal on behalf of the assessee towards remuneration for acting in his motion pictures. Skipping to record contra entries distorts the financial and factual aspects of the assessee's state of affairs of his business and it is not permissible. Therefore as rightly held by the Ld.AO, the assessee ought to have passed those accounting entries and accordingly deducted tax at source towards the payment made to Shri V. Mohanlal. It is also not the case that M/s. Anurag Pctures has deducted tax at source towards the remuneration paid to Shri V. Mohanlal. In this situation, we do not find any merit in the order of the Ld.CIT(A) for having deleted the addition made by the Ld.AO invoking the provisions of section 40(a)(ia) of the Act. However we also find force in the arguments advanced by the Ld.AR that if Shri V. Mohanlal has paid tax with respect to the remuneration received by him from the assessee through M/s. Anurag Pictures then there is no necessity for deducting tax at source. Therefore in the interest of justice, we hereby set aside the order of the Ld.CIT(A) and remit the matter back to the file of Ld.AO with directions to verify whether Shri V. Mohanlal has included the amount received from the assessee through M/s. Anurag Pictures as his income and paid tax, and if found so, delete the addition made by invoking the provisions

of Section 40(a)(ia) of the Act, and if found otherwise reinstate the earlier assessment order. It is ordered accordingly.

11. With respect to the cross objections raised by the assessee, we do not find any merit in the same because we have set aside the order of the Ld.CIT(A) and the Ld.AR has not seriously advanced any arguments towards the ground raised against the maintainability of orders passed U/s.153C of the Act.

12. In the result all the appeals filed by the Revenue are partly allowed for statistical purposes as indicated herein above and the cross objections filed by the assessee are dismissed.

Order pronounced on the 17th July, 2018 at Chennai.

Sd/-

(धुव्वुरु आर.एल रेड्डी)
(Duvvuru RL Reddy)
न्यायिक सदस्य /Judicial Member

Sd/-

(ए. मोहन अलंकामणी)
(A. Mohan Alankamony)
लेखा सदस्य / Accountant Member

चेन्नई/Chennai,
दिनांक/Dated 17th July, 2018

RSR

आदेश की प्रतिलिपि अग्रेषित/Copy to:

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|------------------------|--------------------------|------------------------------|
| 1. अपीलार्थी/Appellant | 2. प्रत्यर्थी/Respondent | 3. आयकर आयुक्त (अपील)/CIT(A) |
| 4. आयकर आयुक्त/CIT | 5. विभागीय प्रतिनिधि/DR | 6. गार्ड फाईल/GF |