

**आयकर अपीलीय अधिकरण, मुंबई न्यायपीठ, 'एच', मुंबई।**

**IN THE INCOME TAX APPELLATE TRIBUNAL  
MUMBAI BENCHES "H", MUMBAI**

श्री जोगिन्दर सिंह, न्यायिक सदस्य एवं  
श्री जी. मंजूनाथ, लेखा सदस्य, के समक्ष

**Before Shri JOGINDER SINGH, Judicial Member, and  
Shri G. MANJUNATHA, Accountant Member**

**ITA NO.6174/Mum/2016  
Assessment Year: 2012-13**

M/s. Dharma Productions Private Limited, Unit No.201 & 202, 2 <sup>nd</sup> Floor, Supreme Chambers, Off Veera Desai Road, 17/18, shah Industrial Estate, Andheri (W), Mumbai-400053	<b>बनाम/</b> Vs.	ACIT-16(1), Room No.439, 4 <sup>th</sup> Floor, Aayakar Bhavan, Mumbai-40020
(निर्धारिती / Assessee)		(राजस्व / Revenue)
<b>P.A. No.AAACD3889K</b>		

निर्धारिती की ओर से / Assessee by	Shri Rakesh Mohan
राजस्व की ओर से / Revenue by	Shri Ram Tiwari-DR

सुनवाई की तारीख / <b>Date of Hearing :</b>	<b>04/06/2018</b>
घोषणा की तारीख/ <b>Date of Pronouncement</b>	<b>26/07/2018</b>

**आदेश / O R D E R**

Per Joginder Singh (Judicial Member)

The assessee is aggrieved by the impugned order dated 30/08/2014 of the Ld. First Appellate Authority, Mumbai. The first ground raised by the assessee pertains to confirming the disallowance of Rs.7,18,43,580/- on account of advertisement expenses incurred after the censor date under Rule-9A of the Income Tax Rules, 1962.

2. During hearing, Shri Rakesh Mohan, Ld. counsel for the assessee, contended that the impugned issue is covered in favour of the assessee by the decision of the Tribunal for Assessment Year 2009-10, (ITA No.2483/Mum/2013), order dated 09/09/2015. On the other hand, the Ld. DR, Shri Ram Tiwari, contended that the issue in hand is not fully covered by the aforesaid decision as the decision from Hon'ble Bombay High Court in the case of CIT vs Prakash Pictures (260 ITR 465) (Bom.) and CIT v S. M. Sagar 261 ITR 271 (Bom.) were not considered by the Tribunal. In reply, the ld. counsel for the assessee, contended that both these decisions have been

considered by the Tribunal for the order for Assessment Year 2010-11 (ITA No.25/Mum/2015), order dated 21/03/2017. This factual matrix was not controverted by the Revenue.

2.1. We have considered the rival submissions and perused the material available on record. In view of the above assertions, we are reproducing hereunder the relevant portion from the order of the Tribunal dated 21/03/2017 (Assessment Year 2010-11) for ready reference and analysis:-

This appeal by the assessee is arising out of the order of the CIT (Appeals)-40, Mumbai in appeal No.CIT (A)-40/DCIT-31/13-14 dated 10<sup>th</sup> November, 2014. Assessments was framed by the DCIT, Central Circle -31, Mumbai u/s 143(3) of the Income Tax Act, 1961 (hereafter "the Act") for assessment year 2010-11 vide his order dated 26-03-2013.

2. The first issue in this appeal of the assessee is against the order of the CIT (A) confirming the disallowance of advertisement expenses incurred post-production by the assessee under Rule 9A of the Income Tax Rules, 1962 (hereafter "the Rules"). For this, the assessee has raised the following ground No.1:-

*"Ground No.1:*

*On the facts and in the circumstances of the case and in law, the Hon'ble CIT (A) grossly erred in confirming the disallowance made by the A. O. of Rs.4,24,95,661/- on account of advertisement expenses incurred after the censor date under Rule 9A of the Income Tax Rules, 1962.*

*The appellant prays that the disallowance is totally unjustified and may please be deleted".*

3. Briefly stated the facts of the case are that the assessee is engaged in the business of production / distribution of

cinematographic films. During the year under consideration, the assessee produced/released three films namely 'Wake Up Sid', 'Kurban' and 'My name is Khan'. The AO disallowed the expenditure relating to advertisement and publicity amounting to Rs.4,24,95, 661/- for the reason that the same has been incurred after completion of the films and after the films got certification by the Censor Board and the same was not allowable in view of Rule 9 of the Rules. The CIT (A) also confirmed the action of the AO vide Para 7 to 13 of the assessment as under:-

*"7. I have considered the facts of the case, submissions and contentions of the appellant as also the detailed order of the A O in this regard. At the very outset, I would like to mention that in the Profit & Loss Account, the assessee has claimed an expenditure of Rs.2,72,70,515/- under the head advertising and publicity of films". However, on verification during the course of assessment proceedings, the A O noticed that this expenditure was actually more to the tune of Rs.4,24,95,661/-, which is not disputed by the assessee. Therefore, as far as this issue is concerned, the figure of expenditure is to be taken at Rs.4,24,95,661/-.*

*8. It is relevant to note here that special provisions have been made relating to allowability of expenditure in film production cases, in the form of Rule 9A, which lay down the detailed guidelines regarding the nature of expenditure which can be claimed by a film producer. As per the provisions of Rule 9A, only the expenditure incurred till the completion of the films and till it received the certificate from the Censor Board can be claimed as cost of the films, by the producer. For clarity, the relevant provisions of Rule 9A are reproduced as under:-*

**9A.** *[(1) In computing the profits and gains of the business of production of feature films carried on by a person (the person carrying on such business hereafter in this rule referred to as film producer), the deduction in respect of the cost of production of a feature film certified for release by the Board of Film Censors in a previous year shall be allowed in accordance with the provisions of sub-rule (2) to sub-rule (4).*

*Explanation : In this rule,—*

- (i) "Board of Film Censors" means the Board of Film Censors constituted under the Cinematograph Act, 1952 (37 of 1952);*
- (ii) "cost of production", in relation to a feature film, means the expenditure incurred on the production of the film, not being—*
  - (a) the expenditure incurred for the preparation of the positive prints of the film; and*
  - (b) the expenditure incurred in connection with the advertisement of the film after it is certified for release by the Board of Film Censors:*

*From the above provisions, it is quite clear that any expenditure in nature of advertisement, incurred in respect of a film after it is certified for*

release by the Censor Board, cannot form part of the “cost of production”, which is allowable in the case of a film producer as per the provisions of Rule 9A.

9. As stated above, during the year, the assessee had produced three movies, viz. “Wake Up Sid”, “Kurban”, and “My name is Khan”. These movies were sold to UTV Software Communications Ltd. and Fox Star Studios India Pvt. Ltd., who were distributors for these films, for a consideration of Rs.24,52,00,000/-, Rs.49,04,00,000/- and Rs.85,00,00,000/-, respectively. As per agreement dated 11/2/2009, sole and exclusive licence to distribute, exhibit and exploit distribution rights as described in Annexure-1 to the agreement, from the effective date, for the territory comprising the whole world, in respect of the films “Wake Up Sid” and “Kurban”( which was then untitled) was granted to UTV Software Communications Ltd. It is further mentioned in clause 2(b) of the said agreement that the sole and exclusive license for the distribution rights of each of the films as granted therein includes the sole and exclusive obligation of the Licensee (Distributor – UTV Software Communications Ltd.) to carry out the marketing, publicity and promotion of each of the said films for the term and the Licensee will bear the entire expenses in relation to the same. For clarity, clause 2 (b) of the agreement dated 11/2/2009 is reproduced as under:-

“b. It is hereby agreed by and between the Parties that the sole and exclusive license for the Distribution Rights of each of the said films as granted herein includes the sole and exclusive obligation of the Licensee to carry out the marketing, publicity and promotion of each of the said films for the term and bear the entire expenses in relation to the same. The Licensee shall be entitled to all the rights of distribution, exhibition and exploitation of each of the said films both commercial and non-commercial and the rights for re-issue (subject to the terms and conditions herein and extinguishing on the expiry of the term of this Agreement), sub-titling, dubbing of each of the said films with or without alterations(alterations shall be limited to censor purposes, edits for compatibility with formats or mediums for exploitation and edits for compatibility with technologies), in any language of the Territory and all other rights now known or invented during the Term and stated in Annexure (1) hereto, to be exploited by or through the Licensee, for or in all the Territory, on the terms and conditions hereinafter contained. It is clarified that notwithstanding anything contained herein, the Licensee shall at all times have the sole and exclusive right to market, promote, distribute and exploit each of the films in the Territory and for the term. All decisions regarding the exploitation and distribution of the Films shall be decided by the Licensee. It is however clarified that the Licensee shall not exhibit or display the Film(s) prior to the release date of such Film(s).”

It is also mentioned in the agreement that the entire cost of printing and processing charges of the films will also be borne by the Licensee, and lieu of the same, the appellant will get a total sum of Rs.73.55 Crores, as minimum guarantee amount (Rs.24,52,00,000/- for the film “Wake Up Sid” and Rs.49,04,00,000/- for the film “Kurban”).

10. Similarly, as per agreement dated 2/2/2010, exploitation and distribution rights in respect of the film "My Name if Khan" were granted to Fox Star Studios India Pvt. Ltd., and all matters of distribution, exhibition, exploitation and monetization of the film shall be in Fox Star's sole discretion. It has also been stipulated in the agreement that the appellant and Fox Star will mutually approve the initial theatrical advertising, publicity and marketing campaign and distribution strategy in India, but Fox Star will determine the final marketing and distribution pattern for the film.

11. From the above two agreements, it is clear that advertisement/publicity expenditure was the sole obligation of the distributors, namely UTV Software Communications Ltd. and Fox Star Studios India Pvt. Ltd. to whom these three films produced by the appellant were sold. In terms of the agreements, the assessee was supposed to get a specified sum, which it got, and thereafter, all rights in the movies were vested in the distributors. In the circumstances, the expenditure incurred by the assessee on advertisement and publicity, amounting to Rs.4,24,95,661/-, was wholly unnecessary. The assessee chose to incur this expenditure on its own volition, though it was not part of its obligations. Therefore, it can only be treated as an unnecessary adventure on the part of the assessee, for which it cannot be granted any benefit under the law. Accordingly, I am in agreement with the decision of the A O in disallowing the claim of the assessee. In doing so, I am not saying that the expenditure itself was bogus but I am trying to emphasize the point that the appellant was not obliged to incur these expenses. There was no business need as such to incur such expenditure. Therefore, the expenditure is not allowable in its hands. I am also unable to agree with the argument of the learned ARs that it will add to the brand value of the assessee, though it may add to the brand value of actors.

12. The Hon'ble Bombay High Court, in the case of CIT vs. Prakash Pictures (260 ITR 456) has held that Rule 9B is a special code in the matter of deduction vis-à-vis computation of profits and gains of business of distribution. The observation of the Hon'ble Court would apply to Rule 9A also, which contains similar provisions and deals with computation of profits and gains of film production. Further, in the case of CIT vs S. M. Sagar (261 ITR 271), the Hon'ble Bombay High Court has held that cost of production has to be allowed only in terms of Rule 9A. A plain reading of Rule 9A makes it clear that only "cost of production" is allowable in the case of an assessee engaged in the business of film production and it has been clearly provided that "cost of production" does not include expenditure incurred on positive prints and advertisement. In fact, the provisions of Rule 9A clearly states that expenditure incurred on positive prints and advertisement is not allowable in case of an assessee engaged in the business of film production. Further, in the case of CIT vs Prakash Picture, Hon'ble jurisdictional High Court, with regard to the alternative argument of the assessee that deduction could be allowed u/s 37 (1) of the Act, held as under:-

"Even assuming for the sake of argument that section 37(1) was attracted, the assessee was required to claim expenses year-wise to the extent of income which the assessee estimated for the unexpired period of contract,

*they have not given that working to the AO. They have not advanced arguments on that basis before the AO. Therefore, the assessee cannot be allowed to raise this alternative argument for the first time particularly when the assessee did not seek reference on that point.”*

*The above decisions of Hon’ble jurisdictional High Court are squarely applicable to the facts of the present case.*

*13. The learned AR in this regard has also relied upon the Hon’ble ITAT’s decision dated 18/9/2013 in its own case for A. Y. 2006-07. However, I would like to respectfully say that the facts of the present year are distinguishable from the facts in A. Y. 2006-07, inasmuch as the agreements between the distributors and the appellant in the present case clearly lay down as to which expenditure was the obligation of which party and that any expenditure in the nature of advertisement and publicity of the films was the sole obligation of the distributors. Therefore, I respectfully state that the ratio of the decision of Hon’ble ITAT for A. Y. 2006-07 is not applicable to facts of this year.”*

4. We have heard the rival contentions and gone through the facts and circumstances of the case. Before us, the learned Counsel for the assessee argued that finally the AO held that after completion of production of three films the rights of the films were sold to either UTV Software Communications Ltd. or Fox Star Studios India Pvt. Ltd. and the assessee is simply a producer of the films, is not correct. He also stated that the assessee has received aggregate amount covering the cost and the profit of the films from UTV Software Communications Ltd. and Fox Star Studios India Pvt. Ltd. According to the AO, therefore, in terms of Rule 9A of the Rules, no expenditure can be claimed by the assessee in its books of account on account of advertisement as all the liabilities were transferred to UTV Software Communications Ltd. and Fox Star Software India Pvt. Ltd. The learned Counsel for the assessee first of all took us through the agreement dated 02-02-2010 between the assessee and Fox Star Software India Pvt. Ltd. in respect to the movie “My Name is Khan”, which is enclosed at pages 91 to 111 of the assessee’s paper book. The learned Counsel for the assessee stated that payment terms are very clear as the total payment for the film is Rs.85 Crores. He drew our attention to clause 3 of the agreement placed at page 95 of the paper book of the assessee which reads as under:-

**“3. PAYMENTS:**

*(a) Acquisition Price shall mean the sum of Rs.85,00,00,000/- (Rupees Eight Five Crores only) plus VAT as applicable to be paid by Fox Star to Dharma ( “Acquisition Price”) in accordance with Payment Schedule as described in Exhibit “D”).*

*(b) Distribution Fee: Fox Star and Fox Searchlight shall be entitled to distribution fee as follows:*

- (i) *Fox Star's Distribution Fee: 20% of the Acquisition Price plus (+) the sums spent by Fox Star for marketing and promotion of the Picture.*
- (ii) *Fox Searchlight's Distribution Fee: 20% of all revenues from exploitation of the Picture generated by Fox Searchlight. For the sake of clarity no distribution fee shall be charged by Fox Searchlight for distribution in the traditional theatrical Indian diaspora theatres which exhibits Indian Hindi cinematographic films on a regular basis. This shall be applicable to all territories where the Picture shall be distributed by Fox Searchlight”.*

He particularly drew our attention to clause 3 (c), (d), (e) and (f) which read as under:-

*(c) Additional Compensation: shall mean, in addition to the Acquisition Price Dharma's share of "Remaining Gross Receipts". Remaining Gross Receipts shall mean the amount remaining after deduction from defined Gross Receipts generated from exploitation of the Picture on a continuing and cumulative basis, in the following order the following items in order of priority:*

- (i) Fox Star's & Fox Searchlight's Distribution Fees as appearing in Paragraphs 3(b) above;*
- (ii) Print & Advertising Costs and any other marketing costs as Mutually agreed between Fox Star, Fox Searchlight and Dharma;*
- (iii) Third party participations, if any, pre-approved in writing by Dharma and Fox Star (excluding any remuneration payable to Shahrukh Khan);*
- (iv) Acquisition Price;*
- (v) All Direct Distribution Expenses;*
- (vi) Consultancy Fees of Anil Thadani; and*
- (vii) All present and future taxes, duties and levies, including service tax and stamp duty related to this transaction paid by the Party incurring such costs, but not including income tax payable by the Parties.*

*Thereafter, Dharma shall be entitled to receive its Additional Consideration in the amount of 50% of 100% (and Fox Star shall receive 50% of 100%) of the Remaining Gross Receipts.*

*(d) Third-Party Participants: Dharma shall not agree to make any payments to third-party participants in the proceeds of the Picture unless first approved by Fox Star in writing except any remuneration payable to Shahrukh Khan as has been disclosed and payable to him as per the Agreement dated April 1, 2009, between Dharma and Shahrukh Khan.*

*(e) Participation Terminology: Payment of any amounts provided for hereunder and all other terms and conditions related to such amounts shall be in accordance with the terms and conditions set forth herein or, if not addressed herein, in Fox Star's Definitions of Defined Gross Receipts attached thereto as Exhibit "E"(Participation Definition”)*

*(f) All accounting, and overflow payments will be undertaken by Fox Star in accordance with Fox Star's customary process.”*

Similarly, the learned Counsel for the assessee also drew our attention to the agreement between the assessee and the UTV Software Communications Ltd. dated 02-02-2009 for two movies namely “Wake Up Sid” and “Kurban”. He particularly referred to

clause 3 of the agreement (copy placed at page 114 of the assessee's paper book) which reads as under:-

*"3. The Licensor is producing two cinematographic films, production number 18, tentatively titled "Wake Up Sid"(hereinafter referred to as "Film 1") and production number 15, Rensil D'Silva's untitled film (hereinafter referred to as "Film 2") the details of which are set out more particularly in Schedule 1, collectively referred to as the "Films".*

He has also referred to clause 3 (b) and (c) copy placed as page 118 of the assessee's paper book, which reads as under:-

*"b. The Licensee shall pay a sum of Rs.73,56,00,000/- (Rupees Seventy Three Crores Fifty Six lacs only) as minimum guarantee ("Minimum Guarantee").*

*c. The Minimum Guarantee amount payable shall be Rs.24,52,00,000/- (Rupees Twenty Four Crores Fifty Two Lacs only) towards Film 1 and Rs.49,04,00,000/- (Rupees Forty Nine Crores Four Lacs only) towards Film 2."*

He further referred to the Minimum Guarantee Clause of net box office collection copy placed at page 119 of the assessee's paper book, Clause (h) of which reads as under:-

*"h. It is further agreed between the Parties that in the event the Net Box Office Collection (defined hereunder) generated from the first theatrical release of the Film 1 does not exceed RS.(25,00,00,000) (Rupees Twenty Five Crores only), the minimum guarantee amount towards Film 1 shall be Rs.21,09,00,000/-. Similarly, in the event the Net Box Office Collection generated from the first theatrical release of the Film 2 does not exceed Rs.[50,00,00,000] (Rupees Fifty Crores only), the minimum guarantee amount towards Film 2 shall be Rs.42,17,00,000/-."*

The learned Counsel for the assessee also drew our attention to Clause 4 of the agreement copy placed at page 120 of the assessee's paper book which reads as under:-

**"4. PUBLICITY & PROMOTIONAL BUDGET:**

*a. The Licensee shall in consultation with the Licensor, handle all the marketing and publicity of the Films. The Parties shall mutually decide in writing, the marketing budget, to be expended towards the marketing and publicity of the Films ("Marketing Expense"). Further, the media plan for the Films would be mutually agreed between the Licensor and the Licensee. It is clarified will also include any tie-ups with subsidiaries/affiliates. Any cost incurred by the Licensee over and above the Marketing Expense unless pre-agreed between the Parties,*

*towards marketing and publicity of the Films shall be solely borne by the Licensee and shall not be recouped from the Total Revenue.*

*b. Any change in the pre approved Marketing Expense shall be mutually agreed, in writing, between the Parties.*

*c. All the creative decisions shall be taken by the Licensor and the Licensor shall develop the marketing and publicity designs and artwork (hereinafter referred to as "Publicity Material") in consultation with the Licensee. The Licensor shall create the designs and artwork for materials for the publicity and marketing of the Films, the same shall be delivered to the Licensee as per the timelines set out in Annexure [4]. All the Marketing Expenses, except any expenses incurred in relation to the designing of the content, incurred in relation to the same shall be borne by the Licensee. It is clarified for avoidance of doubt that the design fees for the creation of any design for the publicity shall be borne by the Licensor whereas the cost of printing or otherwise creation of any material shall be borne by the Licensee and shall form part of the Marketing Expense.*

*d. All decisions regarding the media buying shall be decided by the Licensee in consultation with the Licensor.*

*e. The Licensor and the Licensee shall have a right to issue any press release in relation to each of the Films, provided however that the Licensor or the Licensee, as the case may be, shall consult with each other before issuing such press-release.*

*f. Design & Publicity Materials: The Licensor shall provide the Publicity Materials including artwork and designs as set out in Annexure [4] to the Licensee free of cost as per the timelines provided in the said Annexure [4]".*

Thereafter, he referred to Revenue and Recoupment given at Clause 8 (v) of the agreement of the assessee's paper book page 122 as under:-

*"8. v. Thereafter, all revenues, generated from exploitation of the Distribution Rights ("Overflow") will be shared between UTV and Dharma equally in the ratio of 50:50, for the Term. The Licensee agrees that the Licensee shall not withhold payment of the Licensor's share of the Overflow on grounds of any dispute which the Licensee may have with any person".*

5. In view of these facts, the learned Counsel for the assessee detailed out the expenses incurred post censor date on advertisement and expenses debited to selling and distribution as under:-

<b>Sr. No.</b>	<b>Name of the Movie</b>	<b>Expenses incurred post censor date (Rs.)</b>	<b>Expensed debited to selling and Distribution (Rs.)</b>	<b>Difference (Rs.)</b>
1.	Wake Up Sid	44,21,409	20,50,439	23,70,970
2.	Kurbaan	1,39,58,444	70,13,860	69,44,584
3.	My Name is Khan	2,41,15,808	1,82,06,216	59,09,592
<b>Total</b>		<b>4,24,95,661</b>	<b>2,72,70,515</b>	<b>1,52,25,146</b>

*He explained that so far as the advertisement and publicity expenses are concerned, the same may not be includible in the cost of production of a film as per Rule 9 of the Rules, but the expenditure has since been incurred for the purpose of business, the allowability of the same is required to be considered under the residual provisions of the Act. He explained that the provisions of Section 37 (1) of the Act have been brought on the Statute Book with specific purpose that any person's expenditure which is not found to be allowable under the provisions of Sections 28 to 44AD of the Act and if such expenditure has been incurred wholly and exclusively for the purpose of his business, the same has to be allowed u/s 37 (1) of the Act. The learned Counsel for the assessee, in view of the above agreement argued that these three films were distributed/screened by UTV Software Communications Ltd. and Fox Star Studios India Pvt. Ltd., to whom entire rights of these films were sold, and in terms of the agreements with them, it is not the case where the entire expenditure pertaining to advertisement and publicity was borne by the assessee instead of distributors. The learned Counsel for the assessee explained that the assessee entered into an agreement with the distributors according to which the distributors were to incur the advertisement expenses. He further stated that it is not the fact that the entire expenditure pertaining to advertisement and publicity was incurred by the assessee alone for the distributors, rather major part of the expenditure incurred by the distributors was not claimed by the assessee as deduction. As per the agreement entered into, the distributors were to incur advertisement and publicity expenditure as per approved budget decided mutually between the assessee and the distributors. The assessee claimed deduction for the expenditure incurred by it, which is over and above the expenditure incurred by the distributors as per mutually agreed approved budget. The learned Counsel for the assessee also drew our attention to the Business Statements in respect to all the above movies enclosed as Annexure-2 placed at page 75 of the assessee's paper book which reads as under:-*

Sr. No.	Name of the Movie	Amount spent by the Distributors (Rs. in lacs)	Amount spent by the appellant (Rs. in lacs)	Total amount spent on advertising /publicity (Rs.)	Percentage of the amount spent by DPPL)
1.	Wake Up Sid	4,77,38,000	44,21,409	5,21,59,409	8.48%
2.	Kurbaan	7,99,47,000	1,39,58,444	9,39,05,444	14.86%
3.	My Name is Khan	21,18,99,298	2,41,15,808	23,60,15,106	10.21%

The learned Counsel for the assessee stated that the above expenditure was incurred by the assessee being the producer and ultimate owner and right holder of the movie, being aware of the trade tactics that would help in better promotion of the movie with an out of box thinking that requires in addition to the conventional mode of advertisement and publicity for creating a buzz for the movie and to draw maximum audience to the theatres, as the assessee thought it very much necessary for the movie. It was further contended by the learned Counsel for the assessee that the assessee is entitled to the Minimum Guarantee as well as the overflow profits from the movies and thus, the assessee being the producer of the movie, the assessee for trying to bring extra audiences has to incur the expenditure. The learned Counsel for the assessee also pointed out that the assessee, being producer carried a "WAS: Build up Campaign for the movie Wake Up Sid for 5 days at his own cost for building up the characteristic of the main protagonist, "SID" and to create awareness, buzz and excitement for the same, across the print media and internet, which does not form part of the distributor marketing budget. He further stated that the earnings from the movie are extended to subsequent years and if a movie turns out to be a hit, the producer continues to generate earnings from the same for which nominal amount of selling and distribution expenses are to be spent in these years and that the producer has the overall picture as the movie being the producer's baby. The production banner's reputation is dependent on the number of hits it delivers and when a movie gets hit, it is not the movie but the actors who rise to fame along with the production banner and due to this reason, the movies such as old movies i.e. Dostana, Kuch Kuch Hota Hai, Kabhi Khushi Kabhi Gham etc. under the banner of Dharma Productions has gained popularity. Thus, the audiences have a positive look for the any movie produced under a renowned banner and hence, the producer has to maintain the reputation and live up to the expectations of the audiences and for that the producer has to carry out such efforts as may be required not only for the movie released but for years to come and hence, the

expenditure claimed by the assessee being the producer of the films is a genuine claim which has been incurred with proper planning and backed up with supporting bills and vouchers satisfying all the conditions of section 37(1) of the Act and the same is allowable as a business expenditure.

6. We have to consider whether the advertisement and publicity expenses are to be includible in the cost of production of a film as per Rule 9A of the Rules the expenditure has since been incurred for the purpose of business, the allowability of the same is required to be considered under the residual provisions of the Act? The provisions of section 37(1) of the Act have been brought on the statute book with a specific purpose that any business expenditure which is not found to be allowable under the provisions of section 28 to section 44AD of the Act, and if such expenditure has been incurred wholly and exclusively for the purpose of business has to be allowed under the provisions of section 37(1) of the Act. Accordingly, during the year under consideration, expenditure incurred prior to the date of censor board certificate was claimed under cost of production; the allowability of which is governed under Rule 9A of the Rules and expenditure incurred after the date of censor board certificate was claimed under Selling and Distribution Expenses u/s 37 of the Act. Thus, the breakup of pre and post advertisement and publicity expenses claimed under Cost of Production and Selling and Distribution expenses were as under:-

<b>Sr. No</b>	<b>Name of Movie</b>	<b>Expenses debited to COP (Rs.) (Pre Censor Board)</b>	<b>Expenses debited to Selling and Distribution (Rs.) (Post Censor Board)</b>	<b>Total Expenses (Rs.)</b>
1.	Wake up Sid!	1,5463,521	20,50,439	1,75,13,960
2.	Kurban	1,18,14,539	70,13,860	1,88,23,399
3.	My Name is Khan	90,45,627	1,82,06,216	2,72,51,843
<b>Total</b>		<b>3,63,23,687</b>	<b>2,72,70,515</b>	<b>6,35,94,202</b>

*But we find that while going through the bills and vouchers of the advertisement expenditure it was observed that there was an error in bifurcating the pre and post censor date expenditure. The correct amounts of post censor date expenses and as debited to Selling and Distribution head are as under:-*

Sl. No.	Name of Movie	Expenses incurred post censor date (Rs.)	Difference (Rs.)debited to Selling and Distribution (Rs.)	
1.	Wake up Sid!	44,21,409	20,50,439	23,70,970
2.	Kurban	1,39,58,444	70,13,860	69,44,584
3.	My Name is Khan	2,41,15,808	1,82,06,216	59,09,592
Total		4,24,95,661	2,72,70,515	1,52,25,146

It is the assessee who has made an error in bifurcating the amount. The said error is possibly on account of taking a wrong date while bifurcating the amount. However, at the time of compiling the assessment details, the error came to assessee's notice, as a result of which it provided the correct bifurcation as given above. As the said expenses are in any case allowable vide section 37 of the Act, the same should be allowed on account of a right bifurcation.

7. Before us assessee relied on Hon'ble Madras High Court decision in the case of CIT vs. Prasad Productions Pvt. Ltd. (1989) 179 ITR 147 (Mad), wherein a similar issue came up for adjudication and before it is held that though all expenditure incurred on the production of a film would be its cost of production but that would exclude the expenditure incurred for the preparation of the positive prints of the films so produced. The purpose of obtaining positive prints is to exhibit the film produced which is a stage after the completion of the production. Any expenditure incurred in connection with the preparation of the positive prints for the purpose of exhibition would in reality be post-production expenses and also an item of expenditure in relation to the business of production and exhibition of feature films and would qualify for deduction as an expenditure laid out or expended wholly and exclusively for the purpose of the business. The relevant extracts of the said decision is reproduced hereunder: -

*"The purpose of obtaining positive prints is to exhibit the film produced which is a stage after the completion of the production. In any given case, a person carrying on business in the production of feature films may produce a film, but for a variety of reasons, he may not be in a position to exhibit it by obtaining positive prints. Having produced a film, the person carrying on the business of production of feature films may either keep them without exhibition or even part with them without making arrangements for their exhibition. It cannot, therefore, be assumed that in all cases of production of a film, the producer must necessarily obtain the positive prints of the film as well. In other words, if a person carries on the business of production of films, he may not only produce the films but also prepare the positive prints for the purpose of exhibition or he may not take steps for the exhibition of the film having produced it. The production and*

*exhibition of a feature film constitutes two distinct and separate stages and while the former would take in all activities which culminate in the production of a feature film, the latter contemplates a stage subsequent to the completion of the production of the film, viz., exhibition of the film produced. Viewed thus, any expenditure incurred in connection with the preparation of the positive prints for purposes of exhibition would really be post-production expenses and also an item of expenditure in relation to business of production and exhibition of feature films and would, therefore, qualify for deduction as expenditure laid out or expended wholly and exclusively for the purpose of the business. We have not been referred to any provision in the Act or the rules disallowing such expenditure as an item of business expenditure for the purpose of section 37 of the Act. Though learned counsel for the Revenue placed considerable reliance upon the decision in CIT v. Carborundum Universal Ltd. [1977] 110 ITR 621 (Mad), we are of the view that decision does not in any manner assist the Revenue. In that case, the assessee claimed deduction of a certain amount in the computation of its profits and gains of the business by way of contribution to the superannuation fund of its foreign collaborators and that claim was disallowed by the authorities below. However, the Tribunal held that though that amount was not an allowable deduction under section 36(1)(iv) of the Act as the contribution was not to a recognised provident fund or to an approved superannuation fund nor could be allowed under section 37 of the Act, the payment was allowable under section 28 of the Act. On a reference, it was held that the nature of payment being one described in section 36(1)(iv) of the Act and as it could not be deducted under the section, it could be held to be deductible under section 28 of the Act on general principles in arriving at the true profits and gains of the business in a commercial sense. In the view we have taken that the expenditure incurred in connection with the obtaining of positive prints is really in the nature of post-production expenditure and that there is no provision in the Act or the rules obliging the authorities to disallow such expenditure, the claim of the assessee that such expenditure would fall under section 37 of the Act is, in our view, well-founded. We, therefore, answer the second question referred to us in the affirmative and against the Revenue."*

8. From the above decision, which is on account of positive prints, the ratio of the decision will also be applicable to post censor date advertisement expenditure as both the expenses are excluded from Rule 9A of the Rules. In this regard, reliance is also placed on ITAT, Mumbai, decision in the case of Mukta Arts (P) Ltd. v. ACIT 292 ITR (AT) 16 (Mum) wherein also a similar issue came up for adjudication before the ITAT. The ITAT after relying on the Hon'ble Madras High Court decision in the case of Prasad Productions Pvt. Ltd. (supra) came to the conclusion that such expenditure i.e. cost for making positive prints is allowable u/s 37 of the Act. We reproduce the relevant extracts from the said decision as under:

*"11. As noted, the Rule 9-A also defines "cost of production" to mean, the entire expenditure incurred on the production of film. However,*

*advertisement expenditure incurred after the Censor Board Certification is obtained and also the cost of positive prints of the film are not to be included as part of the cost of production. The effect of the exclusion of these two items normally means that they could be allowed in the year in which these expenses are incurred regardless of whether film is released in that year or not, as held by the Hon'ble Madras High Court in the case of Prasad Productions as reported in 179 ITR 147 the cost of making positive prints is allowable u/s 37 of the Act. Further in the case of B. Nagi Reddy as reported in 199 ITR 451, the Hon'ble Madras High Court held that any loss arising on account of feature film being abandoned midway without completing it, then, the expenditure incurred till that date including the payments made to artists, writers etc., would be allowable as a business loss on the principle of commercial expediency. All the above instances make it clear that in case of film producer, the expenses which do not form part of cost of production as per Rule 9-A are allowable as per the normal provisions of the Act. It, therefore, follows that the Rule 9-A does not cover all these situations and all types of expenses, hence the proposition that it overrides the provisions of the Act on the face of it, is not valid."*

9. However, it is clarified that while deciding the issue in case of Mukta Art Pvt. Ltd. (supra), nowhere it is mentioned that only expenses like the lodging, boarding, Mahurat expenses etc. can be claimed u/s 37 of the Act. It has held that all the expenses which do not form part of Cost of Production, shall be allowable as per normal provisions of the Act. Accordingly, adv. expenses incurred after censor date although not being included in Cost of Production should also be allowed under normal provisions of the Act i.e. u/s 37 of the Act. This view of ours, the advertisement expenses of the film after it is certified for release by the Board of Censor is allowable, for the reason that in today's competitive world marketing and advertisement are of greatest importance to create awareness about a product and enhance its salability. Hence it is unavoidable to incur these expenses. Also as could be seen from the current trend that the amount spent on promotion and advertisement of movies is humungous, sometimes it is baffling to see that the cost of advertisement spirals to almost 50% of the Cost of Movie. Counsel cited latest example being the high profile movie of Shri Shah Rukh Khan "RA One" which created huge curiosity for the movie and helped the movie to recover the cost and generate profits. Therefore, in a nutshell as the lift of the movies is restricted to a maximum of 3 weeks, the producer intends to recover all the cost in the said time, so they push hard to attract the attention of the audience and to do so the most requisite expense is on advertisement. Hence it can be concluded that the expenditure which is wholly and exclusively incurred for the purpose of business has to be allowed

under the provisions of section 37(1) of the Act. Therefore, relying on the principle laid down by the above mentioned judicial pronouncement, we allow the advertisement expenses incurred after the censor certificate as a business expenses u/s 37(1) of the Act.

10. Another fact argued by assessee is that during AY 2009-10 the assessee had included the entire expenditure under Cost of Production and it was submitted that although the advertisement expenditure incurred after censor board certificate is not to be included in the Cost of Production, however the same still being a business expenditure, should be allowed under section 37 of the Act. While passing the assessment order of AY 2009-10 the AO disallowed and the main reason of disallowing was that the assessee had claimed the entire expenditure under Cost of Production instead of claiming the post expenditure under section 37 of the Act it was argued that this proposition is also accepted by Hon'ble Bombay High Court in the case CIT Vs. Prakash Pictures, which brings out an important aspect on this issue. In this decision, the Hon'ble High Court did not allow the assessee company to raise the alternative ground of allowing the expenditure u/s 37. Giving the decision on this aspect, the Hon'ble High Court held as under:

*'Even assuming for the sake of argument that section 37(1) was attracted; the assessee was required to claim expenses year-wise to the extent of income which the assessee estimated for the unexpired period of contract. They have not given that working to the AO. They have not advanced arguments on that basis before the AO. Therefore, the assessee cannot be allowed to raise this alternate argument for the first time particularly when the assessee did not seek reference on that point.'*

These observations of the Hon'ble Bombay High Court uphold the proposition that the claim u/s 37 of the Act, if at all admissible should have been made by the assessee suo moto and not merely as a reaction to the disallowance of the expenses under Rule 9A of the Rules. We find that during the year under consideration, unlike AY 2009-10 the assessee has clearly bifurcated the amount into pre and post censor date and claimed under Cost of Production and Selling and Distribution respectively.

11. We also find that Tribunal in assessee's own case for AY 2006-07 in ITA No. 2480/Mum/2013 vide order dated 18-09-2013 and in ITA No. 2483/Mum/2013 for AY 2009-10 allowed the claim of advertisement and publicity expenses exactly on similar facts. Taking a consistent view also, we allow the claim of the assessee. Accordingly, the first issue of the assessee's appeal regarding advertisement and publicity expenses is allowed.

12. The next common issue in this appeal of assessee is as regards adhoc disallowance estimated by CIT(A) at 5% on adhoc basis in respect to expenditure of costumes and dresses, expenditure of makeup and hair dressers, expenditure of dubbing, song recording and mixing, expenses of dancer and co-ordination charges & expenses of setting. For this assessee has raised following ground No.2 to 6.

*“Ground No.2:*

*On the facts and in the circumstances of the case and in law, the Hon’ble CIT (A) grossly erred in confirming the disallowance made by the A. O. of Rs.6,94,189/- on ad-hoc basis @ 5% out of expenditure of Rs.1,38,83,772/- incurred in respect of costumes’ & dresses. The appellant prays that the disallowance is totally unjustified and may please be debited.*

*Ground No.3:*

*On the facts and in the circumstances of the case and in law, the Hon’ble CIT (A) grossly erred in confirming the disallowance made by the A. O. of Rs.26,829/- on ad-hoc basis @5% out of the expenditure of Rs.5,36,570/- incurred in respect of makeup and hairdressers. The appellant prays that the disallowance is totally unjustified and may please be deleted.*

*Ground No.4:*

*On the facts and in the circumstances of the case and in law, the Hon’ble CIT (A) grossly erred in confirming the disallowance made by the A. O. of Rs.1,32,840/- on ad-hoc basis @5% out of the expenditure of Rs.26,56,979/- incurred in respect of dubbing, song recording & mixing expenses. The appellant prays that the disallowance is totally unjustified and may please be deleted.*

*Ground No.5:*

*On the facts and in the circumstances of the case and in law, the Hon’ble CIT (A) grossly erred in confirming the disallowance made by the A. O. of Rs.72,858/- on ad-hoc basis @5% out of the expenditure of Rs.14,57,153/- in respect of dancers expenses & co-ordination charges. The appellant prays that the disallowance is totally unjustified and may please be deleted.*

*Ground No.6:*

*On the facts and in the circumstances of the case and in law, the Hon’ble CIT (A) grossly erred in confirming the disallowance made by the A. O. of Rs.14,54,008/- on ad-hoc basis @5% out of the expenditure of Rs.2,90,80,159/- incurred as setting expenses. The appellant prays that the disallowance is totally unjustified and may please be deleted.*

13. At the outset, learned Counsel for the assessee stated that this case of assessee is squarely covered by Tribunal order in assessee’s own case for AY 2009-10 in ITA No.2483/Mum/2013 vide order

dated 09-09-2015, wherein Tribunal had deleted the disallowances in entirety by observing as under: -

*“7. The Ld A.R submitted that identical issues were considered by another co-ordinate bench of Tribunal in the case of Shri Karan Yash Johar, proprietor of Dharma Productions, who also happens to be the director of the assessee company in ITA No.2591/Mum/2013 & 2592/Mum/2013 relating to AY 2007-08 and 2009-10. He submitted that the co-ordinate bench, vide its order dated 15.4.2015, after considering the decision rendered by the Tribunal in the assessee’s own case relating to AY 2006-07, has taken the view that no disallowance was called for. He submitted that latest decision of the Tribunal rendered in the case of Shri Karan Yash Johar (supra) may also be followed in the instant case also.*

*8. On the contrary, the Ld D.R submitted that the assessing officer was constrained to make ad-hoc disallowances, since the assessee could not furnish the details that were called for by the AO. Accordingly he submitted that the Ld CIT(A) was justified in confirming the ad-hoc disallowances made by the AO.*

*9. We heard the parties on this issue and perused the record. We notice that the assessing officer has made ad-hoc disallowances @ 25% from some of the expenses in AY 2006-07 also. They were considered by the co-ordinate bench of Tribunal and the Tribunal has deleted the disallowance made out of payment made to Junior artistes and restricted the disallowances in respect of other items of expenses to 5% by following the decision rendered by the Tribunal in the case of Yas Raj Films Pvt Ltd (supra).”*

14. Respectfully following Tribunal’s decision in assessee’s own case for earlier years and taking a consistent view, we also delete the adhoc disallowances made by AO and confirmed by CIT(A).

15. The next issue in this appeal of assessee against the order of CIT(A) confirming the disallowance of purchases of Rs. 32,239/-. For This assessee has raised following ground: -

*“Ground No.7:*

*Without prejudice to Ground No.1 and on the facts and in the circumstances of the case and in law, the Hon’ble CIT (A) grossly erred in confirming the treatment of the A. O. in respect of purchases of Rs.32,239/- from M/s. Leo Impex, as bogus purchases. The appellant prays that the said disallowance is totally unjustified and may please be deleted.”*

16. We have heard rival contentions and gone through the facts and circumstances of the case. We find that the AO disallowed the

purchases made by assessee from M/s Leo Impex treating the same as bogus on the basis of information received from the Investigation Wing of the Department. It was claimed by assessee before us that no such source was disclosed by the Revenue before Tribunal or before the lower authorities. Further, this amount is treated by assessee as part of advertisement and publicity expenses, since we have allowed the main ground, this ground will also be allowed on the same reasoning. This issue of assessee's appeal is allowed.

**17. In the result, the appeal of the assessee is allowed."**

2.2. In the light of the above decision, now we shall analyze the facts in the present appeal. The facts, in brief, are that the assessee is a private limited company engaged in the business of production and distribution of cinematographic films. During the relevant period, the assessee released two films i.e. 'I hate Luv Stories and 'We are family'. The assessee declared total income of Rs.10,18,19,930/- in its e-return filed on 29/11/2011, which was processed under section 143(1) of the Income Tax Act, 1961 (hereinafter the Act). Thereafter, the case of the assessee was taken up for scrutiny, therefore, notices under section 143(2) and 142(1) of the Act were issued to the assessee calling for explanation and evidences including books of accounts and vouchers to justify the claim of various expenses debited in the profit & loss account, including cost of production of the aforementioned

films. The assessee filed the requisite details along with explanation/justification for such claim. The Ld. Assessing Officer completed the assessment under section 143(3) of the Act by making addition-hoc disallowance/additions , which is summarized as under:-

Sl. No.	Total amount claimed by the assessee (in Rs.)	Ad-hoc disallowance @%/additions	Amount paid to /incurred on which account / head	Addition/disallowance made by Assessing Officer. (in Rs.)
1.	73,38,076	5%	Junior Artist	3,66,904
2.	1,17,31,849	5%	Costume and dresses	5,86,592
3.	3,37,697	5%	Makeup and hair dressers	16,884
4.	1,08,319	5%	Dubbing, song recording and mixing expenses	5,416
5.	26,08,073	5%	Dancer expenses and coordination charges	1,30,404
6.	2,12,80,028	5%	Setting expenses	10,64,001
<b>7.</b>	<b>7,18,43,580</b>	<b>Rule 9A</b>	<b>Advertisement and Publicity expenses incurred after the date of censor certificate</b>	----
<b>8.</b>	<b>20,93,365</b>		<b>Expenses incurred on foreign travel expenses of non-crew members</b>	
9.	3,06,18,398		Discrepancies found in respect of	

			parties to whom notices under section 133(6) were issued	
10.	Total income declared			<b>10,18,19,930</b>
11.	Assessed at an income of			<b>20,85,45,745</b>
12	The aggregate disallowance made by the Assessing Officer			<b>10,67,25,554</b>

In the appeal before us, the assessee has only challenged the additions/disallowance made with respect to item numbers 7 & 8 described in the above chart. So far as, the issue with respect to advertisement expenses incurred after the censor date is concerned, it has been adjudicated by the Tribunal for Assessment Year 2009-10, vide order dated 09/09/2015, wherein, admittedly, the cases relied upon by the Ld. DR has not been discussed. However, in a later decision dated 21/03/2017 for Assessment Year 2010-11, the Tribunal deliberated upon identical issue and duly discussed the cases from Hon'ble jurisdictional High Court (relied upon by Ld. DR) in CIT vs Prakash Pictures (260 ITR 456) and CIT vs S. M. Sagar (261 ITR 271)(Bom.), wherein, it was held that the cost of production has to be allowed

only in terms of Rule-9A. Admittedly, the provision of rule-9A clearly states that expenditure incurred on positive prints and advertisement is not allowable in the case of an assessee engaged in the business of film production. The Tribunal relied upon the decision in the case of Mukta Arts Pvt. Ltd. vs ACIT 292 ITR (AT) 16, Mumbai, wherein, a similar issue came up for adjudication and the Tribunal relied upon the decision of Hon'ble Madras High Court in the case of Prasad Productions Pvt. Ltd. and came to the conclusion that such expenditure i.e. cost of making positive prints is allowable u/s 37 of the Act. It can be concluded that the expenditure which is incurred wholly and exclusively for the purposes of business has to be allowed under the provisions of section 37(1) of the Act. The another argument raised by the Ld. Counsel for the assessee is that during Assessment Year 2009-10, the assessee included the entire expenditure under the cost of production and submitted that although the advertisement expenditure incurred after certification of the censor board is still a business income and this proposition is also accepted by Hon'ble Bombay High Court in the case of CIT

vs Prakash Pictures, which brings out an important aspect on this issue. In this decision, the Hon'ble jurisdictional High Court did not allow the assessee company to raise the alternative ground of allowing the expenditure u/s 37 of the Act. The Hon'ble High Court held as under:-

*“Even assuming for the sake of argument that section 37(1) was attracted, the assessee was required to claim expenses year-wise to the extent of income which the assessee estimated for the unexpired period of contract, they have not given that working to the AO. They have not advanced arguments on that basis before the AO. Therefore, the assessee cannot be allowed to raise this alternative argument for the first time particularly when the assessee did not seek reference on that point.”*

We find that the Tribunal in the case of the assessee for Assessment Year 2006-07 (ITA NO.2480/Mum/2013), order dated 18/09/2013 and in ITA No.2843/Mum/2013) for Assessment Year 2009-10, allowed the claim of advertisement and publicity expenses exactly on similar facts. Though the expression ‘for the purpose of business’ is wider in scope than the expression ‘for the purposes of

earning profit' and may comprehend many Acts incidental to the carrying of the business and its limits are implicit in it and the purpose shall be for the purpose of business, that is to say, the expenditure incurred should be for carrying on the business. The expenditure incurred is on the ground of commercial expediency to facilitate the business is an allowable deduction. Even an expenditure incurred by an assessee in the course of his business voluntarily for promoting its business to earn profit such expenditure has to be allowed. It is to be made clear that the principles laid down in various cases by Hon'ble Courts depends upon facts and circumstances of each case as was held by the full Bench of Kerala High Court in Ram Bahadur Thakur Ltd. vs CIT (2003) 261 IR 390, 404-05 (Kerala)(FB). Admittedly, the allowability or non-allowability of the expenditure depends upon so many facts. Thus, this ground of the assessee is allowed.

3. The next ground raised by the assessee pertains to confirming the disallowance of Rs.20,93,365/- incurred on foreign travel of non-crew members in respect of the movie 'we are family'. The crux of the argument on behalf

of the assessee is that the expenses were incurred in accordance with the agreement clause with the child artist/family members so that best performance can be obtained from such artists and even in the case of child artist, one of the family members are required for their safety. On the other hand, Ld. DR, defended the addition.

3.1. We have considered the rival submissions and perused the material available on record. In the present case, in the case of child artist and for their safety, the family members like parents are a necessity and further to get the best out of the child artist, such business expenses become necessary. The ratio laid down in CIT vs George Williamson (Assam) Ltd. 234 ITR 130, 132 (Gau.) supports our view. The Hon'ble Kerala High Court in Aspinwall & Co. 235 ITR 106, wherein, expenditure incurred on foreign travel of wife of the Chief Executive of the assessee company was held to be an allowable deduction. Identical view was taken by Hon'ble Madras High Court in CIT vs Sundaram Clayton Ltd. 240 ITR 271, 274 (Mad.). It is not in dispute by the Ld. Assessing Officer that such expenses were not incurred by the assessee. The business necessity

and incurring of such expenses has to be evaluated by the businessman and even otherwise no prudent businessman will incur expenses without business necessity. The assessee duly furnished the brake up of foreign travel expenses incurred for crew as well as non-crew members. Ms. Nidhi Sunecha is mother of child artist, Divya Sunecha, Shlok Malhotra is the child of Shri Sidharth Malhotra and identical is the situation for Sparsh Malhotra. Anurag Anil Munjal is father of Aanchal Munjal (child artist). The child artist mentioned at serial number 8 to 11(para-8.2 of the assessment order are daughters of Arjun Rampal). Thus, the expenses were incurred under the shelter of one of the clauses contained in the agreement entered into with star cast. The relevant clause is reproduced hereunder:-

***“That in case your services are required outside Mumbai, you shall accompany the Unit to any outdoor location fixed by us. We will arrange to pay for your travelling and also make arrangements for your Boarding and Lodging at our cost. It is further agreed that in case you wish to take along with you any relative to escort, then in that case, we shall also pay for the travel and other expenses of the person accompanying you.”***

Considering the totality of facts, it can be concluded that the child artist who actually acted in the film, therefore, the expenses incurred for their guardians/relatives has to be allowed as business expenses u/s 37(1) of the Act. Our view find support from the decision, identically, for Assessment Year 2010-11, order dated 10/11/2014, wherein, the Tribunal also upheld the order of the Ld. Commissioner of Income Tax (Appeals) for Assessment Year 2006-07, order dated 10/11/2014. Our view find support from the decision and the ratio laid down therein S.A. Builders vs CIT (2007) 158 taxman 74 (Supreme Court), and various decision discussed in the case of S.A. Builders, including the decision from Hon'ble Delhi High Court in CIT vs Dalmia Cement (Bharat) Ltd. (2002) 254 ITR 377(Del.), wherein it was held that once it is established that there was a nexus between the expenditure and the purpose of business (which need not necessarily be the business of assessee itself), the Revenue cannot justifiably claim to put itself in the armchair of the businessman or in the position of the Board of Directors and assume the role to decide how much is reasonable

expenditure. No businessman can compelled to maximise its profit. It is left to the wisdom of prudent businessman. Thus, this ground of the assessee is also allowed.

Finally, the appeal of the assessee is allowed.

This Order was pronounced in the open court in the presence of ld. representatives from both sides at the conclusion of the hearing on 04/06/2018.

*Sd/-*

(G. Manjunatha)

लेखा सदस्य / ACCOUNTANT MEMBER

मुंबई Mumbai; दिनांक Dated : 26/07/2018

*Shekhar, P.S.नि.स.,*

*Sd/-*

(Joginder Singh)

न्यायिक सदस्य / JUDICIAL MEMBER

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

1. अपीलार्थी / The Appellant
2. प्रत्यर्थी / The Respondent.
3. आयकर आयुक्त,(अपील) / The CIT, Mumbai.
4. आयकर आयुक्त / CIT(A)- , Mumbai
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, मुंबई / DR, ITAT, Mumbai
6. गार्ड फाईल / Guard file.

आदेशानुसार/ BY ORDER,

उप/सहायक पंजीकार (Dy./Asstt. Registrar)

आयकर अपीलीय अधिकरण, मुंबई / ITAT, Mumbai