

INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH "F": NEW DELHI
BEFORE SHRI AMIT SHUKLA, JUDICIAL MEMBER
AND
SHRI PRASHANT MAHARISHI, ACCOUNTANT MEMBER

ITA No. 6196 & 31/Del/2015
(Assessment Year: 2011-12 & 2012-13)

Red Ice Productions Private Limited D-46, Naraina Vihar Delhi 23 PAN AADCR8533M	vs	The Income tax Officer Ward 15(2) New Delhi
(Appellant)		(Respondent)

Revenue by :	Shri Surender Pal, Sr. DR
Assessee by:	Shri Sanjay Gupta CA
Date of Hearing	20/12/2018
Date of pronouncement	20/12/2018

Per bench:-

1. These are the two appeals filed by the assessee for assessment year 2011 – 12 against the order of the learned Commissioner of income tax (appeals) – 38, Delhi dated 3 – 10 – 2017 and for assessment year 2012- 13 passed by the Commissioner of income tax (appeals) – 7, New Delhi dated 7/9/2015.
2. The grounds of appeal for assessment year 2011 – 12 raised by the assessee are as under.
 - (i) On the facts and circumstances of the case, the learned Commissioner of income tax (appeals) has erred in law in upholding the correctness of method of valuation of work in progress has adopted by the AO in which all indirect expenses have also been proportionately are located towards the work in progress.
 - (ii) On the facts and circumstances of the case, the learned Commissioner of income tax appeals has erred in law in upholding the proportionate disallowance out of indirect

expenses by apportioning the same towards the work in progress

3. The grounds of appeal for assessment year 2012- 13 raised by the assessee are as under.
 - (i) On facts and circumstances of the case, the learned Commissioner of income tax (appeals) has erred in law in upholding the correctness of method of valuation of work in progress has adopted by the AO in which all indirect expenses have also been proportionately are located towards the work in progress.
 - (ii) On the facts and circumstances of the case, the learned Commissioner of income tax (appeals) has a read in law in upholding the proportionate disallowance out of indirect expenses by apportioning the same towards the work in progress
4. The brief facts of the case for assessment year 2011 – 12 showed that assessee is a company engaged in the business of making of advertisement films, feature films, documentaries and all related work. Assessee filed its return of income on 26/9/2011 declaring total income of INR 26158730/-. Assessment under section 143 (3) of the income tax act was passed on 28/2/2014, wherein the total income of the assessee's returned income was accepted. Subsequently, the order under section 263 of the income tax act was passed setting aside reassessment order on the specific issue of determination of the true and correct value of work in progress at the close of the year as per order dated 8/3/2016. Consequent to that, assessment under section 263 read with section 143 (3) of the income tax, 1961 was passed on 31/8/2016 wherein the valuation of the work in progress was recalculated by the learned AO. The assessee has shown the work in progress at INR 45638014 considering only the direct expenses in this regard and ignored the apportionment of indirect expenses debited in the profit and loss account. Consequently, the learned AO determined total administrative expenses of INR 30383018 and reduced there from travelling and professional fees and directors remuneration and determine the total indirect expenses to be allocated of INR 1 9426788/-. The learned AO further noted that total turnover of the assessee is INR 2 75409309/- and the work in progress

- determined by the assessee is of Rs. 45638014/- and the proportionate expenses were determined of INR 2 761586/- and added the above amount to the taxable income of the assessee company increasing the value of the work in progress which has been incorrectly shown by the assessee. Consequently the net taxable income of the assessee was determined at Rs. 28920316/- against the returned income of the assessee of Rs. 26158730/-.
5. The assessee aggrieved with the order of the learned AO preferred an appeal before the learned Commissioner of income tax (appeals). She passed an order dated 3/10/2017 ex parte wherein on the merits of the case, the learned CIT – A, has held that apportionment of indirect expenses towards work in progress the Learned assessing officer has correctly relied upon the decision of the honourable Supreme Court in case of CIT vs British paints (India) Ltd, 1991 AIR 1338 Supreme Court that in valuation of inventory of work in progress it is necessary to include not only the direct cost of but real but also necessary to include the proportionate overheads and cost which are incurred to bring the inventory to its present position as on the balance sheet date. The learned CIT – A also dismissed the appeal of the assessee for the nonprosecution of appeal.
 6. Aggrieved with the order of the learned CIT – A, the assessee has preferred an appeal before us and submitted that identical issue arose in the case of the assessee for assessment year 2009 – 10, wherein the coordinate bench in ITA number 5831/del/2012 for assessment year 2009 – 10 dated 14/2/2017 has set aside) number 13 of the order, the whole issue to the file of the learned assessing officer. He further stated that, pursuant to that order, The learned assessing officer has passed an order on 29/12/2017 wherein the returned income of the assessee of INR 1622740/- has been accepted and same is assessed income of the assessee. He further stated that for assessment year 2015 – 16. The learned assessing officer has passed in order under section 143 (3) of the act on 30/12/2017 where the valuation method adopted by the assessee consistently has been accepted and the returned income of the assessee has been accepted by the

- learned assessing officer. He therefore submitted that now the issue is squarely covered in favour of the assessee.
7. The learned departmental representative relied upon the order of the learned assessing officer and submitted that indirect cost is required to be apportioned to the work in progress as per the decision of the honourable Supreme Court in case of CIT vs British paints India Ltd.
 8. We have carefully considered the rival contention and also perused the orders of the lower authorities. From the orders produced before us by the learned authorised representative it is apparent that for assessment year 2009 – 10, on the identical facts and circumstances, the case of the assessee was set aside by the coordinate bench to the file of the learned assessing officer and in the set aside proceedings the learned assessing officer has accepted the contention of the assessee for assessment year 2009 – 10. Further, for assessment year 2015 – 16 also the learned assessing officer is accepted the valuation of the work in progress of the assessee which is consistently followed by the assessee. In view of this we do not find any reason to sustain the order of the learned assessing officer and the Commissioner of income tax appeals. Confirming the above addition. Accordingly, the appeal of the assessee is allowed.
 9. The facts and circumstances as well as the argument of both the parties for the assessment year 2012 – 13 in ITA number 6196/del/2015 for assessment year 2012 – 13 are also similar.
 10. We have also carefully perused the orders of the lower authorities for assessment year 2012 – 13 and find that the issue is identical to the facts as has been decided by us for assessment year 2011 – 12. As we have already given reason for accepting the arguments of the assessee in that particular year holding that when the learned assessing officer in set aside proceedings for assessment year 2009 – 10 and in the fresh assessment proceedings for assessment year 2015 – 16 have accepted the method of valuation and the working of the valuation provided by the assessee for the valuation of the work in progress there is no reason to uphold the orders of the lower authorities. Accordingly, we also allow both the grounds of appeal of the assessee for assessment year 2012 – 13.

11. Accordingly, appeal of the assessee for both the years assessment year 2011 – 12 and 2012 – 13 are allowed.
Order pronounced in the open court on 20 /12/2018.

-Sd

(AMIT SHUKLA)
JUDICIAL MEMBER

-Sd/-

(PRASHANT MAHARISHI)
ACCOUNTANT MEMBER

Dated: 20/12/2018
A K Keot

Copy forwarded to

1. Applicant
2. Respondent
3. CIT
4. CIT (A)
5. DR:ITAT

ASSISTANT REGISTRAR
ITAT, New Delhi