

**IN THE INCOME TAX APPELLATE TRIBUNAL
MUMBAI BENCH "SMC", MUMBAI**

**BEFORE SHRI C.N. PRASAD, HON'BLE JUDICIAL MEMBER AND
SHRI RAJESH KUMAR, HON'BLE ACCOUNTANT MEMBER**

**ITA NO. 5204, 5205 & 5206/MUM/2017
(A.Ys: 2012-13, 2011-12 & 2009-10)**

M/s. Roxy Theatres Pvt. Ltd., 5 th Floor, The Jewel, Mama Paramanand Marg, Opera House, Mumbai – 400 004 PAN: AADCR 0705 P	v.	Income Tax Officer Ward – 5(3)(1) Aayakar Bhavan, M.K. Road, Mumbai-400 020
(Appellant)		(Respondent)

Assessee by : Shri Pradeep Sharma
Department by : Shri Chaitanya S. Anjaria

Date of Hearing : 03.04.2019

Date of Pronouncement : 03.04.2019

ORDER

PER C.N. PRASAD (JM)

1. These three appeals are filed by the assessee against different orders of the Learned Commissioner of Income Tax (Appeals)-10, Mumbai [hereinafter in short "Ld.CIT(A)"] dated 21.06.2017 for the A.Ys. 2009-10, 2011-12 and 2012-13.

2. First we take up the appeals in ITA.No.5206/Mum/2017 and ITA.No.5205/Mum/2017 for the A.Ys. 2009-10 and 2011-12 respectively.

The assessments for A.Ys. 2009-10 and 2011-12 were completed u/s.143(3) of the Act by orders dated 07.12.2011 and 29.10.2013 respectively. While completing the assessments the Assessing Officer treated rentals/proceeds from exhibition of films from theatre as “income from house property” as against the claim of the assessee under the head “income from business”. These assessments were challenged before the Ld.CIT(A) and the Ld.CIT(A) by order dated 15.05.2012 for the A.Y. 2009-10 sustained the assessment made by the Assessing Officer in treating the said income under the head “income from the house property”. However, for A.Ys. 2010-11 and 2011-12 the Ld.CIT(A) by orders dated 10.09.2013 and 10.09.2014 held that the said income should be assessed under the head “income from business”. Both assessee and Revenue preferred appeals before the Tribunal in ITA.No. 5201/Mum/2012, ITA.No.6271/Mum/2013 and ITA.No. 7046/Mum/2014 for A.Ys. 2009-10, 2010-11 and 2011-12.

3. Meanwhile consequential orders for A.Ys. 2009-10 to 2011-12 were passed by the Assessing Officer giving effect to the orders of the Ld.CIT(A). However, against the consequential order passed for A.Y.2011-12 the assessee preferred appeal before the Ld.CIT(A). The assessee also filed appeal for A.Y. 2009-10 against 154 order passed by the Assessing Officer rejecting to modify the consequential order dated

24.10.2013 passed giving effect to Ld.CIT(A) order dated 15.05.2012. The Ld.CIT(A) dismissed these appeals of the assessee against which orders the present appeals have been filed for A.Ys. 2009-10 and 2011-12 before the Tribunal. We noticed that the Tribunal subsequently by order dated 14.09.2016 disposed off the appeals filed by the assessee and Revenue against the orders of the Ld.CIT(A) dated 15.05.2012, 10.09.2013 and 10.09.2014 for A.Ys. 2009-10 to 2011-12 restoring the issue to the file of the Assessing Officer and to examine the issue in the light of the decision of the Hon'ble Supreme Court in the case of Chennai Properties & Investments Ltd., v. CIT [373 ITR 673]. Therefore, since the Tribunal set aside the appeals for the A.Ys. 2009-10, 2010-11 and 2011-12 to the file of the Assessing Officer for examining the issue in the light of the decision of the Hon'ble Supreme Court in the case of Chennai Properties & Investments Ltd., v. CIT (supra), the consequential orders passed by the Assessing Officer giving effect to the Ld.CIT(A) orders became infructuous and consequently the appeals filed by the assessee before the Tribunal arise out of such consequential orders of the Ld.Assessing Officer also became infructuous. Hence the appeals in ITA.No. 5206/Mum/2017 and ITA.No. 5205/Mum/2017 for A.Y. 2009-10 and 2011-12 are dismissed as infructuous.

4. Now coming to the appeal filed by the assessee in ITA.No. 5204/Mum/2017 for the A.Y. 2012-13 arising out of the order passed by the Ld.CIT(A) dated 21.06.2017, referring to the fact sheet Ld. Counsel for the assessee vehemently argued that in view of the decision of the Hon'ble Tribunal in assessee's case for the A.Ys. 2009-10 to 2011-12 dated 14.09.2016 the impugned issues stands decided in favour of the assessee, since the issue is covered by the Hon'ble Supreme Court in the case of Chennai Properties & Investments Ltd., v. CIT (supra).

5. Ld. DR vehemently supported the orders of the authorities below.

6. We have heard the rival submissions, perused the orders of the authorities below. We find that the Ld.CIT(A) referring to the decision of his predecessor in assessee's own case for the A.Y. 2009-10 directed the Assessing Officer to collect the details so as to separately assessee the rent and service charges under the head "income from house property" and "income from business" respectively. However, we find that the Tribunal for the A.Ys. 2009-10 to 2011-12 by order dated 14.09.2016 set aside the appeals and restored the issue to the file of the Assessing Officer to examine the contentions of the assessee and the issue in appeals in the light of the decision of the Hon'ble Supreme Court in the case of Chennai Properties & Investments Ltd., v. CIT (supra). We find

that even for this Assessment Year i.e. A.Y. 2012-13 neither the Assessing Officer nor the Ld.CIT(A) has examined the issue and the applicability of the decision of the Hon'ble Supreme Court in the case of Chennai Properties & Investments Ltd., v. CIT (supra). In the circumstances, following the decision of the Tribunal in assessee's own case for the earlier assessment years, we restore this issue to the file of the Assessing Officer to examine the issue afresh denovo, keeping in view the decisions of the Hon'ble Supreme Court in the case of Chennai Properties & Investments Ltd., v. CIT (supra) and Rayala Corporation Pvt. Ltd., v. ACIT [386 ITR 500] and thus, we restore this issue to the file of the Assessing Officer accordingly and needless to say that the Assessing Officer shall provide adequate opportunity of being heard to the assessee.

7. In the result, appeals for the A.Ys. 2009-10 and 2011-12 are dismissed as infructuous and whereas the appeal for the A.Y. 2012-13 is allowed for statistical purpose.

Order pronounced in the open court on the 03rd April, 2019

Sd/-
(RAJESH KUMAR)
ACCOUNTANT MEMBER
Mumbai / Dated 03/04/2019
Giridhar, Sr.PS

Sd/-
(C.N. PRASAD)
JUDICIAL MEMBER

Copy of the Order forwarded to:

1. The Appellant
2. The Respondent.
3. The CIT(A), Mumbai.
4. CIT
5. DR, ITAT, Mumbai
6. Guard file. //True Copy//

BY ORDER

(Asstt. Registrar)
ITAT, Mum