

**IN THE INCOME TAX APPELLATE TRIBUNAL  
DELHI BENCHES 'E', NEW DELHI**

**Before Sh. Bhavnesh Saini, Judicial Member**

**Dr. B. R. R. Kumar, Accountant Member**

**ITA No. 233/Del/2017 : Asstt. Year : 2013-14**

Moving Picture Company India Ltd.,405, Skylark Building, 60, Nehru Place, New Delhi-110019	Vs	Income Tax Officer, Ward-17(2), New Delhi
<b>(APPELLANT)</b>		<b>(RESPONDENT)</b>
<b>PAN No. AAACM6292R</b>		

**Assessee by : None**

**Revenue by : Ms. Rinku Singh, Sr. DR**

**Date of Hearing: 11.07.2019**

**Date of Pronouncement: 11.07.2019**

**ORDER**

**Per Dr. B. R. R. Kumar, Accountant Member:**

The assessee has raised the following grounds:

*"1. That the order passed by the learned Commissioner of Income Tax(Appeals)-33 is bad at law wrong in facts and against the principles of natural justice.*

*2. That under the facts and circumstances the Commissioner of Income Tax(Appeals)-33 has erred in confirming the disallowance of Depreciation of Media Library of Rs.63,92,833/- under normal provisions and Rs.51,17,167/- under the provision of MAT u/s 115JB of Income Tax Act, 1961.*

*3. That under the facts and circumstances the Commissioner of Income Tax(Appeals)-33 has erred in confirming the disallowance of depreciation of Rs.51,17,167/- on Media Library for calculating the Book Profit of MAT u/s 115JB of Income Tax Act, 1961."*

2. The issue before us pertaining to taxation under the provisions of MAT u/s 115JB of the Act has already been dealt in the earlier years. For the sake of ready reference the relevant

part of the assessment order and the order of the Id. CIT(A) are reproduced as under:

*"During the course of assessment proceedings, it was seen that the assessee company had shown 'Media Library' as an Intangible Asset and claimed depreciation of Rs.63,92,833/- as per the Act. It was further seen that in Assessment Order passed u/s 143(3) of the Act for A Y 2011-12, similar issue was dealt in and at para 5, following remarks were made:-*

*"During the F Y 2006-07, the assessee has converted stock in trade of Rs.3,19,95,873/- into fixed assets under the head Media Library The intangible assets (Media Library) in question is in the nature of "Stock" and Scrap' generated in the course of carrying on the business, which has a commercial value As the assessee is in the business of producing and making videos and films, the same cannot be treated as fixed assets No explanation regarding the conversion of stock in trade and its valuation is given before it was converted into a fixed assets."*

*Further, the same issue was also discussed by CIT(A)-6, Delhi in order dated 26/02/2014 for A.Y. 2011-12 where on page 13, following observation was made -*

*From the above decision of Hon'ble ITAT it is clear that till the A.Y. 2007- 08 the item in the media library were valued at nil' and were shown under the head stock-in-trade The value of these items had been taken as nil as there was no buyer for these items However, with a view to show improved balance-sheet for taking higher loan from the banks these assets have been shown in the balance sheet as fixed assets in AY 2007-08. Assessee was in possession of these assets, which were valued at 'nil' for the purpose of arriving at the value of work-in-progress. In the AY 2007-08, the assets were reclassified as fixed assets and valued at Rs.3,79,95,890/-. This value admittedly is an artificial value because this work-in-progress is unsellable The ostensible purpose is to window-dress the balance-sheet Hon'ble ITAT did not approve the entries made in the books of account which also have tax implication in future. Accordingly, held that the re-classification of the assets and the value placed thereon in the books will have no consequence as far as income tax assessment are concerned. It was held that the assets for the purpose of income-tax shall continue to be grouped as stock-in-trade at nil value. No explanation was given by the assessee about the basis of valuation of fixed assets before it was converted from stock-in-trade to fixed asset. Hon'ble ITAT held that re-classification of the assets and the value placed thereon in the books will have no consequence as far as income tax assessments are concerned. It was held that the assets for the purpose of income-tax shall continue to be grouped as stock-in-trade at nil value In view of the above, the claim of depreciation by the assessee on the above assets is not allowable."*

6. In view of above clear findings of Higher Authorities related to same issue in past, the assessee company was asked to furnish its explanation for allowability of Claim of depreciation of Rs.63,92,833/- under the provisions of the Income Tax Act. 1961. In response, the AR of the assessee company furnished a revised computation of income vide letter dated 08/02/2016 which is placed on records A perusal of the same revealed e assessee company had not claimed the alleged depreciation of Rs.63,92,833/- the revised computation of income so filed. However, it was also seen that the assessee company had claimed Long Term Capital Loss of Rs.69,94,018/- on account of Sale of shares, which was shown as Other Income of Rs 49,00,000/- in original return of income filed. Accordingly, the assessee was asked to furnish evidences in support of the said claim of Long Term Capital Loss of Rs.69,94,018/-. A perusal of details filed vide letter dated 22/02/2016 and 26/02/2016 revealed that the claim of the assessee company was bonafide.

7. In view of above discussion, it is evident that the depreciation of Rs.63,92,833/- claimed by the assessee company on Media Library is liable to be disallowed. Accordingly, Rs.63,92,833/- is being disallowed and added to the income of the assessee company under normal provisions of the Income Tax Act.”

3. The Id. CIT(A) has adjudicated the matter, dismissing the appeal of the assessee on this ground. The relevant portion of the submission of the assessee and the order of the Id. CIT(A) is as under:

"Ground No. 2 to the Grounds of Appeal relates to disallowances of claim of depreciation of Rs.63,92,833/-. The learned Assessing Officer has disallowed the entire depreciation of Media Library amounting to Rs.63,92,833/- on Presumption basis and assuming that these assets were created in the assessment year 2007-08 (financial Year 2006-07) out of stock in trade and are in the nature of stock and scrap and having NIL value. The only facts based on which the Ld. AO has disallowed depreciation on media library is that the same was disallowed for the AY 2011-12 and the disallowance has been confirmed by Ld. CIT(A)-6. Here we may submit that the assessee company has already filed its appeal on 18.05.2015 to honorable ITAT against the order of Ld CIT(A)-6 for the AY 2011-12. Copy of which is enclosed here with for reference. Assessee company's appeal is still pending at honorable ITAT. Further the Department allowed the Depreciation on these assets over the post many years including assessment year 2009-10 and 2010-11 and 2012-13. Learned AO has stated that assets were covered into fixed Assets during the AY 2007-08 but failed to appreciate the

*facts that for the above said Assessment years both Hon High court of Delhi. Hon ITAT and CIT(Appeal) had decided the above issue in favour of assessee. Further SLP filed by the Department to Hon Supreme Court has been rejected by the apex Court on 21.01.2014.*

*The assessee is not a technical person to decide the claim of depreciation when the qualified Auditors has already decided the same and the Departmental itself has decided the same.*

*The Learned AO has not objected the eligibility/allowability of Depreciation on Media Library or Rate of Depreciation. Only contention of the learned AO is that these assets are converted from stock to Fixed Assets in the FY 2006-07 and disallowed for the A Y 2001-12 and no explanation has been offered for this. Here we may submit that each Assessment Year is different. This question was raised in the F Y 2006-07 and has been decided in favour of the assessee. The department has also allowed depreciation on Media Library for all the previous years other than A.Y. 2011-12. Copies of various Assessment Order and Court Orders are enclosed herewith"*

*5.3. I have carefully considered the action of the A.O., submissions of the appellant and the decisions of higher authorities relevant to the impugned issue. As recorded by the A.O. in para 5 of the assessment order the Ld. CIT(A) for A.Y. 2011-12 observed that the Hon'ble ITAT did not approve the entries regarding conversion of stock-in-trade into fixed assets at higher value made in the Books of Accounts.*

*5.4. The Hon'ble ITAT clearly, directed that the assets, for the purpose of Income Tax, shall continue to be grouped as stock -in- trade at NIL value.*

*5.5. As the assets on which depreciation has been claimed have a NIL value, question of depreciation therein does not arise. In view of the above I find no reason to interfere with the conclusion of A.O. The addition is confirmed."*

4. We have gone through the facts on record and find that the matter has been in continuation with the decision taken for the assessment year 2011-12 pertaining to allowability of the depreciation and consequent computation of the MAT u/s 115JB of the Act. Hence, in absence of any material change in the

facts and claim of the assessee, we hereby uphold the decision of the Id. CIT(A) on this issue.

5. In the result, the appeal of the assessee is dismissed.  
(Order pronounced in the open Court on 11.07.2019)

Sd/-

**(Bhavnes Saini)**  
**Judicial Member**

**Dated: 11/07/2019**

\*Subodh\*

Copy forwarded to:

1. Appellant
2. Respondent
3. CIT
4. CIT(Appeals)
5. DR: ITAT

Sd/-

**(Dr. B. R. R. Kumar)**  
**Accountant Member**

**ASSISTANT REGISTRAR**