

आयकर अपीलीय अधिकरण, 'ए' न्यायपीठ, चेन्नई
IN THE INCOME TAX APPELLATE TRIBUNAL , 'A' BENCH, CHENNAI
श्री धुव्वुरु आर.एल रेड्डी, न्यायिक सदस्य एवं श्री एस जयरामन, लेखा सदस्य के समक्ष
BEFORE SHRI DUVVURU RL REDDY, JUDICIAL MEMBER AND
SHRI S. JAYARAMAN, ACCOUNTANT MEMBER

आयकर अपील सं./I.T.A.Nos.1219 & 1220/CHNY/2019

(निर्धारण वर्ष / Assessment Years: 2009-10 & 2014-15)

ShriS. Sathyaraj,
No.13A, Brahadambal Road,
Nungambakkam,
Chennai – 600 034.

Vs **The Income Tax Officer,**
Non-Corporate Ward-3(1),
Namakkal.

PAN: AAFPS6100C

(अपीलार्थी/Appellant)

(प्रत्यर्थी/Respondent)

अपीलार्थी की ओर से/ Appellant by : Shri J. Chandrasekar, CA
प्रत्यर्थी की ओर से/Respondent by : Shri AR.V. Sreenivasan, JCIT

सुनवाई की तारीख/Date of hearing : 08.07.2019

घोषणा की तारीख /Date of Pronouncement : 04.10.2019

आदेश/ O R D E R

PER S. JAYARAMAN, ACCOUNTANT MEMBER:

The assessee filed these appeals against the common order of the Commissioner of Income Tax (Appeals)-14, Chennai in ITA Nos. 6(2011-12) & 201(2016-17)/CIT(A)-14 dated 28.12.2018 for the assessment year 2009-10 & 2014-15 respectively.

2. Shri S. Sathyaraj, the assessee, is an actor in feature films and producer of feature films and admitted income from house

property, profits and gains of business, income from other sources, agricultural income etc. While making the assessment for assessment year 2009-10, the AO inter-alia, noticed that the assessee claimed deduction of income at Rs.2,21,000/- in the revised working statement of total income. The assessee stated that he has not received TDS certificate from producer "Silver Screen Movies", despite close follow-up with them and hence, he has withdrawn the claim of TDS at Rs.2,21,000/- and also reduced his professional income by Rs.2,21,000/-. However, this claim was not considered by the AO while making the assessment. Further, relying on the decision of the Hon'ble Supreme Court in the case of CIT vs. Jaipuria China Clay Mines (P) Ltd., (1966) 59 ITR 155, the assessee claimed carried forward and set-off of unabsorbed depreciation of Rs.7,49,266/- against income from other sources and income from house property in the revised return of income / revised working of the statement of income. The AO has not allowed the assessee's above claim. Similarly, while making the assessment for the assessment year 2014-15, the assessee by his letter stated that as against the film receipts of Rs.5 lakhs from M/s. Maragadam Pictures, he has offered Rs.4,50,000/- only as income, since the TDS deducted by M/s. Maragadam Pictures at Rs.50,000/- is not reflected

in 26AS and he has not also claimed Rs.50,000/- as a tax deduction on his total income. The AO held that since the assessee accepted the facts of TDS of Rs.50,000/-, it is deemed to have been received by him and hence added Rs.50,000/- to the returned income and completed the assessment. Against the above orders, the assessee filed appeals before the CIT(A). The Id.CIT(A) confirmed the disallowances. Aggrieved against those orders, the assessee filed these appeals.

3. The Id.AR submitted that the assessee maintains accounts for his income as an actor on cash basis and for his income as producer on mercantile basis. The income primarily consists of film receipts, advertisement receipts, rental income and interest income. He was taking one feature film which was under production. For the assessment year 2009-10, from the intimation, the assessee found that credit for the TDS claim of Rs.2,21,000/- was not given to him. The claim pertains to a producer by name 'Silver Screen Movies', from whom the assessee has not received TDS certificate from them, despite his close follow-up. Therefore, he filed a revised return withdrawing the claim of TDS and he reduced his professional income. The Id.AR submitted that assessee is maintaining books of

account on cash basis, Rs.2,21,000/- though said to be deducted as tax at source by his client, since, it is not remitted to the Government account and not reflected in 26AS, it is clear that the assessee has not received the same. Further, the Id.AR submitted that the assessee claimed carried forward of unabsorbed depreciation of Rs.7,49,226/- against the income from other sources / income from house property, relying on the Hon'ble Supreme Court decision. Aggrieved against the order of AO, the assessee filed appeals before the CIT(A). The Id.CIT(A) confirmed the addition / disallowance made by the AO, stating that the assessee is required to offer the entire receipt as income including the TDS portion. With regard to the issue of depreciation disallowance, the Id.CIT(A) held that as per Section 72, the business loss can be carried forward and adjusted against the income from business and not against any other head of income. He has also held that the decision relied on by the assessee was rendered in the context of 1922 Act. In this regard, the Id.DR relied on the Hon'ble Supreme Court decision in the case of CIT vs. Virmani Industries (P) Ltd, [1995] 83 Taxman 343 (SC), which is rendered in the context of Section 32 following the decision in CIT vs. Jaipuria China Clay Mines (P) Ltd, (1966) 59 ITR 555. Inviting our attention to 32(2) of the Income Tax Act, the Id.AR submitted that as

far as unabsorbed depreciation is concerned, the law as per 1922 and as per Income Tax Act, 1961 is same with no variation and hence pleaded that the assessee's appeal for the assessment year 2009-10 may be allowed.

3.1 With regard to the disallowance made in assessment year 2014-15, the Id.AR submitted that in the case of Margadam Pictures, the assessee has received only Rs.4,50,000/- as film receipts, as against Rs.5,00,000/-. M/s.Margadam Pictures has deducted Rs.50,000/- as tax. Since, the assessee is maintaining accounts on cash basis as an actor, it is submitted that Rs.4,50,000/- can only be taken as income which is offered to tax for this assessment year. Since, the tax deducted by M/s. Margadam Pictures is not reflected in 26AS, he pleaded that the TDS made at Rs.50,000/- has not been received by the assessee and he has not claimed this account as deduction against the tax on his total income. Therefore, the Id.AR pleaded to allow the appeal for assessment year 2014-15. Per contra, the Id.DR supported the orders of the lower authorities.

4. We heard the rival submissions and gone through the relevant material. Since the assessee is accounting his professional

(actor) income on cash basis, the entire receipt including TDS has to be assessed in the respective assessment year. Therefore, the addition made in assessment year 2009-10 and 2014-15 are in accordance with law. However, since the assessee is claiming that the producers by name 'Silver Screen Movies' and M/s. Maragadam Pictures have deducted the tax from the respective receipts, while determining the tax payable by the assessee, the AO is directed not to call upon the assessee to pay the corresponding taxes himself to the extent on which the tax has been deducted from the income of the respective assessment year, in accordance with Section 205 of the Income Tax Act, provided, that the assessee is able to furnish the TDS certificate issued by the respective deductor, supra, to that extent.

4.1 With regard to the set-off of brought forward unabsorbed depreciation, the head note of the Hon'ble Supreme Court decision in the case of CIT vs. Virmani Industries (P) Ltd, supra is extracted as under:-

"Section 32(2) of the Income-tax Act, 1961 – Depreciation – Carry forward and set off of unabsorbed depreciation – Assessment year 1965-66 – Whether for availing benefit under section 32(2) it is necessary that business carried on in 'following previous year' be same as business as was carried on in preceding previous year – Held, no – Whether assets

which earned depreciation in preceding year have to exist and continue to be used for business in following year – Held, no – Whether in order to avail benefit under section 32(2) it is necessary that some business must be carried on by assessee in following years and unabsorbed depreciation could be carried forward and set off against income under other heads – Held, no”

It is seen that the Id.CIT(A) has not taken cognizance of the fact that the assessee has admitted income from business and profession at Rs.38,32,052/-. Therefore, the assessee is entitled to set-off the brought forward loss against such income. The AO shall verify the fact of income admitted from business and profession, as indicated above, and if it is the fact, then he shall allow the brought forward depreciation claim to the extent of availability of income under that head. To this extent, the assessee's appeal is allowed.

5. In the result, the assessee's appeals for both the assessment years are partly allowed.

Order pronounced in the court on 4th October, 2019 at Chennai.

Sd/-

(धुव्वुरु आर एल रेड्डी)

(Duvvuru R.L Reddy)

न्यायिक सदस्य/Judicial Member

चेन्नई/Chennai,

दिनांक/Dated 4th October, 2019

Sd/-

(एस जयरामन)

(S. Jayaraman)

लेखा सदस्य /Accountant Member

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 |