

आयकर अपीलीय अधिकरण, 'डी' न्यायपीठ, चेन्नई  
IN THE INCOME TAX APPELLATE TRIBUNAL, 'D' BENCH, CHENNAI  
श्री एन.आर.एस. गणेशन, न्यायिक सदस्य एवं श्री एस जयरामन, लेखा सदस्य के समक्ष  
**BEFORE SHRI N.R.S. GANESAN, JUDICIAL MEMBER AND  
SHRI S. JAYARAMAN, ACCOUNTANT MEMBER**

आयकर अपील सं./I.T.A.No.1215/Chny/2015  
(निर्धारण वर्ष / Assessment Year: 2008-09)

**Shri M. Perarasu,**  
No.4/459, 8<sup>th</sup> Cross Street,  
Kabaleeswarar Nagar, Neelangarai,  
Chennai – 600 041.

Vs The ACIT,  
Non-Corporate Circle 20(1),  
Chennai – 34.

**PAN: AMNPP4778P**

(अपीलार्थी/Appellant)

(प्रत्यर्थी/Respondent)

अपीलार्थी की ओर से/ Appellant by : Shri T.T. Durairaj Kandiar, FCA

प्रत्यर्थी की ओर से/Respondent by : Shri R. Anita, JCIT

सुनवाई की तारीख/Date of hearing : 08.01.2020

घोषणा की तारीख /Date of Pronouncement : 19.02.2020

**आदेश / O R D E R**

**PER N.R.S. GANESAN, JUDICIAL MEMBER:**

This appeal of the assessee was early disposed of by an order dated 19.12.2018. However, the assessee filed a miscellaneous petition in MP No.48 of 2019 alleging that Ground No.4 raised by the assessee is not disposed of. Accordingly, this Tribunal found that Ground No.4 raised by the assessee was not disposed of. Therefore, non-disposal of the ground raised by the assessee would amount to

an error within the meaning of Section 254(2) of the Income Tax Act, 1961 (in short 'the Act'). Accordingly the appeal was reopened and posted today for disposal of Ground No.4 alone.

2. Shri T.T. Durairaj Kandiar, the Ld. Representative for the assessee submitted that as per the agreement between the assessee and the producer of the film, the entire cost of production of the film from the beginning till the end of completion and handing over the same to the producer shall be borne by the assessee. According to the assessee, the cost of total production of the film was Rs.3,75,00,000/-. Within Rs.3,75,00,000/-, the assessee has to complete the entire film and handover the film to the producer. The assessee is not entitled for any additional cost for production of the film. However, the assessee could not complete the film within Rs.3,75,00,000/-. The assessee in fact has to incur Rs.26,75,000/- for completion of the film in addition to Rs.3,75,00,000/-. Therefore, the Ld. representative submitted that the additional cost of Rs.26,75,000/- over and above Rs.3,75,00,000/- has to be allowed as production expenditure.

3. On the contrary, Shri M. Mathivanan, the Ld. Departmental Representative submitted that even though the assessee received Rs.3,75,00,000/-, the assessee has shown only about Rs.49,00,000/- in the books of account. The Ld.DR further submitted that Rs.3,75,00,000/- received by the assessee was not disclosed in the books of account. Therefore, the assessee is not entitled for so called production expenditure of Rs.26,75,000/-.

4. We have considered the rival submissions on either side and perused the material available on record. As per the agreement, the assessee has to complete the film within the cost of Rs.3,75,00,000/-. At para 4 & 5 of the agreement, it is agreed between the parties, what are the work which needs to be done by the assessee as a Director of the film. For the purpose of convenience, we are reproducing para 4 & 5 of the agreement:-

*“4. The entire cost of production from the beginning till the date of completion and handing over of the following materials of the said picture ‘PAZHANI’ (color.scope) shall be borne by the party of the FIRST PART:-*

- a) Double positive/rushes/U.matic cassette.*
- b) Original and duplicate censor certificate (in principle it is agreed to apply the censor certificate through the second party);*
- c) first copy of the film;*
- d) albums of black and white/colour disc.*
- e) designs and posters blow ups, photocards slides etc.*

- f) *audio cassettes;*
- g) *original script book in Tamil with synopsis songs and lyrics pertaining to the said film;*
- h) *letter to the concerned laboratory transferring the negatives (both picture and sound) in the name of the party of the second part;*
- i) *all balance and unused makeup materials, costumes and properties relating to the said picture.*

*“5. In consideration of the above, the party of the second party has agreed to pay a sum of Rs.3,75,00,000/- (Rupees three crores and seventy five lakhs only) payable to the total amount to the party of the first part and agreed to pay the same as under:-*

- a) *Rs.1,25,00,000/- (Rupees one crore and twenty five lakhs) already spend by the second part towards the above said production and the accounts for the same were inspected and accepted by the first party;*
  - b) *Rs. 17,00,000/- (Rupees seventeen lakhs only)paid as advance to the first party;*
  - c) *Rs.1,83,00,000/- (Rupees one crore and eighty three lakhs) payable before the completion of the entire shooting works and it should be paid for easy and convenient shooting programmes.*
  - d) *Rs. 25,00,000/- (Rupees twenty five lakhs only) payable before the commencement of dubbing works of the film.*
  - e) *Rs. 25,00,000/- (Rupees twenty five lakhs only) payable before the commencement of re-recording works of the film;*
- Total Rs.3,75,00,000/- (Rupees three crores and seventy five lakhs only)*

At para 7 of the agreement, it is also categorically stated that the assessee being the first party to the agreement, not entitled to

demand any additional cost of consideration or extra payment apart from the agreed amount of Rs.3,75,00,000/-. If the assessee in fact incurred any additional cost over and above Rs.3,75,00,000/-, this Tribunal is of the considered opinion, the same has to be allowed as expenditure in the hands of the assessee, while computing the taxable income. However, it is not known whether the assessee has in fact incurred Rs.3,75,00,000/- or not. On a query from the Bench, the Ld. Representative for the assessee could not produce the details of the expenditure. The assessment year under consideration is 2008-09. Therefore, there can be real difficulty in producing the books of account. It is also necessary to examine the actual expenditure incurred by the producer in addition to Rs.3,75,00,000/- which was said to be incurred by the assessee. Since the necessary details were not available before this Tribunal, this Tribunal is of the considered opinion that this matter needs to be re-examined by the Assessing Officer. Accordingly, the orders of both the authorities below are set aside and the issue relating to the claim of expenditure of Rs.26,75,000/- towards production expenditure alone is remitted back to the file of the Assessing Officer. The Assessing Officer shall re-examine the issue afresh in the light of the agreement and other books of account, etc., and find out whether the assessee has

incurred any additional cost of production of film in addition to Rs.3,75,00,000/-. Thereafter the Assessing Officer shall decide the issue afresh in accordance with law, after giving a reasonable opportunity to the assessee. The other part of the order dated 19.12.2018 shall stand as it is.

5. In the result, the appeal filed by the assessee stands allowed for statistical purposes.

Order pronounced in the court on 19<sup>th</sup> February, 2020 at Chennai.

Sd/-

( एस जयरामन )

(S. Jayaraman)

लेखा सदस्य /Accountant Member

Sd/-

(एन.आर.एस. गणेशन)

(N.R.S. Ganesan)

न्यायिक सदस्य/Judicial Member

चेन्नई/Chennai,

दिनांक/Dated, the 19<sup>th</sup> February, 2020.

**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             |