

**IN THE INCOME TAX APPELLATE TRIBUNAL  
DELHI BENCH: ' F ' NEW DELHI**

**BEFORE SHRI G. S. PANNU, VICE PRESIDENT  
AND  
MS SUCHITRA KAMBLE, JUDICIAL MEMBER**

**(ITA No.175/DEL/2018 ( A.Y 2013-14)**

ACIT Circle-34(1), New Delhi  <b>(APPELLANT)</b>	Vs	Yashovardhan Tyagi 1-140, Ashok Vihar, Phase-1 New Delhi AAAPT0403G <b>(RESPONDENT)</b>
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<b>Appellant by</b>	<b>Sh. Farhat Khan, Sr. DR</b>
<b>Respondent by</b>	<b>Sh. Satish Aggarwal, CA</b>

<b>Date of Hearing</b>	<b>23.06.2021</b>
<b>Date of Pronouncement</b>	<b>23.06.2021</b>

**ORDER**

**PER SUCHITRA KAMBLE, JM**

This appeal is filed by the Revenue against the order dated 25/09/2017 passed by CIT(A)- 12, New Delhi for Assessment Year 2013-14.

2. The grounds of appeal are as under:-

*“Whether the order of Ld.CIT(A) is not erroneous on facts and on law?*

*2. The CIT(A) erred on facts and circumstances of the case by deleting the addition of Rs.4,96,00,000/- in respect of claim of royalty for non deduction of TDS observing that the ‘Minimum Guarantee Royalty’ debited by the assessee in this P & L account which does not fall in the definition of ‘Royalty’.*

3. During the year, the assessee was engaged in the business of Trading of Film Distribution under the name and style of M/s Sukrit Pictures and shown income from Salary, house property and other sources. Income Tax Return declaring income of Rs. 4,00,000/- was e-filed on 30.09.2013. The assessee claimed a sum of Rs. 4,96,00,000/- as Minimum Guarantee Royalty for acquiring rights for theatrical distribution of various movies during the Assessment Year. The Assessing Officer made addition of Rs. 4,96,00,000/- and disallowed the same. The Assessing Officer also made addition of Rs. 36,808 towards car depreciation expenses as claimed by the assessee. Thus, the Assessing Officer assessed the income at Rs. 5,0036,810/-.

4. Being aggrieved by the Assessment Order, the assessee filed appeal before the CIT(A). The CIT(A) allowed the appeal of the assessee.

5. The Ld. DR relied upon the Assessment Order and submitted that the CIT(A) erred in deleting the addition of Rs. 4,96,00,000/- in respect of claim of royalty for non deduction of TDS observing that the 'Minimum Guarantee Royalty' debited by the assessee in his P & L account which does not fall in the definition of 'Royalty'.

6. The Ld. AR submitted that the issue is covered in favour of the assessee in A.Y. 2010-11 and 2011-12 by the Tribunal as mentioned in the order of the CIT(A). The Ld. AR relied upon the order of the CIT(A).

7. We have heard both the parties and perused all the relevant material available on record. The issue contested by the Revenue is already decided by the Tribunal in assessee's own case in A.Ys. 2010-11 and 2011-12. The Tribunal in A.Y. 2011-12 being ITA No. 2880/Del/2016 order dated 27.04.2020 held as under:

*"9. We find that Clause (v) of Explanation 2 to Section 9(1) consists of two different transactions, one inclusive another non-inclusive. The inclusive part*

*consists of the transfer of all or any rights (including the granting of a licence) in respect of any copyright, literary, artistic or scientific work including films or video tapes for use in connection with television or tapes for use in connection with radio broadcasting. The non-inclusive part consists of consideration for the sale distribution or exhibition of cinematographic films. The Assessing Officer misread the provision in the second part of the clause with regard to exhibition of cinematographic films. He wrongly held that what the assessee purchased is copyrights and hence liable to TDS. In fact, the copyrights are always with the producer. The distributor is only given the right exhibition of cinematographic films. Hence, such transactions do not attract the provisions of TDS. Further, the minimum guarantee amount which is paid by the distributor for acquiring the exhibition rights of a movie is a fixed expenditure for the distributor that is paid to producers irrespective of the fact whether the film generates a profit or incurs losses. Hence, the payments made by the assessee do not fall under the term "Royalty" and do not attract the provisions of TDS. The appeal of the revenue on this ground is dismissed."*

These findings were confirmed by the Tribunal in assessee's own case for A.Y. 2010-11 vide order dated 27.05.2021 in ITA No. 5998/Del/2014. The Revenue could not brought on record any distinguishable facts in the present assessment year. Therefore, there is no need to interfere with the finding of the CIT(A). The appeal of the Revenue is dismissed.

8. In result, appeal of the Revenue is dismissed.

**Order pronounced in the Open Court in presence of both the parties on this 23<sup>rd</sup> Day of June, 2021.**

**Sd/-  
(G. S. PANNU)  
VICE PRESIDENT**

**Sd/-  
(SUCHITRA KAMBLE)  
JUDICIAL MEMBER**

Dated: 23/06/2021  
R. Naheed

Copy forwarded to:

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

ASSISTANT REGISTRAR  
ITAT NEW DELHI