

**IN THE INCOME TAX APPELLATE TRIBUNAL
MUMBAI BENCH "K" MUMBAI**

**BEFORE SHRI OM PRAKASH KANT (ACCOUNTANT MEMBER) AND
SHRI RAHUL CHAUDHARY (JUDICIAL MEMBER)**

**ITA No. 7894/MUM/2019
Assessment Year: 2015-16**

Fremantle India Television
Productions Private Limited,
109, Shalimar Morya Park,
Plot B-2, Off New Link Road,
Oshiwara, Andheri West,
Mumbai-400053.

PAN No. AAACF 0436 A

Appellant

Vs.

The Asst. Commissioner of
Income-tax, Circle 16(1),
Aayakar Bhavan,
Mumbai-400020.

Respondent

Assessee by : Mr. M.P. Lohia/
Mr. Hemen Chadariya, ARs
Revenue by : Dr. Satya Pinisetty, CIT-DR

Date of Hearing : 16/03/2022
Date of pronouncement : 19/05/2022

ORDER

PER OM PRAKASH KANT, AM

This appeal by the assessee is directed against final assessment order dated 31/10/2019 passed by the Ld. Asst. Commissioner of Income-Tax, Circle 16(1), Mumbai, pursuant to the direction of the

Ld. Dispute Resolution Panel (in short 'the Ld. DRP') for assessment year 2015-16. The grounds raised by the assessee in its appeal are reproduced as under:

"On the facts and in the circumstances of the case, the learned TPO / AO/DRP have

- 1. erred in determining the total taxable loss of the Appellant at Rs 3,17,85,420 as against a loss of Rs 4,62,41,878 as reported in the return of income filed by the Appellant.*
- 2. erred in rejecting the Appellant's transfer pricing analysis without providing cogent basis and making a transfer pricing adjustment of INR 1,44,56,458 in respect of deemed international transaction of television content production fees received from the broadcasters.*
- 3. erred in rejecting documentary evidence including audited segmental statement, submitted by the Appellant during the proceedings before the lower authorities based on certain incorrect observations.*
- 4. erred in observing that the "low" production budget was charged to the broadcasters and the Appellant had indirectly passed "some" benefit to the Associate Enterprise ('AE') through other possible payments, and also for stating that the Appellant was not willing to share the production budget details without appreciating the facts that it was part of the agreement submitted during the DR proceedings.*
- 5. erred in not considering Appellant's contention that since the format rights fee receivable by the AE from the broadcasters were linked to the production fees to be received by the Appellant, it was in the AE's*

interest that the Appellant receives an appropriate share of production fees from the broadcasters

6. *Without prejudice to the above, the learned A erred in making transfer pricing adjustment in contravention of the Hon'ble DRP directions which directed the arms-length price to be equivalent to the cost of production and rejecting external TNMM applied by the TPO, thereby making the assessment order illegal and void.*
7. *The learned AO failed to appreciate the directions of the Hon'ble DRP that the Appellant should have recovered the cost of production from the deemed AEs, and that the cost of production is only the direct cost which has in fact been recovered from the deemed AEs and is part of the revenues from the deemed As as reflected in the Appellant's Form 3CEB.*
8. *The learned AO has grossly erred in initiating penalty proceedings under section 271(1Xc) of the Act."*

2. Before us the assessee has not pressed the ground No. one, ground Nos. 6 to 8 and therefore same are dismissed as infructuous.

3. In respect of ground No. 2 to 5 of the appeal, Ld. counsel of the assessee filed a request on behalf of the assessee for admission of the additional evidence. It was submitted by the assessee that in the case issue in dispute is in respect of determination of the arm's length price of 'deemed international transactions' of television content production fees received from the broadcasters. In the year

under consideration, Fremantle Media Ltd (AE) has granted license to two third-party broadcaster in India namely Star India Private Limited and Zee entertainment Enterprises Ltd. to use their format. The assessee had submitted format license agreement dated 21/10/2014 between the AE and Star India Private Limited during the proceeding before the Ld. DRP. The assessee submitted before us that it wish to submit following documents as additional evidence:

1. *confirmation from Fremantle media Ltd stating that all the transactions that it had undertaken with the two third-party broadcaster in India and the format license fee stated therein are the only income that are sourced by the AE from the aforementioned broadcaster.*
2. *Format agreement between Fremantle media Ltd and ZEE entitlement enterprise limited for show "Scars of life".*

3.1 In view of the above additional evidences submitted, the Ld. counsel of the assessee submitted that issue-in-dispute may be restored back to the file of the Ld. AO/TPO for deciding afresh in the light of above additional evidences.

4. The Ld. DR also did not object to the above request of the Ld. counsel of the assessee.

5. We have heard rival submission of the party and perused the relevant material record. For determination of arm's length price of the deemed international transactions, it is important to go through the agreement entered between the AE and domestic third-party. The said agreement and confirmation have been filed for first time before us, which being crucial and important for adjudicating the issue dispute, same are admitted as additional evidence in terms of Rule 29 of ITAT Rules, 1963 and issue-in-dispute involved in ground No. 2 to 5 of the appeal in relation to adjustment to the deemed international transactions is restored back to the file of the Ld. AO/TPO for deciding afresh after providing adequate opportunity of being heard to the assessee. The ground Nos. 2 to 5 of the appeal of the assessee accordingly allowed for statistical purposes.

6. In the result, the appeal of the assessee is allowed partly for statistical purposes.

Order pronounced in the open Court on 19/05/2022.

Sd/-

**(RAHUL CHAUDHARY)
JUDICIAL MEMBER**

Sd/-

**(OM PRAKASH KANT)
ACCOUNTANT MEMBER**

Mumbai;

Dated: 19/05/2022

Dragon Legal/Rahul Sharma, Sr. P.S.

Copy of the Order forwarded to :

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

//True Copy//

BY ORDER,

(Sr. Private Secretary)
ITAT, Mumbai