IN THE INCOME TAX APPELLATE TRIBUNAL
MUMBAI I BENCH, MUMBAI

[Coram: Pramod Kumar (Vice President),
and Sandeep S Karhail (Judicial Member)]

ITA No.: 1422/Mum/21
Assessment year: 2015-16

Deputy Commissioner of Income Tax
International Tax Circle 4(2)(2), Mumbai ……Appellant

Vs.

Channel V Music Networks Ltd, Hongkong ……...……Respondent
SRBC Associates LLP, 14th floor, The Ruby
29 Senapati Bapat Marg, Dadar West
Mumbai 400 028 [PAN: AAEF6136H]

Appearances by:
Milind Chavan *for the appellant*
Divesh Chawla *for the respondent*

Date of concluding the hearing : 02/06/2022
Date of pronouncing the order : 01/09/2022

O R D E R

Per Pramod Kumar VP

1. This appeal is directed against the order dated 4th March 2021, passed by the learned CIT(A) in the matter of assessment under section 143(3) r.w.s. 144C(3) of the Income Tax Act, 1961, for the assessment year 2015-16.

2. Grievances raised in the memorandum of appeal are as follows:

> **1. In the facts & Circumstances of the case, Ld. CIT(A) has grossly erred in directing the AO to allow set off of brought forward business loss of earlier years with the current year income received on account of Franchise Fees which is held to be in the nature of Royalty income and taxed in accordance with the provisions of Section 115A(1)(b) of the Act at the rate of 27.04% (including surcharge and education cess) unlike business income which is taxed at 42.23% (including surcharge and education cess).**
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> **2. In the facts & Circumstances of the case, Ld. CIT(A) has erred in not appreciating that brought forward business loss of AY 2011-12 has resulted from Sale of advertisement, distribution of channels and syndication of content treated as receipts from business and profession taxed at 42.23% (including surcharge and**

education cess) while the current year income is the receipt from Franchise Fees which in the nature of Royalty income and taxed on a gross basis in accordance with the provisions of Section 115A(1) (b) of the Act at the rate of 27.04% (including surcharge and education Cess).

3. Learned representatives fairly agree that whatever we decide in the appeal for the assessment year 2014-15, which was heard along with this appeal, will apply *mutatis mutandis* to this appeal as well. Vide our order of even date, we have dismissed the said appeal, and observed as follows:

> *3. The assessee before us is a foreign company and tax resident of Hong Kong. It operates satellite television channels featuring various genres of programming, data and content, and derives income mainly from selling advertising airtime on the channel, distribution of the channel, syndication of content and other allied activities. During the relevant previous year, the assessee had received franchise fees amounting to Rs 5,60,76,277 from an Indian entity- namely Star India Private Limited. In the computation of income, the assessee claimed set off of this income against the brought forward business loss of Rs 11,34,35,178 from the assessment year 2011-12. The Assessing Officer declined the set off for two reasons- first, that the claim of loss of Rs 11,34,35,178 in the assessment year has been, upon finalisation of assessment under section 143(3), stands converted into an income of Rs 8,96,44,590; second, that, to quote the words of the Assessing Officer, "the franchise fees being in the nature of royalty and not being business profit, cannot be set off against the business loss". Aggrieved, the assessee carried the matter in appeal before the learned CIT(A). Learned CIT(A) noted that as a result of the assessment for the assessment year 2011-12 having been carried in appeal, the loss claim of the assessee will be sufficient to set off the income of Rs 5,60,76,277 earned as franchise fees. He thus directed the Assessing Officer to allow the set off, and observed that "while setting off losses from earlier years, the AO may take into account legal procedures as per the Income Tax Act". The Assessing Officer is aggrieved of the relief so granted by the CIT(A), and is in appeal before us.*
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> *4. We have heard the rival contentions, perused the material on record and duly considered the facts of the case in the light of the applicable legal position.*
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> *5. We find that Section 72(1), as it stood at the relevant point of time, inter alia provided that, "**Where for any assessment year, the net result of the computation under the head "Profits and gains of business or profession" is a loss to the assessee……..be carried forward to the following assessment year, and— (i) it shall be set off against the profits and gains, if any, of any business or profession carried on by him and assessable for that assessment year**….". Clearly, therefore, all that is necessary for the income to be set off must consist of the profits and gains of any business or profession carried by the assessee and assessable for that assessment year. On the facts of the present case, there is not even a dispute that the franchise fee is earned by the assessee in the course of its business and is, therefore, assessable as such. The only issue, as raised by the Assessing Officer, is with respect to the rate at which this franchise fee is taxable, but then the rate of taxation is, in our considered view, not a relevant factor so far as eligibility of income for set-off is concerned. We also see no conflict in an income being taxable under the head profits and gains from business or profession, and an income being in the nature of a franchise fee earned in the course of business - even if it is taxed*

at a rate different than the rate at which the normal business income is taxed. All that really matters is the income being in the nature of profits and gains from business or profession being carried on by the assessee, and that aspect is not even in dispute on the facts of the present case. The grievances raised by the Assessing Officer are thus devoid of legally sustainable merits.

6. In view of the above discussions, as also bearing in mind the entirety of the case, we approve the conclusions arrived at by the learned CIT(A), and decline to interfere in the matter.

4. We see no reasons to take any other view of the matter than the view so taken by us in the assessee's case for the immediately preceding assessment year. Respectfully following the same, we approve the conclusions arrived at by the learned CIT(A) and decline to interfere in the matter.

5. In the result, the appeal is dismissed. Pronounced in the open court today on the 01st day of September, 2022.

Sd/-	Sd/-
Sandeep S Karhail	**Pramod Kumar**
(Judicial Member)	(Vice President)

Mumbai, dated the 01st day of September, 2022

Copies to:	*(1)*	*The appellant*	*(2)*	*The respondent*
	(3)	*CIT*	*(4)*	*CIT(A)*
	(5)	*DR*	*(6)*	*Guard File*

By order etc

Assistant Registrar/ Sr PS
Income Tax Appellate Tribunal
Mumbai benches, Mumbai