

THE INCOME TAX APPELLATE TRIBUNAL
"C" Bench, Mumbai
Shri B.R. Baskaran (AM) & Shri ABY T. Varkey (JM)

I.T.A. No. 5942/Mum/2017 (A.Y. 2007-08)

ACIT-9(2)(2) Room No. 665A 6 th Floor Aayakar Bhavan M.K. Road Mumbai-400 020.	Vs.	Cineline India Ltd. (Earlier known as Cinemax India Ltd.) M/s. Eskay Infrastructure Development Pvt. Ltd. Business Point-349 8 th Floor, Western Express Highway, Andheri East Mumbai-400 069. PAN : AACCC1775F
(Appellant)		(Respondent)

Assessee by	Shri Vijay Mehta
Department by	Shri P.D. Chougule
Date of Hearing	03.10.2022
Date of Pronouncement	04.10.2022

ORDER

Per B.R.Baskaran (AM) :-

The Revenue has filed this appeal challenging the order dated 12.6.2017 passed by the learned CIT(A)-16, Mumbai and it pertains to A.Y. 2017-18.

2. The only issue urged in this appeal relates to decision of the learned CIT(A) in holding that the entertainment tax subsidy is a capital receipt, which is not taxable.

3. The assessee is engaged in the business of exhibition of films, builders and developers. This is a second round of proceedings. In the first round, the issue relating to the assessee's claim to treat the 'entertainment tax subsidy' as capital receipt was rejected by the tax authorities on the ground that the

assessee had made fresh claim before the Assessing Officer during the course of assessment proceedings without filing revised return. Hence, in the first round, the said issue was restored back by the Tribunal to the file of the Assessing Officer. In the set aside proceedings also, the Assessing Officer did not accept the contentions of the assessee and accordingly assessed entertainment tax subsidy as revenue receipt taxable in the hands of the assessee.

4. In the appellate proceedings, the learned CIT(A) deleted the addition by following the decision rendered by Hon'ble Jurisdictional Bombay High Court in the case of Cinemax India Pvt. Ltd. (ITA No. 394/Mum/2012).

5. Aggrieved by the decision of the learned CIT(A) the Revenue has filed this appeal.

6. We have heard the parties and perused the record. For the sake of convenience we extract below the decision rendered by the learned CIT(A) on this issue as under :-

“6.3 I have considered the submission of the appellant and case laws cited by the appellant. The Hon'ble ITAT 'C' Bench, after considering the judgement of Hon'ble Jurisdictional High Court in the case of Cinemax India Ltd. in ITA No. 394/Mum/2012 has held as under :

“We have heard both the sides and perused the material on record. Firstly, on the issue raised by the revenue claiming that the entertainment tax/duty collected by the assessee is to be treated as a revenue receipt, it is pertinent to mention that the case of the assessee squarely covered by the decision of the Hon'ble Bombay High Court in the case of CIT Vs. Chaphalkar Brothers (supra), dated 08.06.2011, wherein it has been held that the subsidy of this kind constitutes capital receipts as it is meant for promotion of the new industries by way of multiplex theatres , in our view, has been rightly followed by the Ld.CIT(A) for treating the impugned amount as 'capital receipts'. It is also relevant to mention that the fact of the assessee's case is also covered by the decision of the Tribunal in the assessee's sister concern case namely Vista Entertainment Pvt. Ltd. in ITA No. 8402/Mum/2011 for the Assessment Year 2008-09, the order to which the present AM is also a party, wherein it has been held that similar additions are not sustainable since the same

amounts to capital in nature. Following the above decisions in the similar context of facts involved, we do not find any justifiable reason to interfere with the decision of the Ld. CIT(A) in treating the impugned amount as capital receipt and the same not liable to tax. Accordingly, the decision of the Ld. CIT(A) on this count is upheld. Similar decision on this issue was taken by the Tribunal in the assessee's own case vide ITA No.1287/M/2012 and 1483/M/2012 for the AY 2009-2010."

6.4 Further, the Hon'ble ITAT 'C' Bench in the case of Cinemax India Ltd. in ITA No. 1287/Mum/2012 has once again held as under :

"We have heard both the sides and perused the material on record. Firstly, on the issue raised by the revenue claiming that the entertainment tax/duty collected by the assessee is to be treated as a revenue receipt, it is pertinent to mention that the case of the assessee squarely covered by the decision of the Hon'ble Bombay High Court in the case of CIT Vs. Chaphalkar Brothers, dated 08.06.2011, wherein it has been held that the subsidy of this kind constitutes capital receipts as it is meant for promotion of the new industries by way of multiplex theatres, in our view, has been rightly followed by the Ld.CIT(A) for treating the impugned amount as capital receipts. It is also relevant to mention that the fact of the assessee's case is also covered by the decision of the Tribunal in the assessee's sister concern case namely Vista Entertainment Pvt. Ltd. in ITA No. 8402/Mum/2011 for the Assessment Year 2008-09, the order to which the present AM is also a party, wherein it has been held that similar additions are not sustainable since the same amounts to capital in nature. Following the above decisions in the similar context of facts involved, we do not find any justifiable reason to interfere with the decision of Ld.CIT(A) in treating the impugned amount as capital receipt and the same not liable to tax. Accordingly, the decision of the Ld.CIT(A) on this count is upheld."

6.5 Similar issue has been taken by the Hon'ble ITAT in the case of Cineline India Ltd. in ITA no. 5692/Mum/2013 wherein the Hon'ble Court has held as under :

"In the appeal of the Revenue, the issue pertains to entertainment tax/duty collected by the assessee is whether capital receipt and whether exempted from taxation, whereas, in the appeal of the assessee, the issue pertains to the subsidy received from the Government is a capital receipt and also whether is to be reduced from the value of WDV. We note that both these issues has been dealt with in detail by the Tribunal, as reproduced hereinabove, therefore, without going into much deliberation, we find that the Tribunal vide order dated 24/01/2014, on identical fact, in the case of assessee itself, vide aforesaid orders, deliberated upon the issue and by following the decision from Hon'ble jurisdictional High Court in the case of CIT v.Chapalakar Brothers (order dated 08/06/2011),

wherein it was held that subsidy of this kind constitutes capital receipts as the same is meant for promotion of new industries by way of multiplex theaters, which has been followed by the ld. First Authority also. Therefore, we find no merit in the appeal of the Revenue and also following the same order with respect to subsidy received has to be reduced from WDV of the block of asset and to allow the depreciation on the reduced value of WDV also vide para-4 of the order of the Tribunal dated 24/01/2014, the issue has been decided in favour of the assessee. Respectfully following the order of the Tribunal, the appeal of the Revenue is dismissed and that of the assessee is allowed.”

6.6 The facts of the appellant’s case are squarely covered by Hon’ble Jurisdictional High Courts cited above and Hon’ble Jurisdictional High Court in the case of CIT Vs. Chaphalkar Brothers, therefore, respectfully following the judgement of Hon’ble High Court, the appeal of the appellant is allowed and addition of Rs. 6,29,98,601/- made by the Assessing Officer is deleted.”

7. We heard the parties and perused the record. The Ld A.R submitted that the Tribunal has consistently decided this issue in favour of the assessee in the subsequent assessment years, viz., AY 2008-09 to 2010-11. The Revenue has challenged the decisions so rendered by the Tribunal by filing appeals before the Hon’ble Bombay High Court and all those appeals have been dismissed. The Ld A.R further submitted that the decision rendered by Hon’ble Bombay High Court in the case of Chaphalkar Brothers (supra) has since been upheld by the Hon’ble Supreme Court in the very same case reported in 400 ITR 279 (SC). He submitted that the orders passed by the Hon’ble Bombay High Court in the assessee’s own case were also tagged with the above said case of Chaphalkar Brothers before Hon’ble Supreme Court. Accordingly, the Ld A.R submitted that the decision rendered by Ld CIT(A) does not call for any interference.

8. We notice that the Hon’ble Supreme Court has upheld the decision rendered by Hon’ble jurisdictional Bombay High Court in the case of Chaphalkar Brothers. It has been held by Hon’ble Supreme Court that the Entertainment tax subsidy is capital in nature. Since the decision rendered by the Ld CIT(A) gets support from the decision rendered by Hon’ble Supreme

Court, we do not find any infirmity in the order passed by Ld CIT(A). Accordingly we uphold his order.

9. In the result, the appeal filed by the revenue is dismissed.

Order pronounced in the open court on 04.10.2022.

Sd/-
(ABY T. VARKEY)
JUDICIAL MEMBER

Sd/-
(B.R. BASKARAN)
ACCOUNTANT MEMBER

Mumbai; Dated : 04/10/2022

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,

(Assistant Registrar)
ITAT, Mumbai

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