

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

**BEFORE SHRI OM PRAKASH KANT (ACCOUNTANT MEMBER)  
AND  
SHRI RAJ KUMAR CHAUHAN (JUDICIAL MEMBER)**

**ITA No. 3360/MUM/2024  
Assessment Year: 2018-19**

Culver Max Entertainment Pvt. Ltd.,  
(Formerly known as Sony Pictures  
Networks India Pvt. Ltd.),  
Interface Building 7, 4<sup>th</sup> floor, Off  
Malad Link Road, Malad (W),  
Mumbai-400064  
**PAN NO. AABCS 1728 D**  
**Appellant**

**Vs.**

The CIT(A), NFAC, The Asst. CIT,  
Circle 16(9), Room 439, 4<sup>th</sup> floor,  
Aayakar Bhavan, Maharishi Karve  
Road,  
Mumbai-400020.  
**Respondent**

Assessee by : Mr. Nitesh Joshi &  
Ms. Mansi Chheda  
Revenue by : Mrs. Pradnya R. Gholap, Sr. DR

Date of Hearing : 22/08/2024  
Date of pronouncement : 27/09/2024

**ORDER**

**PER OM PRAKASH KANT, AM**

This appeal has been filed by the assessee against order dated 02.05.2024 passed by the Ld. Commissioner of Income-tax (Appeals) – National Faceless Appeal Centre, Delhi [in short ‘the Ld. CIT(A)’] for assessment year 2018-19, raising following grounds:



**Deduction of taxes paid outside India under section 37 of the Act**

1. On the facts and under circumstances of the case and in law, the Hon'ble CIT(A) erred in not adjudicating upon the Ground of appeal No. 10 preferred by the Appellant relating to deduction under section 37 of the Act in respect of taxes paid outside India (foreign tax credit) for which relief under section 90 of the Act is not available to the Appellant.

2. On the facts and under circumstances of the case and in law, the Hon'ble CIT(A) erred in not granting deduction of foreign taxes paid amounting to Rs. 2,56,05,104 under section 37 of the Act without appreciating that the same has not been claimed by the Appellant as relief under section 90 of the Act and that such claim is not debarred by section 40(a) ii) of the Act.

Each of the above grounds of appeal is without prejudice to and independent of one another.

2. At the outset before us, the Ld. counsel for the assessee submitted that the Ld. CIT(A) has decided the appeal without considering the submission of the assessee filed in respect of grounds raised and therefore may be restored back to the file of the Ld. CIT(A). The Ld. counsel further submitted that regarding the claim of foreign tax credit, the assessee has already filed rectification application before the Ld. CIT(A), which is pending.

3. We have heard rival submission of the parties and perused the relevant material on record. We find that the Ld. CIT(A) has mainly directed the Assessing Officer to verify the quantum of TDS and foreign tax credit and allow the same in accordance with law. The relevant finding of the Ld. CIT(A) is reproduced as under:

**“DECISION**

*The first ground is general in nature.*

*The second ground submits as:*



*On the facts and circumstances of the case and in law, the learned AO erred in disallowing the provision for gratuity amounting to Rs. 11,57,94,444 under section 43B of the Act without appreciating the fact that the amount of gratuity has been reported twice in Form 3CD under clause 21(e) and 26(i)(B)(b), and the amount of Rs. 11,57,94,444 has been suo-moto disallowed by the Appellant in the ROI.*

*The Appellant prays that the double disallowance of Rs. 11,57,94,444 made by the learned AO based*

*on the Intimation under section 143(1) should be deleted. The AO is directed to verify whether the appellant has suo-moto disallowed the amount in*

*If so, he is directed to delete the addition, to prevent any double addition taking place.*

**THIS GROUND IS PARTLY ALLOWED.**

*The third ground submits as:*

*On the facts and circumstances of the case and in law, the learned AO erred in not granting credit*

*for TDS to the extent of Rs. 124,45,44,224 claimed in the ROI.*

*On the facts and circumstances of the case and in law, the learned AO erred in not granting credit of TDS of Rs. 49,28,303 claimed additionally before the learned AO during the course of assessment proceedings (not claimed in the ROI).*

*On the facts and circumstances of the case and in law, the learned AO erred in not granting credit for TCS to the extent of Rs. 53,600 claimed in the ROI.*

*The Appellant prays that the learned AO be directed to grant additional credit of TDS of Rs. 124,94,72,527 and TCS of Rs. 53,600.*

*The AO is directed to verify the quantum of TDS and TCS, and if found correct, credit may be given.*

**THIS GROUND IS PARTLY ALLOWED TOO.**

*The fourth ground submits as:*

*On the facts and circumstances of the case and in law, the learned AO erred in not granting deduction of Education Cess and Secondary & Higher Education Cess paid by the Appellant while computing its taxable income.*

*The AO is directed to verify this aspect, and allow deduction, if due.*



*THIS GROUND IS PARTLY ALLOWED.*

*The fifth ground submits as:*

*On the facts and circumstances of the case and in law, the learned AO erred in not granting relief of FTC under section 90 of the Act claimed by the Appellant amounting to Rs. 72,52,701.*

*On the facts and circumstances of the case and in law, the Appellant wishes to make an additional claim of FTC of Rs. 1,82,274 under section 90 of the Act (not claimed in the ROI).*

*The appellant submits too, that it had claimed FTC of Rs. 69,99,920 under section 90 of the Act in the ROI, and that Form no. 67 had also been duly filed. Apparently, there was a typographical error in the amount of income and taxes paid in foreign currency and hence, during the course of assessment proceedings the Appellant submitted a rectified claim of Rs.72,75,701/-*

*Before me, it claims that a withholding tax certificate by one deductor, M/s Netflix Inc. was received after the filing of the revised ROI and completion of assessment proceedings, and hence, an additional claim of deduction of FTC amounting to Rs. 1,82,274 under section 90 of the Act has been made before me.*

*The AO is directed to verify the claim of the appellant with regard to the FTC amount, and if found correct, credit of Rs.74,34,974 under section 90 of the Act may be granted.*

*HIS GROUND IS PARTLY ALLOWED TOO.*

*With respect to the ground regarding charge of interest, the AO is directed to look into this, while giving effect to this order.”*

3.1 In our opinion, the credit of tax including foreign tax credit is subject to verification by the Assessing Officer and for which, the Ld. CIT(A) has already directed the Assessing Officer. Accordingly, we restore the matter back to the Assessing Officer for considering the credit of the TDS or foreign tax credit in accordance with law after verification, if such credit has not been granted by the Assessing Officer. The grounds of appeal of the assessee are accordingly allowed for statistical purposes.



4. In the result, the appeal filed by the assessee is allowed for statistical purposes.

**Order pronounced in the open Court on 27/09/2024.**

**Sd/-  
(RAJ KUMAR CHAUHAN)  
JUDICIAL MEMBER**

**Sd/-  
(OM PRAKASH KANT)  
ACCOUNTANT MEMBER**

Mumbai;  
Dated: 27/09/2024  
Rahul Sharma, Sr. P.S.

**Copy of the Order forwarded to :**

1. The Appellant
2. The Respondent.
3. CIT
4. DR, ITAT, Mumbai
5. Guard file.

//True Copy//

BY ORDER,  
(Assistant Registrar)  
**ITAT, Mumbai**