IN THE INCOME TAX APPELLATE TRIBUNAL
HYDERABAD "A" BENCH: HYDERABAD

BEFORE SHRI VIJAY PAL RAO, VICE PRESIDENT
AND
SHRI MANJUNATHA G, ACCOUNTANT MEMBER

ITA.Nos.654 & 665/Hyd./2023 & ITA.No.648/Hyd./2024
Assessment Years 2017-2018, 2018-2019 & 2020-2021

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| The ACIT, Circle-5(1),<br>Hyderabad – 500 004.<br>Telangana. | vs. | M/s. Eenadu Television<br>Private Limited,<br>Hyderabad – 501 212.<br>PAN AACCM7226P |
| (Appellant) | | (Respondent) |

ITA.No.563/Hyd./2024
Assessment Year 2020-2021

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| M/s. Eenadu Television<br>Private Limited,<br>Hyderabad – 501 212.<br>PAN AACCM7226P | vs. | The ACIT, Circle-5(1),<br>Hyderabad – 500 004.<br>Telangana. |
| (Appellant) | | (Respondent) |

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| For Revenue : | Shri B. Bala Krishna, CIT-DR |
| For Assessee : | Shri V. Siva Kumar, Advocate |

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| Date of Hearing : | 18.03.2025 |
| Date of Pronouncement : | 16.05.2025 |

## ORDER

**PER MANJUNATHA G. :**

The above three appeals ITA.Nos.654 & 665/ Hyd./2023 & ITA.No.648/Hyd./2024 are filed by the Revenue against the respective orders dated 13.10.2023 and 10.04.2024, of the learned CIT(A)-National Faceless Appeal Centre [in short the "NFAC"], Delhi, relating to the assessment years 2017-2018, 2018-2019 & 2020-2021, respectively and the assessee has filed it's cross-appeal ITA.No.563/Hyd./2024, against the order dated 10.04.2024 of the learned CIT(A)-National Faceless Appeal Centre [in short the "NFAC"], Delhi, relating to the assessment year 2020-2021. Since common issues are involved in all these four appeals, these appeals were heard together and are being disposed of by this single consolidated order for the sake of convenience and brevity. First, we take-up ITA.No. 654/Hyd./2023 for the assessment year 2017-2018 as "lead" case.

ITA.No.654/Hyd./2023 – A.Y. 2017-2018 :

2. The Revenue has raised the following grounds in the instant appeal :

1. *"The order of the Ld.CIT(A), NFAC, Delhi, dtd. 13/10/2023 in appeal No. CIT(A). Hyderabad-4/10622/2019-20 is against the facts of the case.*

2. *Whether, on the facts and in the circumstances of the case and in law, the CIT(A) was right and justified in following the directions of the ITAT in allowing the claim of cost of production of TV serials and programmes as revenue expenditure as against depreciation granted by AO treating it as Capital expenditure?.*

3. *Whether, on the facts and in the circumstances of the case and in law, the CIT(A) was correct and justified in following the directions of the ITAT in allowing the claim of cost of production of TV serials and programmes as revenue expenditure when incurring of such expenditure resulted in creation of asset with enduring benefit because of its repeat telecast value?.*

4. *Whether, on the facts and in the circumstances of the case and in law, the CIT(A) erred in following the directions of the ITAT in allowing the claim of the assessee following the decision of ITAT of ITAT Mumbai bench in the case of Zee Media Corporation Ltd, when in the said case assessee itself amortized such expenditure over the period of its exploitation considering the repeat telecast value and not as revenue expenditure in the first year itself and whether in such circumstances the impugned order of Tribunal is perverse both on facts and in law?.*

5. *Whether, on the facts in the circumstances of the case and in law, the CIT(A) erred in following the directions of the ITAT in allowing the claim of the assessee following the decision of Delhi High Court in Television Eighteen India Ltd (364 ITR 597) in which the subject matter was 'news content' which does not have repeat telecast value as against expenses incurred towards TV serials and programmes and film rights having repeat telecast value?*

6. *Whether, on the facts and in the circumstances of the case and in law, the CIT(A) was right and justified in following the directions of the ITAT in ignoring that Rule 9A and 98 are available only for*

*production of feature films and not for production of TV serials and programmes?*

7. *Whether, on the facts and circumstance of the case and in law, the CIT(A) erred in following the directions of the ITAT in not considering that expenses incurred towards TV serials and programmes and film rights created an intangible asset and such asset has to be depreciated over its life time as held in Accounting Standard-26?*

8. *Whether, on the facts and circumstances of the case and in law, the CIT(A) was correct and justified in following the directions of the ITAT in allowing depreciation @25% on film software library by treating it as an intangible asset Ignoring the finding of A.O. that the said asset is an integral part of the tools used by the assessee to carry on its business and needs to be treated Plant and Machinery?*

9. *Any other ground that may be urged at the time of hearing."*

3. Briefly stated facts of the case are that, the assessee company viz., M/s. Eenadu Television Private Limited was formed as result of demerger of M/s. Ushodaya Enterprises Private Limited. The Company M/s. Ushodaya Enterprises Private Limited is *inter-alia* in the business of producing and telecasting entertainment/news/information programmes under the trade name of "ETV" and has demerged it's television business into three companies namely (1) M/s. Eenadu Television Private Limited, (2) M/s. Prism TV Private Limited and (3) M/s. Panorama Television Private limited. The scheme of arrangements under sections

391 and 394 of Companies Act, 1956 was approved by Hon'ble High Court of Andhra Pradesh vide their Order dated 15.12.2010 with effect from 01.04.2010. The Telugu TV channels namely "ETV Telugu" and "ETV 2" clubbed together and transferred to M/s. Eenadu Television Private Limited. The assessee-company has filed its return of income for the impugned assessment year 2017-18 on 27.10.2017 declaring total income of Rs.42,31,26,430/-, The return of income has been processed u/sec.143(1) of the Income Tax Act, 1961 [in short “the Act”].

3.1. Thereafter, the case of the assessee-company was selected for scrutiny under Computer Aided Scrutiny Selection (CASS) and notice u/sec.143(2) of the Act dated 08.08.2018 was issued to the assessee-company through ITBA portal. The Assessing Officer also issued statutory notice u/sec.142(1) of the Act and called for the information. In response to the notices and questionnaires, the assessee-company has furnished the requisite information through ITBA portal from time to time. During

the course of assessment proceedings, after going through the information/documents furnished by the assessee-company and after a discussion with the authorized representative, the Assessing Officer completed the assessment by making the additions on account of disallowance of depreciation on non-compete fee of Rs.9,44,78,811/-, (ii) disallowance of cost of production of TV serials and programmes which are claimed as revenue expenditure of Rs.106,95,46,203/- and (iii) disallowance of excess depreciation claimed on "Film Software Library" of Rs.3,54,89,905/- and thereby, determined the total income of the assessee-company at Rs.162,26,41,349/- as against the returned income of Rs.42,31,26,430/- vide order dated 19.12.2019 passed u/sec.143(3) of the Income Tax Act, 1961.

4. On being aggrieved, the assessee carried the matter in appeal before the learned CIT(A). Before the learned CIT(A), in response to the notice issued u/sec.250 of the Act, the assessee-company has filed it's submissions and also relied on the order of the ITAT, Hyderabad A-

Bench, Hyderabad in the case of sister-concern M/s. Prism TV Limited, Hyderabad vs., DCIT, Circle-16(3), Hyderabad in ITA.No.466 and 1249/Hyd./2015 for the assessment year 2011-2012 and 2012-2013 order dated 24.03.2016 wherein the Tribunal has directed the Assessing Officer to verify the issues of depreciation on non-compete fee and depreciation on Film Software Library and allowed the claim of assessee company on account of disallowance of cost of production of TV serials and programmes which are claimed as revenue expenditure and also relied on various judicial precedents on these issues. The learned CIT(A) after considering the submissions of the assessee, more particularly, by relying on the order of the Tribunal dated 24.03.2016 in the case of assessee's sister-concern viz., M/s. Prism TV Limited for the assessment year 2011-2012 (supra), has directed the Assessing Officer to verify the claim of assessee on account of depreciation on non-compete fee of Rs.9,44,67,811/- and depreciation claimed on account of Film Software Library of Rs.3,54,89,905/-, as per the valuation determined by the valuer and thereafter, to pass consequential order by the

Assessing Officer on these issues and further, the learned CIT(A) has allowed the claim of assessee with respect to disallowance of cost of production of TV serials and programmes which are claimed as revenue expenditure of Rs.106,95,46,203/- vide it's order dated 13.10.2023.

5. Aggrieved by the order of the learned CIT(A), the Revenue is now in appeal before the Tribunal.

6. The first issue that came-up for our consideration from ground no.2 of Revenue's appeal is disallowance of depreciation on non-compete fee. The facts with regard to the impugned dispute are that, the appellant company was formed as a result of demerger of M/s. Ushodaya Enterprises Private Limited. The company M/s. Ushodaya Enterprises Private Limited is, *inter alia,* in the business of production and telecasting entertainment/news/ information programs under the trade name of "ETV" and has demerged it's television business into three companies namely M/s. Eenadu Television Private Limited, M/s. Prism TV Private Limited and M/s. Panorama Television Private

Limited. In the scheme of demerger intangible asset by name non-compete fee whose WDV was at Rs.329,76,56,250/- was distributed among three companies and, as a result, the value of asset of appellant company as on 01.04.2010 was at Rs.212,33,75,625/-. For the assessment year 2017-2018, the opening WDV is worked out at Rs.37,79,15,242/- and on which the appellant company has claimed depreciation @ 25% applicable to an "Intangible Asset" as defined under section 32(1)(ii) of the Act and debited an amount of Rs.9,44,78,811/-. The Assessing Officer disallowed depreciation on non-compete fee on the ground that the appellant company has failed to prove how the said claim is in accordance with section 32(1)(ii) of the Act and eligible for claiming depreciation @ 25% applicable to an intangible asset. The Assessing Officer had discussed the issue at length in light of definition of non-compete fee and it's purpose and also how the said claim is not falls within the ambit of any other business or commercial right of similar nature as defined under section 32(1)(ii) of the Act. The

Assessing Officer had also discussed the issue towards payment of non-compete fee in light of agreement between the related parties i.e., M/s. Ushodaya Enterprises Private Limited and M/s. Usha Kiron Television and M/s. Usha Kiron Movies both owned by Sri Ramoji Rao, HUF, Chairman of the appellant company. The Assessing Officer had also disputed the basis of valuation of non-compete fee in light of relevant valuation report submitted by the appellant company and observed that, appellant company failed to justify the method to work-out the valuation of decline in revenue at lowest stage and that higher stage. Therefore, observed that, appellant company has failed to justify the payment of non-compete fee and further, assuming for a moment the said payment is genuine, but, not eligible for depreciation in terms of section 32(1)(ii) of the Act because, it does not fall under the definition of any other business or commercial rates of similar nature.

7. Shri B. Bala Krishna, learned CIT-DR, submitted that, in the case of M/s Ushodaya Enterprises Ltd., for the assessment year 2008-2009, the issue of non-compete fee

has been examined. While completing the assessment u/sec.143(3) of the Act, the Assessing Officer disallowed depreciation claim on non-compete fee of Rs.83.75 cr by observing that, the payment of non-compete fee was a "Sham" transaction and also held that, even the non-compete-fee transaction is genuine, the depreciation claimed on such non-compete fee is inadmissible. He submitted that, on an appeal, the learned CIT(A) upheld the decision of the Assessing Officer in disallowing the depreciation on non-compete fee. He submitted that, on an appeal filed by the assessee before ITAT, the Tribunal vide it's order dated 22.10.2014 restored the matter to the file of the Assessing Officer with a direction to verify the genuineness and necessity of incurring the said expenses. He submitted that, during the second round of proceedings also, the Assessing Officer passed an order on 31.03.2017 wherein the disallowance of depreciation on non-compete fee, pending receipt of Valuation Report regarding the quantum of non-compete fee without verifying the genuineness and necessity of incurring the said expenses.

Therefore, against the said order of the Assessing Officer, the assessee carried the matter in appeal before the learned CIT(A) in second round of appeal, contending, inter alia, that, the AO did not comply with the directions of the Tribunal. He submitted that, the learned CIT(A) order dated 24.03.2023 after examining the first round of assessment and appeals and second round of assessment up-to Assessing Officer level, has directed the Assessing Officer to allow the claim of non-compete fee as per Valuation determined by the Valuer appointed, however, the learned CIT(A) was failed to examine/appreciate the fact with respect to genuineness and necessity of incurring the said expenses. In this backdrop, the learned CIT-DR submitted that, the said order of the Tribunal setting-aside the issue to the file of the Assessing Officer, for verification of genuineness and necessity of incurring the said expenses viz Non-compete fee in the first round of appeal and second round of appeal up-to CIT(A) remain unanswered. The AO while completing the assessment on 31.03.2017 consequent to ITAT directions has not examined the genuineness and

necessity for payment of non-compete fee, but, simply proceeded to pass an order, wherein the value of non-compete fee was kept pending for want of valuation report. Thus, the Learned DR submitted that, the genuineness and the necessity of payment of non-compete fee was remained unexamined for any of the assessment years in appeal. Therefore, he submitted that, the reliance placed by various judicial authorities including the decision/directions of the Tribunal in respect of the earlier assessment years were mis-interpreted. The Learned DR, therefore, pleaded that, the issue of non-compete fee may please be decided afresh in the present appeals on hand in consonance with the ITAT directions dated 22.10.2014 wherein the question of genuineness and necessity of payment of non-compete fee was directed to be examined, which remain unexamined.

7.1. Lastly, the Learned DR drew the attention of the Bench to the letter of ACIT, Circle-5(1), Hyderabad dated 28.10.2024 and submitted that, the said letter may be admitted as additional evidence wherein consequential assessment order was passed by the Assessing Officer by

appointing the valuer for determination of non-compete fee and depreciation on WDV of Film Software Library in pursuance to the directions of the Tribunal dated in ITA.No.466/ Hyd./2015 etc., dated 24.03.2016 in the case of sister-concern of the assessee viz., Prism TV Private Limited.

8. Shri V. Siva Kumar, Advocate-Learned Counsel for the Assessee, supporting the order of the learned CIT(A), submitted that, this issue is squarely covered in favour of the appellant company by the decision of ITAT, Hyderabad Bench in appellant's own case for earlier assessment years, where the issue has been discussed at length in light of agreement between the parties and provisions of section 32(1)(ii) of the Act and after considering the relevant facts held that, the appellant company is eligible for depreciation of non-compete fee in terms of section 32(1)(ii) of the Act. However, remitted the matter back to the file of Assessing Officer to verify the valuation claimed by the appellant company. Further, during the remand proceedings, the

Assessing Officer has verified the valuation and also referred for valuation of non-compete fee to an independent valuer in terms of section 142A of the Act and after considering relevant valuation report submitted by the valuer, the Assessing Officer has allowed the claim of depreciation of non-compete fee. In this regard, he has submitted relevant observations of the Tribunal and also the consequential assessment order passed by the Assessing Officer for the assessment year 2008-2009 dated 19.05.2023 where the Assessing Officer has accepted the genuineness of payment made for non-compete fee and also the purpose of payment while allowing depreciation of non-compete fee as per the valuation report submitted by the valuer. He therefore, submitted that, the issue is now covered in favour of the appellant company and, therefore, the appellant company is eligible for depreciation and accordingly the order of the learned CIT(A) should be upheld.

9. We have heard both the parties, perused the material on record and gone through the orders of the authorities below. There is no dispute with regard to the fact

that, in the scheme of demerger, intangible asset by name non-compete fee of Rs.212,33,75,625/- has been assigned to the appellant company as per the order of the Hon'ble High Court of Andhra Pradesh vide order dated 15.12.2010 and consequently the appellant company has claimed depreciation on non-compete fee right from assessment year 2011-2012 and up-to the present assessment year. The Assessing Officer disallowed depreciation on non-compete fee right from assessment year 2011-2012 on the ground that, it is not an "asset" within the definition of an "Intangible Asset" as defined under section 32(1)(ii) of the Act and further non-compete fee is a negative right for the limited period which does not have any value and cannot be alienated. The Assessing Officer further observed that, the appellant company has failed to prove with relevant evidences i.e., the necessity for payment of non-compete fee in light of agreement between the related parties viz., M/s. Ushodaya Enterprises Private Limited, M/s. Usha Kiron Television and M/s. Usha Kiron Movies both owned by Sri Ramoji Rao, HUF, Chairman of the appellant company. The

Assessing Officer also discussed the issue in light of the relevant financial statements of M/s. Ushodaya Enterprises Private Limited and corresponding financial statements of Ramoji Rao HUF and argued that, the appellant company had designed a tax avoidance plan to off-set huge losses claimed by the HUF by payment of huge amount of non-compete fee out of the profits derived by M/s. Ushodaya Enterprises Private Limited. Accordingly, the Assessing Officer observed that, the appellant company has acquired the copyrights of number of movies owned by two firms belongs to Ramoji Rao HUF and the agreement specified for non-compete fee between the parties for a period of 5 years in similar lines of business. However, what remains unanswered is, once the copyrights of all library owned by the two firms viz., M/s. Usha Kiron Television and M/s. Usha Kiron Movies has been sold to M/s. Ushodaya Enterprises Private Limited as agreed in light of agreement, then, there is nothing left with these two Firms or Sri Ramoji Rao HUF to compete with the appellant company. Therefore the Assessing Officer observed that, the

transaction between the appellant company and two firms is 'sham' transactions designed to avoid payment of tax and accordingly, disallowed the entire amount of depreciation claimed on account of non-compete fee. The Assessing Officer also discussed the issue in light of definition of an "Intangible Asset" in light of provisions of section 32(1)(ii) of the Act and more particularly, the words "any other business or commercial rights of similar nature" and argued that, the appellant company had acquired non-compete rights which is not an asset and further, the non-compete fee acquired by the appellant company is not an asset since it has no marketing value and it could not be sold or assigned and it does not have transferable right. Therefore, observed that, non-compete fee is not a right that is acquired by the payer, but, a restriction of the recipient and, therefore, it does not fall under the definition of "any other commercial or business right of similar nature" to claim depreciation under section 32(1)(ii) of the Act.

10. We have given our thoughtful consideration to the reasons given by the Assessing Officer to disallow depreciation on non-compete fee in light of various arguments advanced by the Learned Counsel for the Assessee, in light of the orders of the Tribunal in appellant company's own case for earlier assessment years and we find that, M/s. Ushodaya Enterprises Private Limited had acquired two firms viz., M/s. Usha Kiron Television and M/s. Usha Kiron Movies belongs to Ramoji Rao HUF as a going concern and had acquired satellite rights of 3700 feature films in different languages, many of which, were either perpetual or for a long period ranging from 7 years to 50 years. In connection with the said acquisition of two firms M/s. Ushodaya Enterprises Private Limited had entered into non-compete agreement with two Firms belongs to Ramoji Rao HUF for a period of 5 years and had paid a sum of Rs.670 crores as non-compete fee. The said non-compete fee has been assigned to three different companies under the scheme of demerger with effect from 01.04.2010 and right from assessment year 2011-2012 onwards, the

appellant company has claimed depreciation of non-compete fee as an “Intangible Asset”. The Assessing Officer had disallowed the depreciation on said non-compete fee for earlier years also and the matter has reached to the Tribunal. The ITAT Hyderabad Bench in earlier years had remanded the matter to the file of Assessing Officer to verify the genuineness of payment made for non-compete fee and also the necessity of making such payment including relevant valuation of non-compete fee by an independent valuer. However, in principle agreed that non-compete fee is an “Intangible Asset” falls under the words “any other commercial or business rights of similar nature”. The Tribunal had also examined the necessity of payment of non-compete fee in light of share subscription agreement and share purchase agreement dated 25.01.2008 with M/s. Equator Trading Enterprise Private Limited and transfer of equity shares by M/s. Ushodaya Enterprises Private Limited to M/s. Equator Trading Enterprise Private Limited. According to the Tribunal, though the copies of share purchase agreements and subscription agreements are not

available on record, however, on perusal of the closing agreement dated 30.01.2008 between the appellant company and M/s. Equator Trading Enterprise Private Limited, the appellant company has transferred 39% of equity shares to M/s. Equator Trading Enterprise Private Limited and argued that, since there is a third party investment in the appellant company, it cannot be said that, the transaction of non-compete fee by the appellant company with the above two firms is, between the two related parties and a 'sham' transaction and, therefore, directed the Assessing Officer to examine the payment of non-compete fee in light of above new facts. In the consequential proceedings, the Assessing Officer once again reiterated his observations and held that, non-compete fee is not an 'Intangible Asset" falls under the definition of "any other commercial or business rights of similar nature" and not entitled for depreciation. However, disallowed the depreciation on the ground that, the valuation report from the valuer is pending. The said order of the Assessing Officer has been challenged by the appellant company

before the CIT(A) and the learned CIT(A) after verification of relevant facts, directed the Assessing Officer to allow depreciation of non-compete fee. Therefore, it is necessary for us to examine the claim towards depreciation on non-compete fee in light of provisions of section 32(1)(ii) of the Act and relevant case laws cited by both the parties and also the findings of the Tribunal for earlier assessment years.

11. Admittedly, the agreement is between the two related parties. In fact, Ramoji Rao is the main person holding substantial interest in all these concerns and companies. The non-compete agreement has been entered into between M/s. Ushodaya Enterprises Private Limited represented by Ramoji Rao and M/s. Usha Kiron Movies and M/s. Usha Kiron Enterprises represented by Ramoji Rao HUF as a proprietor. The agreement is for non-compete for the business for a period of 5 years in light of purchase of running business by the appellant company and acquisition of 3700 feature films in different languages what was held by the above two Firms is, satellite rights of feature films and the same has been transferred to the

appellant company of erstwhile M/s. Ushodaya Enterprises Private Limited as a going concern. Once the entire business is transferred as a going concern concept, then, nothing is left with the transferee firms to carry on the business. Further, what was held by them is a copyright of a feature film, but, not a product/design or copyright asset, patent. In order to restrict any person from doing similar business for a particular period, there should be a business and product. In the present case, going by the nature of business transferred by the above two firms, it is only a sale of copyrights of feature films and once right is sold to a third party, then, nothing is left with the seller or the transferee. Therefore, continuing the business or carrying the business of similar nature under different name does not arise because, what is left with the transferee company is factually nothing by virtue of transferring of all the 3700 feature films owned by them. Further, assuming for a moment by entering into non-compete agreement, the appellant company restricted the erstwhile firms to carry on the business and acquired copy-rights of feature films in

future, but, said business can be done by any third party because, the exclusive right of feature film is not with the two firms alone, but, it is with the different people because, the copyrights of feature film is owned by producer of different films, but, not a single party. Therefore, once the business is transferred as a going concern and nothing is left with the transferee firms to carry on business, in our considered view, entering into non-compete agreement with the above two firms for a period of 5 years give rise to various questions including question of tax avoidance plan by the appellant company going by the nature of transactions and financial position of Ramoji Rao HUF. Although, this fact has been brought-out by the Assessing Officer in his order while disallowing depreciation on non-compete fee, but, the Tribunal while setting aside the matter has touched upon the point in light of transfer of 39% equity shares to M/s. Equator Trading Enterprise Private Limited even though the Tribunal admitted in it's order that, share subscription agreement are not available before the Tribunal to ascertain the correct details as to whether M/s.

Equator Trading Enterprise Private Limited a third party or a company belongs to Ramoji Rao Group or not. In absence of relevant evidences, the finding of facts given by the Tribunal to hold that, the transaction is not between the related parties, in our considered view, is not based on any evidences, but, purely on the submissions of the appellant company. Therefore, to this extent, we cannot subscribe to the reasons given by the Tribunal to hold that, non-compete agreement between the appellant company and other firms, is not between the related parties and a third party interest is involved and, therefore, it cannot be said that, it is a commercial agreement, cannot be accepted and needs to be further examined by the Assessing Officer.

12. Coming back to another question whether non-compete fee is an "Intangible Asset" falls under the definition of "any other commercial or business rights of similar nature" ?. There is no disputed with regard to the fact that, in the case of non-compete agreement or Covenant, the advantage is a restricted one for a particular point of time. It does not necessary and not in the facts of

the case confirm any exclusive right to carry on the primary business activity. The right can be assailed in the present case only against two Firms who transferred the rights of feature films and such right can be considered right in personam. Further, the said non-compete right does not have any commercial value, except for the agreed persons or parties and the same cannot be transferred or alienated in an open market. Every rights spelt-out expressly by the statute in the definition of an "Intangible Asset" such as know how, patents, copy right, trade mark, licenses or franchise etc., and even Goodwill can be said to be alienated. Such is not a case with agreement not to compete which is purely personal. Therefore, it is necessary to examine the payment of non-compete fee in light of the right of personam because, as we already stated in earlier part of this order, in case, the appellant company restricted the two firms in carrying-out similar business for a period of 5 years, there is no restriction for third party to carry-out similar business because, what was transferred by the above two firms is not a product or a design, but, it is a

copyright of feature films. Therefore, this aspect also needs to be examined by the Assessing Officer. Although, these facts are required to be examined, but, while setting aside the matter to the file of Assessing Officer, the Tribunal has considered only one aspect of shareholding part of the company's and held that, non-compete fee is an "Intangible Asset". Therefore, we are of the considered view that, this aspect also needs further examination from the Assessing Officer.

13. Further in so far as valuation of non-compete fee, it was a specific direction of the Tribunal in earlier round of litigation to the Assessing Officer to verify the valuation of non-compete fee from an independent valuer and in this regard, the Assessing Officer has referred for valuation to an independent valuer and obtained the valuation report and allowed depreciation. Therefore, this issue is now settled and, therefore, there is no ground for the Revenue to agitate with regard to valuation of non-compete fee and thus, we are in full agreement with the reasons given by the learned CIT(A) on the issue of valuation of non-compete fee.

13.1. At this stage, it is relevant to refer to the decision of ITAT, Hyderabad Bench in appellant company's own case for the assessment year 2015-2016 in ITA.No.2244/Hyd/ 2018 order dated 22.07.2022, where the issue has been remitted back to the file of Assessing Officer with a direction to pass a detailed speaking order. Relevant findings of the Tribunal are as under :

> *"5. We have heard the rival contentions of the parties and perused the material available on record. We have noticed that the Assessing Officer in para 4.1. to 4.7.4 had discussed in detail as to why the non-compete fees cannot be the subject matter of depreciation. Further, we may point out that the Tribunal in the case of the assessee, had remanded back the matter to the file of the Assessing Officer in ITA No.1245/Hyd/2016. However neither the Tribunal in the earlier round of litigation nor the Assessing Officer or the ld.CIT(A) have examined the issue whether the 'non compete fees' is an intangible asset and can be subjected to depreciation or not , in the light of decision of Delhi High court in the case of Sharp Business System Vs. CIT reported in (2012) 27 taxmann.com 50, wherein the Hon'ble High Court in Paras 11 and 12 had held as under :*
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> > *"11. This question arose as a direct sequel to the appellant's alternative submission that if the expenditure is treated as a conferring capital advantage, necessarily they are depreciable. The appellant claims for depreciation of "know-how", "patents", "copyrights", "trademarks", "licenses", "franchises" or other business or commercial rights of similar ITA-492-12 Page 10 nature being intangible assets acquired on or after 1st day of April 1998. Arguing by analogy, learned counsel for the appellant relied upon the judgment of the Supreme Court in Techno Shares & Stocks Ltd. (supra) where the issue was whether the contention of the assessee that it could claim*

*depreciation on the Bombay Stock Exchange Membership Card held by it on the plea that it was a license or "business or commercial right of similar nature" was upheld. The appellant also relied upon the decision of this Court in Hindustan Coco Cola Beverages P. Ltd. (supra) and the judgement of the Kerala High Court in B. Ravindran Pillai v. CIT 332 ITR 531 (Ker). As would be evident from Section 32(1)(ii), depreciation can be allowed in respect of intangible assets. Parliament has spelt-out the nature of such assets by express reference to „know-how", „patents", „copyrights", „trademarks", „licenses" and „franchises". So far as patents, copyrights, trademarks, licenses and franchises are concerned, though they are intangible assets, the law recognizes through various enactments that specific intellectual property rights flow from them. Licenses are derivative and often are the means of conferring such intellectual property rights. The enjoyment of such intellectual property right implies exclusion of others, who do not own or have license to such rights from using them in any manner whatsoever. Similarly, in the matter of franchises and know-how, the primary brand or intellectual process owner owns the exclusive right to produce, retail and distribute the products and the advantages flowing from such brand or intellectual process owner, but for the grant of such know-how rights or franchises. In other words, out of these species of intellectual property like rights or advantages lead to the definitive assertion of a right in rem. The decisions of this Court in Hindustan Coco Cola Beverages P. Ltd.*

*ITA-492-12 Page 11 (supra) and that of the Kerala High Court in B. Ravindran Pillai (supra) underlined that goodwill is also a species of depreciable right which can claim the benefit of Section 32. Those decisions were based on the ruling of the Supreme Court in CIT v. B.C. Srinivasa Setty 1981 (128) ITR 294 (SC) and subsequent cases which have ruled that goodwill is a depreciable capital asset. So far as the decisions in Techno Shares & Stocks Ltd. (supra) is concerned, the Supreme Court clearly limited its holding that the right to membership of Stock Exchange is in the nature of "any other business or commercial right" which*

*was an intangible asset as is evident from the following observations:*

*"Before concluding we wish to clarify that our present judgment is strictly confined to the right to membership conferred upon the membership under the BSE Membership Card during the relevant assessment years. We hold that the said right to membership is "business or commercial activity" which gives a non-defaulting continuing membership and right to access Exchange and to participate therein and in that sense it is a license or akin to a license, in terms of Section 32(1)(ii)....."*

*12. It is, therefore, apparent that the ruling in Techno Shares & Stocks Ltd. (supra) was concerned with an extremely limited controversy, i.e. depreciability of stock exchange membership. This Court observes that such nature was held to be akin to a license because it enable the member, for the duration of the membership, to access the Stock Exchange. Undoubtedly, it conferred a business advantage and was an asset which and was clearly an intangible asset. The question here, however, is whether a non-compete right of the kind acquired by the assessee against L&T for seven years amounts to a depreciable intangible asset. As discussed earlier, each of the species of rights spelt-out in Section 32(1)(ii), i.e. know-how, patent, copyright, trademark, license or franchise as or any other right of a similar kind which confers a business or commercial or any other business or commercial right of similar nature has to be "intangible asset". The nature of these rights mentioned clearly spell-out an element of exclusivity which enures to the assessee as a sequel to the ownership. In other words, but for the ownership of the intellectual property or know-how or license or franchise, it would be unable to either access the advantage or assert the right and the nature of the right mentioned or spelt-out in the provision as against the world at large or in legal parlance "in rem". However, in the case of a non-competition agreement or covenant, the advantage is a restricted one, in point of time. It does not necessarily - and not in the facts of this case, confer any exclusive right to carry-on the primary business activity. The right can be asserted in the present instance only against L&T and in a sense, the right "in personam". Indeed, the 7 years period spelt-out by the non-competing covenant brings the*

> *advantage within the public policy embedded in Section 27 of the Contract Act, which enjoins a contract in restraint of trade would otherwise be void. Another way of looking at the issue is whether such rights can be treated or transferred - a proposition fully supported by the controlling object clause, i.e. intangible asset. Every species of right spelt-out expressly by the Statute - i.e. of the intellectual property right and other advantages such as know-how, franchise, license etc. and even those considered by the Courts, such as goodwill can be said to be alienable. Such is not the case with an agreement not to compete which is purely personal. As a consequence, it is held that the contentions of the assessee are without merit; this question too is answered against the appellant and in favour of the ITA-492-12 Page 13 Revenue.*

*6. Similarly, neither Tribunal in the earlier round of litigation nor the Assessing Officer or the ld.CIT(A) had the benefit of examining the applicability of decision of Hon'ble Gujarat High Court in the case of PCIT Vs. Feeromatic Milacron India (P) Ltd. (supra) whereby the Hon'ble Court decided the issue in favour of the assessee, in the following manner :-*

> *8. We may recall the Assessing Officer does not dispute that the expenditure was capital in nature since by making such expenditure, the assessee had acquired certain enduring benefits. He was, however, of the opinion that to claim depreciation, the assessee must satisfy the requirement of section 32(1)(ii) of the Act, in which, Explanation 3 provides that for the purpose of the said sub-section the expression "assets" would mean [as per clause (b)] intangible assets, being know-how, patents, copyrights, trade marks, licenses, franchises or any other business or commercial rights of similar nature. In the opinion of the Assessing Officer, the non-compete fee would not satisfy this discrimination. Going by his opinion, no matter what the rights acquired by the assessee through such non-compete agreement, the same would never qualify for depreciation in section 32(1)(ii) of the Act as being depreciable intangible asset. This view was plainly opposed to the well settled principles. In case of Techno Shares & stocks Ltd. (supra) the Supreme Court held that payment for acquiring membership card of Bombay Stock*

*Exchange was intangible asset on which the depreciation can be claimed. It was observed that the right of such membership included right of nomination as a license which was one of the items which would fall under section 32(1)(ii). The right to participate in the market had an economic and money value. The expenses incurred by the assessee which satisfied the test of being a license or any other business or commercial right of similar nature. ( emphasis supplied us us)*

*9. In case of Areva T & D India Ltd. (supra) Division Bench of Delhi High Court had an occasion to interpret the meaning of intangible assets in context of section 32(1)(ii) of the Act. It was observed that on perusal of the meaning of the categories of specific intangible assets referred to in section 32(1)(ii) of the Act preceding the term "business or commercial rights of similar nature" it is seen that intangible assets are not of the same kind and are clearly distinct from one another. The legislature thus did not intend to provide for depreciation only in respect of the specified intangible assets but also to other categories of intangible assets which may not be possible to exhaustively enumerate. It was concluded that the assessee who had acquired commercial rights to sell products under the trade name and through the network created by the seller for sale in India were entitled to depreciation.*

*7. In our view, each case depends on its own sets of facts and the facts of each case are required to be examined by the lower authorities and thereafter finding is required to be returned after considering the judgments as relied upon by the assessee as well as the Revenue. In the case Feeromatic Milacron India (P) Ltd. the Assessing Officer had not disputed that the expenditure incurred was capital in nature, which is not a case in the case in hand. However the fact remains that lower authorities have not examined any of the judgments relied upon by both the parties. Therefore, in light of the above, we have no other option but to remand back the matter to the file of Assessing Officer with the direction to pass a detailed speaking order. Hence, ground No.1 is allowed for statistical purposes."*

13.2. In this view of the matter and considering the facts of the case, we are of the considered view that, the issue of non-compete fee needs further examination from the Assessing Officer in light of discussion hereinabove and more particularly, in light of decision of Hon'ble High court of Delhi in the case of Sharp Business System vs., CIT [2012] 27 taxmann.com 50 and also the decision of Hon'ble High court of Gujarat in the case of PCIT vs., Feeromatic Milacron India (P) Ltd., [2018] 99 taxmann.com 194 (Guj.) and thus, we set-aside the order of the learned CIT(A) on this issue and restore the issue back to the file of Assessing Officer to reconsider the issue. The Assessing Officer is directed to reconsider the issue in light of our discussion hereinabove and decide the issue as per Law.

14. The next issue that came for consideration from ground numbers 3 to 7 of Revenue's appeal is, disallowance of excess depreciation claimed on the cost of production of TV serials and programs. The facts with regard to impugned dispute are that, the appellant company is in the business of production and telecasting of TV serials and has debited

an amount of Rs.142,60,61,604/- towards cost of production of TV serials and programs as revenue expenditure. The Assessing Officer disallowed the deduction claimed towards cost of production of TV serials as revenue expenditure on the ground that, the cost of production of TV serials and programs is not covered under Rule 9A and 9B of I.T. Rules, 1962 and further, by incurring production expenses, the appellant company creates a copyright over the TV serials which is in the nature of "Intangible Assets" and, therefore, eligible for claiming depreciation under section 32(1)(ii) of the Act. Accordingly, the Assessing Officer disallowed the entire revenue expenditure debited in the P & L A/c and has allowed 25% of depreciation on the said expenditure and balance amount of Rs.106,95,46,203/- has been disallowed and added back to the total income of the appellant company.

15. On appeal, the learned CIT(A) by following the decision of ITAT, Hyderabad Bench in the case of Prism TV Private Limited, Hyderabad vs., DCIT, Circle-16(3), Hyderabad in ITA.Nos.466 and 1249/Hyd.2015 for the

assessment years 2011-2012 and 2012-2013, order dated 24.03.2016 has allowed the issue in favour of the appellant company.

16. Shri B. Bala Krishna, the learned CIT-DR submitted that, the CIT(A) has erred in allowing claim on cost of production of TV serials and programs as revenue expenditure without appreciating the fact that, by incurring of such expenditure, the assessee has created an asset of enduring benefit because, of it's repeated telecast value. The CIT-DR further referring to the decision of ITAT Mumbai Bench in the case of Zee Media Corporation Limited submitted that, in the said case the appellant itself amortized such expenditure for a period of it's telecast/exhibition considering the repeated telecast value and not as revenue expenditure in the first year itself. Therefore, allowing deduction towards cost of production of TV serial as revenue expenditure by following the said decision is incorrect. Learned DR further referring to the decision of Hon'ble Delhi High Court in the case of Television-18 Limited 364 ITR 597 (Del.) submitted that, the

subject matter in the above case was "creation of news content" which does not have repeated telecast value as against the TV serials and programs and film rights because, TV serials and film rights have repeated value because, it can be telecasted at any time which is evident from various TV programs which have been repeatedly telecasted over a period of time. Learned DR further, referring to the appellant's claim of depreciation on film software library submitted that, appellant itself has treated purchase of film software library as an intangible asset and claimed depreciation @ 25%. However, when it comes to claiming deduction towards cost of production of TV serials, the appellant company claimed that, it is a revenue expenditure, contrary to it's own admission. Therefore, he submitted that, although, the Assessing Officer has brought out clear facts in light of relevant provisions while allowing depreciation @ 25%, but, the learned CIT(A) allowed relief by following certain judicial precedents, which are factually different from the case of the appellant company. Therefore,

he submitted that, addition made by the Assessing Officer should be upheld.

17. Shri V. Shiv Kumar, Advocate-Learned Counsel for the Assessee, on the other hand, supporting the order of the CIT(A) submitted that, this issue is squarely covered by the decision of ITAT, Hyderabad Bench in appellant company's own case for the assessment year 2015-2016 in ITA.No.2244/Hyd./2018 (supra), where under identical set of facts, the Tribunal has allowed the deduction claimed towards cast of production of TV serials and programs as revenue expenditure. Therefore, the Learned Counsel for the Assessee submitted that, the order of CIT(A) should be upheld and ground taken by the Revenue should be rejected.

18. We have heard both the parties, perused the material on record and gone through the orders of the authorities below. The appellant company has claimed the entire cost of production of TV serials and programs as revenue expenditure in the year of incurring of said

expenditure. The Assessing Officer has a treated cost of production of TV serials and program as capital in nature, because, the said expenditure creates an enduring benefit to the appellant company because of it's nature of repeated telecasting of TV serials and programs and accordingly, allowed depreciation @ 25% as an "Intangible Asset". We find that, this issue is no longer *res integra.* The Coordinate Bench of ITAT, Hyderabad in appellant's own case for the assessment year 2015-2016 in ITA.No.2244/Hyd./2018 (supra), had considered the similar issue and after considering relevant submissions and also by following Judgment of Hon'ble Bombay High Court in the case of CIT vs., Dharma Productions (P) Ltd., [2019] 104 taxmann.com 211 (Bom.) and Judgment of Hon'ble Delhi High Court in the case of CIT vs., Television Eighteen India Limited [2014] 46 taxmann.com 283 (Del.), allowed the claim of the assessee on account of cost of production of TV serials and programs as revenue expenditure and the relevant observations of the ITAT, Hyderabad Tribunal are as under :

*"…..*

*9.3. Thus, it is seen that the issue is fairly covered in favour of the assessee by the above decision and the A.O. is directed to treat the expenditure incurred by the assessee on cost of production of TV programmes as revenue expenditure. This ground of appeal of the assessee is accordingly allowed. Following the said decision, we uphold the decision of the CIT(A) and dismiss the grounds raised by the revenue on this issue."*

*10. We have heard the rival contentions of the parties and perused the material available on record. Admittedly, while holding the issue in favour of the assessee in the earlier assessment year, the tribunal had followed the order passed in the earlier assessment years. Further, the issue is also covered in faovur of the assessee by virtue of the decision of Hon'ble Bombay High Court in the case of CIT Vs. Dharma Productions (P) Ltd. (2019) 104 taxmann.com 211 and also by the decision of Hon'ble Delhi High Court in the case of CIT Vs. Television Eighteen India Limited (2014) 46 taxmann.com 283. Therefore, we do not find any merit in the ground raised by the Revenue and accordingly, ground No.2 is dismissed."*

18.1. In this view of the matter and considering the consistent view taken by the coordinate bench of the Hyderabad Tribunal in earlier orders for preceding assessment years, we are of the considered view that, there is no error in the reasons given by the learned CIT(A) to allow deduction towards cost of production of TV serials and programs as revenue expenditure. Thus, we are inclined to uphold the order of the learned CIT(A) and reject the ground nos.3 to 7 taken by the Revenue.

19. The next issue that came-up for consideration through ground number 8 of Revenue's appeal is disallowance of excess depreciation on film software library by treating the same as an "Intangible Asset".

20. The facts with regard to the impugned dispute are that, the appellant company has claimed depreciation @ 25% on film software library. The Assessing Officer allowed depreciation on film software library @ 15% applicable on plant and missionary and excess depreciation over and above 15% has been disallowed. On appeal, the learned CIT(A) deleted the addition made by the Assessing Officer by following decision of ITAT, Hyderabad Bench in appellant's own case for earlier assessment years.

21. Shri B Bala Krishna, learned CIT-DR submitted that, the CIT(A) was erred in allowing depreciation @ 25% on film software library by treating it as an intangible asset ignoring the findings of the Assessing Officer that, the said asset is an integral part of the tools used by the appellant company to carry on its business, which needs to be treated

as a plant and machinery. Therefore, he submitted that, the addition made by the Assessing Officer should be sustained.

22. Shri V. Shiv Kumar, Advocate-Learned Counsel for the Assessee, on the other hand, supporting the order of the learned CIT(A) submitted that, this issue is also covered in favour of the appellant company by decision of ITAT, Hyderabad Bench in appellant's own case for earlier assessment years, where the issue has been set-aside to the file of the Assessing Officer to ascertain the correct value of film software library determined by E and Y and allow depreciation as per law. Therefore, he submitted that, the CIT(A) after considering relevant facts has rightly allowed the depreciation as an intangible asset and, therefore, order of the learned CIT(A) should be upheld.

23. We have heard both the parties, perused the material on record and gone through the orders of the authorities below. There is no dispute with regard to the fact that, the appellant company has purchased copyrights

of various feature films and TV programs and on which, the appellant company has claimed depreciation @ 25% as applicable to an "Intangible Asset". The Assessing Officer has allowed depreciation @ 15% applicable to plant and machinery on the ground that, film software library is a tool for the main business activity of the company and, therefore, in the nature of plant and machinery and cannot be treated as an intangible asset. We find that, this issue is covered by the decision of ITAT, Hyderabad Bench in appellant's own case for assessment years 2011-2012 and 2012-2013 (supra), where the Tribunal by following the decision of ITAT, Hyderabad Bench in the case of Prism TV Private Limited in ITA.Nos.466 and 1249/Hyd/2015, order dated 24.03.2016 has held that, film software library is in the nature of an "Intangible Asset" and the depreciation thereon is allowable at the rate applicable to an "Intangible Asset". However, set aside the issue for the purpose of valuation of the asset. Further, for the assessment year 2015-2016, once again the Tribunal has accepted in principle that, film software library is an "Intangible Asset"

and eligible for depreciation applicable to an "Intangible Asset". However, set aside the issue to the file of Assessing Officer for valuation of film software library purchased by the appellant company by conducting an independent valuation of the film software library in terms of section 142A of the Act. Since the issue is settled by the decision of ITAT, Hyderabad Bench, for earlier assessment years (supra), in our considered view, on the issue of depreciation on film software library, there is no disputed that, appellant company is eligible for depreciation @ 25% as applicable to an "Intangible Asset". However, on the issue of valuation of film software library once again the matter is set aside to the file the Assessing Officer with direction to re-examine the valuation of the film software library by conducting independent valuation by referring the matter to the independent valuer. Accordingly, this ground of the Revenue is allowed for statistical purposes.

24. In the result, ITA.No.654/Hyd./2023 of the Revenue for the assessment year 2017-2018 is partly allowed for statistical purposes.

**ITA.No.665/Hyd./2023 – A.Y. 2018-2019 :**

25. The Revenue has raised the following grounds in the instant appeal :

1. *"The order of the Ld.CIT(A), NFAC, Delhi, dtd. 13/10/2023 in appeal No. NFAC/2017-18/10018281is against the facts of the case*

2. *Whether, on the facts and in the circumstances of the case and in law, the CIT(A) was right and justified in directing the AO to allow the depreciation on non compete fee as the non-compete fee is not an asset as it has no market value and therefore does not fall under the ambit of the provisions of section 32(1)(U) of the Act?.*

3. *Whether, on the facts and in the circumstances of the case and in law, the CIT(A) was right and justified in following the directions of the ITAT in allowing the claim of cost of production of TV serials and programmes as revenue expenditure as against depreciation granted by AO treating it as Capital expenditure?.*

4. *Whether, on the facts and in the circumstances of the case and in law, the CIT(A) was correct and justified in following the directions of the ITAT in allowing the claim of cost of production of TV serials and programmes as revenue expenditure when incurring of such expenditure resulted in creation of asset with enduring benefit because of its repeat telecast value?*

5. *Whether, on the facts and in the circumstances of the case and in law, the CIT(A) erred in following the directions of the ITAT in allowing the claim of the assessee following the decision of ITAT of ITAT Mumbai bench in the case of Zee Media Corporation Ltd, when in the said case assessee itself amortized such expenditure over the period of its exploitation considering the repeat telecast value and not as revenue expenditure in the first year itself and whether in such circumstances the impugned order of Tribunal is perverse both on facts and in law?*

6. *Whether, on the facts in the circumstances of the case and in law, the CIT(A) erred in following the directions of the ITAT in allowing the claim of the assessee following the decision of Delhi High Court in Television Eighteen India Ltd (364 ITR 597) in which the subject matter was 'news content which does not have repeat*

*telecast value as against expenses incurred towards TV serials and programmes and film rights having repeat telecast value?*

7. *Whether, on the facts and in the circumstances of the case and in law, the CIT(A) was right and justified in following the directions of the ITAT in ignoring that Rule 9A and 98 are available only for production of feature films and not for production of TV serials and programmes?*

8. *Whether, on the facts and circumstance of the case and in law, the CIT(A) erred in following the directions of the ITAT in not considering that expenses incurred towards TV serials and programmes and film rights created an intangible asset and such asset has to be depreciated over its life time as held in Accounting Standard-267*
9. *Whether, on the facts and circumstances of the case and in law, the CIT(A) was correct and justified in following the directions of the ITAT in allowing depreciation @25% on film software library by treating it as an intangible asset ignoring the finding of A.O. that the said asset is an integral part of the tools used by the assessee to carry on its business and needs to be treated Plant and Machinery?*

10. *Whether, on the facts and circumstances of the case, the CIT(A) was correct in deleting the disallowance made u/s 14A in the absence of the average of monthly investments, the amount of expenditure disallowable u/s 14A of the Act in relation to such income determined in accordance with the provision of Rule BD of the Income Tax Rules, 1962 and based on the average value of yearly opening investment held in shares and mutual funds.*

11. *Any other ground that may be urged at the time of hearing.*

26. The first issue that came-up for consideration through ground no.2 of Revenue's appeal is depreciation on non-compete fee in terms of sec.32(1)(ii) of the Act. We find that, an identical issue has been considered by us in appellant's own appeal for the assessment year 2017-2018

hereinabove in ITA.No.654/Hyd./2023. But, for facts and figures, the facts on the issue involved for the year under consideration are identical. The reasons given by us in the preceding paragraphs shall follow mutatis mutandis in this Revenue's appeal ITA.No.665/Hyd/2023 as well. Therefore, on similar reasons, we set aside the issue to the file of Assessing Officer and direct the Assessing Officer to re-consider the issue in light of our discussion hereinabove for the assessment year 2017-2018 and decide the issue for the year under consideration i.e., for the assessment year 2018-2019.

27. The next issue that came-up for consideration through ground nos.3 to 8 of Revenue's appeal is disallowance of expenditure incurred towards cost of production on TV serials and programs. We find that an identical issue has been considered by us in appellant's own case for the assessment year 2017-2018 in ITA.No.654/ Hyd./2023. But, for facts and figures, the facts on the issue involved for the year under consideration i.e., A.Y. 2018-2019 are identical. Therefore, the reasons given by us in

the preceding paragraphs shall follow *mutatis mutandis* in this Revenue's appeal ITA.No.665/Hyd/2023 as well. Therefore, on similar reasons, we are inclined to uphold the order of the learned CIT(A) and reject the ground nos.3 to 8 taken by the Revenue.

28. The next issue that came-up for consideration through ground no.9 of Revenue's appeal is disallowance of excess depreciation on film software library.

29. We find that, identical issue has been considered by us in appellant's own appeal for the assessment year 2017-2018 hereinabove in ITA.No.654/Hyd./2023. But, for facts and figures, the facts on the issue involved for the year under consideration are identical. The reasons given by us in the preceding paragraphs shall follow mutatis mutandis in this Revenue's appeal ITA.No.665/Hyd/2023 as well. Therefore, on similar reasons, we set aside the issue to the file of Assessing Officer and direct the Assessing Officer to re-examine the issue in light of our discussion hereinabove for the assessment year 2017-2018 and decide the issue for

the year under consideration i.e., for the assessment year 2018-2019 in accordance with law.

30. The next issue that came-up for consideration through ground no.10 of Revenue's appeal is deleting the disallowance made u/sec.14A r.w. Rule 8D of I.T. Rules, 1962.

31. The facts with regard to the impugned dispute are that, during the course of assessment proceedings, the Assessing Officer noticed that the appellant company has claimed exemption on income by way of long term capital gains of Rs.9,01,92,604/- u/sec.10(38) of the Act and by way of dividend income of Rs.1,25,55,990/- u/sec.10(34) of the Act. The Assessing Officer further noted that the assessee had *suo motu* disallowed the expenditure relatable to exempt income of Rs.4,06,230/- u/sec.14A of the Act. The Assessing Officer further observed that, quantification of disallowance made by the appellant is not in accordance with provisions of sec.14A read with Rule 8D of IT Rules, 1962. Therefore, called-upon the assessee to explain as to

why disallowance contemplated u/sec.14A shall not be made by invoking provisions of Rule 8D of IT Rules, 1962. In response, the assessee submitted that, it has made *suo motu* disallowance of direct expenses relatable to exempt income, however, not disallowed any interest expenditure and other expenses, because of investment made in mutual funds which is out of own funds and not from borrowed funds. The assessee further contended that in case the disallowance of other expenditure is required, then, it should be only on the investment which yield the exempt income. The Assessing Officer after considering the relevant submissions of the assessee and also taking note of investment made by the assessee in the mutual funds observed that, the disallowance computed by the assessee towards expenses relatable to exempt income is not in accordance with Rule 8D of IT Rules, 1962 and, therefore, rejected the computation and worked-out the disallowance by taking into account average opening and closing value of investment for the last 12 months and computed 1% of said average investments. Further, after considering the *suo*

*motu* disallowance made by the assessee, has made an addition of Rs.3,08,907/-.

32. On appeal, the learned CIT(A) deleted the addition made by the Assessing Officer by following the decision of Hon'ble High Court of Bombay in the case of CIT vs., Reliance Utilities and Power Limited 313 ITR 340 (Bom.) by holding that the appellant has sufficient funds in it's accounts to explain investments made in shares and mutual funds which earned exempt income. Therefore, there is no reason to sustain the disallowance made by the Assessing Officer towards expense relatable to exempt income.

33. Aggrieved by the order of the learned CIT(A), the Revenue is now in appeal before the Tribunal.

34. Shri B Balakrishna, learned CIT-DR submitted that, the learned CIT(A) has erred in deleting the addition made by the Assessing Officer towards disallowance of expenses u/sec.14A without appreciating the fact that the disallowance computed by the assessee u/sec.14A is not in accordance with Rule 8D of IT Rules, 1962 and further, the

Assessing Officer has rightly computed disallowance @ 1% on monthly average investment made for the year under consideration. The learned CIT(A) without considering relevant details has simply deleted the addition made by the Assessing Officer by following the decision of Hon'ble Bombay High Court in the case of CIT vs., Reliance Utilities and Power Limited (supra). Therefore, he submitted that the addition made by the Assessing Officer should be sustained.

35. Shri V. Shiv Kumar, Advocate-Learned Counsel for the Assessee on the other hand, supporting the order of the learned CIT(A) submitted that, the appellant has computed disallowance of Rs.4,06,230/- u/sec.14A being salary and benefits paid to one employee who is looking after investment in mutual funds. Apart from this, the appellant did not incur any expenditure for earning exempt income. Further, the appellant already proved that source for investment in mutual funds is out of own funds of the appellant and no borrowed funds have been used.

Therefore, the question of disallowance of interest does not arise. The learned CIT(A) after considering the relevant submissions of the appellant company has rightly deleted the addition made by the Assessing Officer and therefore, the order of the learned CIT(A) should be upheld.

36. We have heard both the parties and carefully considered the reasons given by the learned CIT(A) for deleting the addition made by the Assessing Officer by following the Judgment of Hon'ble Bombay High Court in the case of CIT vs., Reliance Utilities and Power Limited (supra). We find that, the decision of Hon'ble Bombay High Court is applicable before the amendment to Rule-8D by the Finance Act w.e.f. 02.06.2016 where sub-rule-2 of Rule 8D has been substituted and as per the said Rule, the expenditure in relation to income which does not form part of the total income shall be computed of following amounts namely, the amount of expenditure directly relating to income which does not form part of total income and the amount equal to 1% of the annual average of the monthly average of the opening and closing balances of the value of

investment income from which does not or shall not form part of total income. In other words, after substituting Rule (2) of Rule 8D, the concept of disallowance of interest expenditure and other expenditure are separately dispensed with. Therefore, the findings recorded by the learned CIT(A) in light of decision of Hon'ble Bombay High Court in the case of CIT vs., Reliance Utilities and Power Limited (supra) does not hold good for the year under consideration.

37. Having said so, let us come back to the arguments of the Learned Counsel for the Assessee. Learned Counsel for the Assessee submitted that, the assessee has made suo motu disallowance of expenditure relatable to exempt income being salary and allowances paid to one employee who look after the investment in mutual funds. Alternatively, the Learned Counsel for the Assessee submitted that, if at all disallowance is required to be made under Rule 8D(2) of IT Rules, then, only the investments which yield exempt income needs to be considered. In so far the argument of the assessee that, it does not have any

other expenditure except salary and allowance to one employee cannot be accepted for the simple reason that, assessee does not have separate books of accounts for investment activity and regular business activity. In absence of separate books of accounts, the possibility of incurring certain common administrative expenditure for both the activities cannot be ruled-out.

38. Having said so, let us come back the method of computation of disallowance adopted by the Assessing Officer. The Assessing Officer has taken total investments including investment which yield exempt income and investment which does not yield exempt income for the purpose of computation of 1% on annual average of the monthly average of the opening and closing balances of the value of investments, ignoring the law which is very clear that only investment from which exempt income is earned needs to be considered. Since the Assessing Officer has considered total investment including investment which yield exempt income and investment which does not yield exempt income, in our considered view, the matter needs

further examination from the Assessing Officer in light of the arguments of the Learned Counsel for the Assessee. Therefore, we set aside the order of the learned CIT(A) and direct the Assessing Officer to re-examine the claim of assessee in light of the nature of investment and amount of exempt income earned from each investment for the year under consideration. In case, any investment which does not earn any exempt income for the year under consideration, then, the same needs to be excluded for the purpose of computing average of the monthly averages of opening and closing balances of the value of investment and compute disallowance as per Rule 8D(2) of I.T. Rules, 1962.

39. In the result, ITA.No.665/Hyd./2023 of the Revenue is partly allowed for statistical purposes.

ITA.No. 648/Hyd./2024 – A.Y. 2020-2021 :

40. The Revenue has raised the following grounds in the instant appeal :

1. *"The Order of the LA CIT(A), NFAC, Delhi, dtd. 10/04/2024 in Appeal NANFAC2019-20/10183190 is against the facts of the case.*

2. *Whether, on the facts and in the circumstances of the case and in law, the CIT(A) was right and justified in directing the AO to allow the depreciation on non-compete fee as the non-compete fee is not an asset as it has no market value and therefore does not fall under the ambit of the provisions of section 32(1)(ii) of the Act?"*

3. *"Whether, on the facts and in the circumstances of the case and in law, the CIT(A) was right and justified in following the directions of the ITAT in allowing the claim of cost of production of TV serials and programmes as revenue expenditure as against depreciation granted by AO treating it as Capital expenditure?"*

4. *"Whether, on the facts and in the circumstances of the case and in law, the CIT(A) was correct and justified in following the directions of the ITAT In allowing the claim ef cost of production of TV serials and programmes as revenue expenditure when incurring of soch expenditure resulted in creation of asset with enduring benefit because of its repeat telecast value?"*

5. *"Whether, on the facts and in the circumstances of the case and in law, the CIT(A) emed in following the directions of the ITAT in allowing the claim of the assessee following the decision of ITAT of ITAT Mumbai bench in the case of Zee Media Corporation Ltd, when in the said case assessee itself amortized such expenditure over the period of its exploitation considering the repeat telecast value and not as revenue expenditure in the first year itself and whether in such circumstances the Impugned order of Tribunal is perverse both on facts and in law?"*

6. *"Whether, on the facts in the circumstances of the case and in law, the CIT(A) erred in following the directions of the ITAT in allowing the claim of the assessee following the decision of Delhi high Court in Television Eighteen India Ltd (364 ITR 597) in which the subject matter was 'news content' which does not have repeat telecast value as against expenses incurred towards TV serials and programmes and film rights having repeat telecast value?"*

7. *"Whether, on the facts and in the circumstances of the case and in law, the CTT(A) was right and justified in following the directions of the ITAT in ignoring that Rule 9A and 913 are available only for production of feature films and not for production of TV serials and programmes?"*

8. *"Whether, on the facts and circumstances of the case and in law, the CIT(A) erred in following the directions of the ITAT in not considering that expenses Incurred towards TV serials and*

*programmes and film rights created an intangible asset and such asset has to be depreciated over its life time as held in Accounting Standard-267"*

9. *"Whether on the facts and circumstances of the case, the CIT(A) was correct in deleting the disallowance made u's 14A in the absence of the average of monthly investments, the amount of expenditure disallowable u/s 14A of the Act in relation to such income determined in accordance with the provisions of Rule 8D of the Income tax Rules, 1962 and based on the average value of yearly opening and closing investments held in shares and mutual funds."*

10. *Any other ground that may be urged at the time of hearing."*

41. The first issue that came-up for consideration through ground no.2 of Revenue's appeal is depreciation on non-compete fee in terms of sec.32(1)(ii) of the Act. We find that, an identical issue has been considered by us in appellant's own appeal for the assessment year 2017-2018 hereinabove in ITA.No.654/Hyd./2023. But, for facts and figures, the facts on the issue involved for the year under consideration are identical. The reasons given by us in the preceding paragraphs shall follow mutatis mutandis in this Revenue's appeal ITA.No.648/Hyd/2024 as well. Therefore, on similar reasons, we set aside the issue to the file of Assessing Officer and direct the Assessing Officer to re-consider the issue in light of our discussion hereinabove for

the assessment year 2017-2018 and decide the issue for the year under consideration i.e., for the assessment year 2020-2021.

42. The next issue that came-up for consideration through ground nos.3 to 8 of Revenue's appeal is disallowance of expenditure incurred towards cost of production of TV serials and programs. We find that, an identical issue has been considered by us in appellant's own case for the assessment year 2017-2018 in ITA.No.654/ Hyd./2023. But, for facts and figures, the facts on the issue involved for the year under consideration i.e., A.Y. 2020-2021 are identical. Therefore, the reasons given by us in the preceding paragraphs shall follow *mutatis mutandis* in this Revenue's appeal ITA.No.665/Hyd/2023 as well. Therefore, on similar reasons, we are inclined to uphold the order of the learned CIT(A) and reject the ground nos.3 to 8 taken by the Revenue.

43. The next issue that came-up for consideration through ground no.9 of Revenue's appeal is deleting the

disallowance made u/sec.14A r.w. Rule 8D of I.T. Rules, 1962.

44. We find that an identical issue has been considered by us in appellant's own case for the assessment year 2018-2019 in ITA.No.665/Hyd./2023. But, for facts and figures, the facts on the issue involved for the year under consideration i.e., A.Y. 2020-2021 are identical. Therefore, the reasons given by us in the preceding paragraphs shall follow *mutatis mutandis* in this Revenue's appeal ITA.No.648/Hyd/2024 as well. Therefore, on similar reasons, we set aside the order of the learned CIT(A) and direct the Assessing Officer to re-examine the claim of assessee in light of the nature of investment and amount of exempt income earned from each investment for the year under consideration. In case, any investment which does not earn any exempt income for the year under consideration, then, the same needs to be excluded for the purpose of computing average of the monthly averages of opening and closing balances of the value of investment and

compute disallowance as per Rule 8D(2) of I.T. Rules, 1962. Accordingly, ground no.9 of Revenue is allowed for statistical purposes.

45. In the result, ITA.No.648/Hyd./2024 of the Revenue is partly allowed for statistical purposes.

ITA.No.563/Hyd./2024 – A.Y. 2020-2021 [Assessee Appeal]:

46. The assessee has raised the following grounds in the instant appeal :

1. *"Order of the Commissioner of Income Tax (Appeals), National Faceless Appeal Centre (NFAC) dated 10-04-2024 is erroneous, contrary to the law and facts of the case.*

2. *Commissioner of Income Tax (Appeals) erred in sustaining the addition of Rs.8,68,15,598/- made by the Assessing Officer on account of provisions made for marketing expenses. Commissioner of Income Tax (Appeals) ought to have seen that it is an actual expenditure recognized on accrual basis though called as provision in accounts and therefore allowable as deduction while computing the income of the Appellant. Hence the Commissioner of Income Tax (Appeals) is not justified in confirming the action of Assessing Officer in making addition of Rs.8,68,15,598.*

3. *Commissioner of Income Tax (Appeals) erred in sustaining the addition of Rs.54,85,832/- made by the Assessing Officer on account of Subscription Revenue. Commissioner of Income Tax (Appeals) ought to have seen difference of Rs.54,85,832/-in Subscription Revenue was offered as income in asst year 2021-22 based on the SMS (Subscribers Management system) reports submitted in April 2020 by Distribution Platform Operators (i.e., DTH Operators, MSO's etc..) for March, 2020. Hence the Commissioner of Income Tax (Appeals) is not justified in*

*confirming the action of Assessing Officer in making addition of Rs.54,85,832 towards subscription revenue.*

4. *For all of the above and such other grounds as may be urged at the time of hearing it is most respectfully prayed that this Hon'ble Tribunal may be pleased to allow the appeal."*

47. The first issue that came-up for consideration from the grounds of appellant company's appeal is disallowance of provision for expenses.

48. During the course of assessment proceedings, the Assessing Officer noted that market expenses have increased drastically in comparison to turnover of the appellant company. The Assessing Officer further noted that the marketing expenses incurred during the year 2018-2019 amounting to Rs.6.37 crores, whereas, during the financial year 2019-2020 i.e., for the assessment year 2020-2021, it was at Rs.35.16 crores. However, the revenue has not increased. Therefore, the Assessing Officer called-upon the appellant company to explain and file relevant evidences in respect of provision for marketing expenses of Rs.8,68,15,598/-. In response, the appellant company submitted that, it has accounted various expenditure

incurred towards marketing expenses on the basis of bills submitted by the vendors and work orders issued by the appellant company. The said expenditure has been accounted on accrual basis, though, called as provision in account and, therefore, allowable as deduction. The Assessing Officer after considering relevant submissions of the appellant company observed that, the appellant company has failed to substantiate the provision created for marketing expenses with relevant evidences. Although, the assessee company claims that, the said expenditure has been accounted on accrual basis on the basis of work orders issued by the appellant company and bills submitted by the vendors in the subsequent financial year, but, the fact remains that, on perusal of bills filed by the appellant company, there is huge increase in marketing expenses when compared to previous financial year, for which, there is no explanation from the appellant company. Therefore, the Assessing Officer rejected the explanation of the appellant company and made addition of Rs.8,68,15,598/-

49. Being aggrieved by the assessment order, the appellant company carried the matter in appeal before the CIT(A) and challenged the disallowance of provision for marketing expenses and contended that, the said expenditure is actual expenditure incurred for the year under consideration on the basis of work orders issued by the appellant company and bills submitted by the vendors. Since the vendors has submitted the bills in subsequent financial year, which pertains to the year under consideration, the appellant company has created a provision in the books of accounts on the same and has been paid in subsequent financial year. The CIT(A) after considering relevant submissions of the appellant company and also taking note of decision of Hon'ble Supreme Court in the case of Rotork Controls India (P.) Ltd., vs., CIT, Chennai [2009] 180 Taxman 422 (SC) observed that, the appellant company has not furnished or established any systematic scientific method or approach of accounting provision for liability to prove that, such liability is ascertained liability which accrued to the appellant

company for the year under consideration. The learned CIT(A) further observed that, since the appellant company has not filed relevant evidences to prove the liability accrued and crystalized for the year under consideration, the Assessing Officer has rightly disallowed provision created for liability and thus, rejected the explanation of the appellant-company and sustained the addition made towards disallowance of provision for liabilities.

50. Learned Counsel for the Assessee Shri V. Shiv Kumar submitted that, the learned CIT(A) was erred in law in sustaining the addition made by the Assessing Officer on account of provision made for marketing expenses without appreciating the fact that, the said expenditure has been recognised on accrual basis, though, called as provision in the accounts and, therefore, allowable as deduction while computing income of the appellant company. Learned Counsel for the Assessee further submitted that, the appellant company has filed relevant evidences including work orders issued by the appellant company and bills

submitted by the vendors and as per the said evidences, the expenditure pertains to the financial year 2019-2020 relevant to assessment year 2020-2021. Further, these evidences could not be filed before the Assessing Officer. Therefore, he submitted that, the matter may be remitted back to the file of Assessing Officer to verify the facts and allow the claim as per law.

51. Shri B. Bala Krishna, learned CIT-DR, on the other hand, supporting the order of the learned CIT(A) submitted that, any provision created for an un-ascertained liability cannot be allowed as deduction and this fact has been upheld by the Hon'ble Supreme Court in the case of Rotork Controls India (P.) Ltd., vs., CIT, Chennai (supra). He submitted that, since the assessee could not explain the method of making provision for liabilities, in absence of relevant details, the learned CIT(A) has rightly sustained the addition made by the Assessing Officer and, therefore, the order of the learned CIT(A) should be upheld.

52. We have heard both the parties, perused the material on record and gone through the orders of the authorities below. Any expenditure incurred exclusively for the purpose of business of an assessee should be accounted for in the year of incurring, whether said expenditure has been paid in the year or in the subsequent year. The only condition for accounting said expenditure is, the expenditure must be laid-out 'wholly and exclusively for the purpose of business' and in case of 'provision' for expenditure, there should be a scientific basis for making such 'provision'. In the present case, the appellant company has filed certain additional evidences in the form of work orders and bills submitted by the vendors. On perusal of the additional evidences filed by the appellant company, we find that, the appellant company has issued certain work orders and the vendors completed the work and also submitted bills in the subsequent financial year, but, said work has been completed in the previous financial year and also relates to the year under consideration. Once the expenditure is relates to the year under consideration, and

said expenditure has been accrued to the appellant company, then, in our considered view the appellant company should make a 'provision' for the said expenditure, even though, the said expenditure has been paid or discharged in subsequent financial years. Since the appellant company has filed additional evidences which are not filed before the Assessing Officer, in our considered view, the matter needs to go back to the file of Assessing Officer for further verification. Thus, we set aside the issue to the file of Assessing Officer and direct the Assessing Officer to verify the claim of the appellant company in light of any evidences that may be filled to justify the claim of 'provision' for marketing expenses.

53. Next issue that came-up for consideration from ground no.3 of assessee's appeal is addition of Rs.54,85,832/- on account of Subscription Revenue.

54. During the course of assessment proceedings, the Assessing Officer called-upon the appellant company to file details of monthly break-up of subscription revenue. In

response, the appellant company submitted that, this subscription revenue relating to Distribution Platform Operators **[**in short "DPOs**]** in the month of March, 2020, revenue has been recognised based on February 2020 billing and the difference between actual revenue and the provisional revenue for the month of March, 2020 has been adjusted in April, 2020 and this practice is followed uniformly for all financial years since introduction of new tariff order by TRAI in February, 2019. The Assessing Officer not accepted the contention of the appellant company and according to the Assessing Officer in the 'mercantile system' of accounting, transactions are accrued when they arise and the income is recorded in the books of accounts when it is accrued, irrespective of the fact that when it is received. Since the income has been accrued to the appellant company, the Assessing Officer has made addition of Rs.54,85,832/- towards short fall of revenue in the month of March, 2020.

55. On appeal, the CIT(A) sustained the addition made by the Assessing Officer.

56. Learned Counsel for the Assessee Shri V. Shiv Kumar, submitted that, the appellant company is following this method of accounting towards subscription revenue for the month of March on the basis of February month billing, in absence of relevant details from the field staff. However, in case of any difference in revenue for the month of March has been adjusted in the month of April in subsequent financial year and credited to income account. Since the appellant company is following this method from the very beginning, there is no loss of revenue from the subscription revenue. Although, these facts have been brought to the notice of Assessing Officer, but, the Assessing Officer ignored the explanation furnished by the appellant company and made addition. Therefore, he submitted that, the addition made by the Assessing Officer should be deleted.

57. Shri B. Bala Krishna, learned CIT-DR, on the other hand, supporting the order of the learned CIT(A) submitted that, the appellant company could not explain as to why there is a short fall in actual revenue and provisional revenue for the month of March, 2020, except stating that, this method has been following right from the very beginning and in absence of relevant details as to revenue, the Assessing Officer has rightly assessed the difference amount of revenue for the month of March, 2020 and, therefore, the order of the Assessing Officer and the learned CIT(A) should be upheld.

58. We have heard both the parties, perused the material on record and gone through the orders of the authorities below. The appellant company is in the business of Distribution of Platform Operators [DPOs] for various channels and collects monthly revenue through its agents/ operators. Since it's agents/operators are located in different parts of the State/Country, it is difficult for the appellant company to collect data before the end of the financial year. Therefore, the appellant company makes an

adhoc “provision” for income for the month of March of every year on the basis of February month revenue. In case of any difference in actual revenue and provisional revenue for the month of March, then, the same has been adjusted in the month of April 2020. The appellant company is following this method of accounting for many years. In our considered view, going by the nature of business of the appellant company and the area covered under the business, there is no dispute with regard to the claim of the appellant company that, it is difficult to gather details of revenue from each and every agent/operator on or before 31st March of every year. However, the fact remains that, once the appellant company collects the revenue, it could very well adjust the income by providing necessary entries in their books before finalization of the balance sheet under the Head “Exceptional Items or Extraordinary Items”. Since the appellant company claims that, there is a difference between actual revenue and provisional revenue and same has been adjusted in subsequent month i.e., April, [2020] of each year, in our considered view, there is a short fall in

revenue for the month of March [2020] as considered by the Assessing Officer. Since the appellant company is not able to explain as to why the said revenue has not been accounted in the month of March [2020], in our considered view, the Assessing Officer has rightly assessed difference income on the basis of provisional and actual income accounted for the month of March 2020. The learned CIT(A) after considering relevant facts has rightly sustained the addition made by the Assessing Officer. Thus, we are inclined to uphold the findings of the learner CIT(A) and reject the ground taken by the appellant company.

59. In the result, appeal ITA.No.563/Hyd./2024 of the assessee is partly allowed for statistical purposes.

60. To sum-up, appeals ITA.Nos.654 & 665/Hyd./ 2023 & ITA.No.648/Hyd./2024 of the Revenue are partly allowed for statistical purposes and appeal ITA.No.563/ Hyd./2024 of the Assessee is partly allowed for statistical purposes. A copy of this common order be placed in the respective case files.

Order pronounced in the open Court on 16.05.2025

| | |
|---|---|
| Sd/- | Sd/- |
| [VIJAY PAL RAO] | [MANJUNATHA G] |
| VICE PRESIDENT | ACCOUNTANT MEMBER |

Hyderabad, Dated 16th May, 2025

VBP

Copy to

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|---|---|
| 1. | The ACIT, Circle-5(1), Room No.223, 2nd Floor, IT Towers, AC Guards, Hyderabad – 500 004. Telangana |
| 2. | M/s. Eenadu Television Private Limited, sp-iii Building, 3rd Floor, Ramoji Film City, Hyderabad. PIN – 501 212. Telangana. |
| 3. | The DR ITAT "A" Bench, Hyderabad. |
| 4. | Guard File. |

//By Order//

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