

**आयकर अपीलीय अधिकरण, मुंबई "के" खंडपीठ**  
**Income-tax Appellate Tribunal -"K" Bench Mumbai**

**सर्वश्री राजेन्द्र,लेखा सदस्य एवं, शक्तिजीत डे, न्यायिक सदस्य**

**Before S/Shri Rajendra,Accountant Member and Saktijit Dey,Judicial Member**

**आयकर अपील सं/ ITA No.2237/Mum/2011 : निर्धारण वर्ष/Assessment Year-2004-05**

M/s. Crest Animation Studios Ltd. 501, Raheja Plaza-1, LBS Marg Ghatkopar (W),Mumbai-400 086. <b>PAN:AAACC 6134 C</b>	Vs.	ACIT-2(1)(1) Circle-11(1), Aayakar Bhavan Mumbai-400 020.
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**(Appellant)**

**(Respondent)**

**आयकर अपील सं/ ITA No.2746/Mum/2011 : निर्धारण वर्ष/Assessment Year-2004-05**

ACIT-2(1)(1) Mumbai-400 020.	Vs.	M/s. Crest Animation Studios Ltd. Mumbai-400 086.
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**(Appellant)**

**(Respondent)**

**Revenue by: Shri Shiddaramappa Kappattanavar-Sr.AR**

**Assessee by: None**

**सुनवाई की तारीख / Date of Hearing: 04.10.2016**

**घोषणा की तारीख / Date of Pronouncement: 16.11.2016**

**आयकर अधिनियम,1961 की धारा 254(1)के अन्तर्गत आदेश**

**Order u/s.254(1)of the Income-tax Act,1961(Act)**

**लेखा सदस्य, राजेन्द्र के अनुसार/ PER Rajendra A.M.-**

Challenging the orders dated 27.10.2012 of the CIT(A)-3,Mumbai,the Assessee and the Assessing Officer (A.O.) have filed present appeals for the above mentioned assessment year (AY).Assessee-company,engaged in the production of add films, 2D animation and computer graphics, software for television serials etc.,filed its return of income on 28/10/2004, declaring total Loss at Rs.9,56,10,090/-.The Assessing Officer(AO)completed the assessment u/s.143(3) of the Act,on 13.12.2006, determining its income at (-) Rs.5,26,61,000/-.

**ITA/2237/Mum/2011**

2.First ground of appeal is about disallowing the claim of depreciation of Rs. 45.76 lakhs,being depreciation on the capitalise WDV of Rs.1.83 Crores on account of unpaid customs duty.During the assessment proceedings,the AO found that the assessee had capitalised an amount of Rs.2.09 Crores, being custom duty payable on plant and machinery and had claimed depreciation on it. Following the order for the AY.2003-04,he disallowed the claim of depreciation holding that depreciation was not allowable for the year under consideration also. He found that the returned value of the plant and machinery for the year under consideration was Rs.1.83 Crores and the assessee had claimed depreciation at the rate of 25%, amounting to Rs.45.76 lakhs. As stated earlier,following the order for the previous year,the AO made a disallowance of Rs.45,76,888/-.

**3.**Aggrieved by the order of the AO,the assessee preferred an appeal before the First Appellate Authority (FAA).Before him,the assessee made elaborate submissions. Following the order of his predecessor for the AY. 2003-04,the FAA upheld the order of the AO.

**4.**None appeared before us, as mentioned earlier. The Departmental Representative (DR) supported the order of the FAA.

**5.**We find that the FAA had followed the order of his predecessor for the earlier year and upheld the addition.Nothing has been brought on record to challenge the findings given by the AO and the FAA about the disallowance.Therefore, confirming the order of the FAA, we decide the first ground against the assessee

**6.**Second ground is about making addition of Rs.2.29 lakhs on account of notional interest at the rate of 8% on the sums advanced to subsidiary, namely,M/s. Rich Crest Animation Inc.(RCA).During the assessment proceedings, the AO found that the assessee had advanced a loan of Rs.28.68 lakhs to RCA on which no interest was charged, that it had charged interest at the rate of 8% on advances made to other subsidiaries. Following the order for the AY.2003-04,the AO added and amount of Rs.2,29,475/- to the total income of the assessee (interest at the rate of 8%).

**7.**During the appellate proceedings before the FAA,the assessee made submissions. After considering the same and following the order of his predecessor for the earlier AY.,he held that none of the reasons given by the assessee for not charging interest on advances had been established, that assessee had not furnished any evidence,that the reasons of the assessee were unsatisfactory, that the assessee had not established that the amount were given out of its non-interest-bearing funds, that it had made a simple statement that it had been done in commercial expediency or for business purposes,that such an explanation could not be accepted,that the assessee had not explain as to why it was charging interest from other subsidiaries and not from RCA. Finally, he upheld the addition made by the AO.

**8.**Before us, the DR supported the order of the FAA. We find that the assessee had not established the basic fact of not charging the interest from RCA and charging interest from the other subsidiaries. It has to explain as to why different treatment was given with regarding charging of interest.In our opinion, the FAA was justify in holding that making a bald

statement of commercial expediency for an expenditure is not enough, that the assessee has to establish the fact. In the case under consideration, the assessee had not proved the said basic fact. Therefore, we hold that there is no need to interfere with the order of the FAA. Confirming his order, we decide the second ground against the assessee.

**9.**Last ground of appeal pertains to disallowing the professional fees paid to Shri Javed Akhtar (JA), amounting to Rs.50 lakhs. During the assessment proceedings, the AO found that assessee had paid Rs.50 lakhs as professional fees to JA. He directed the assessee to file explanation in that regard. The assessee contended that JA had written a script for a film, that the script was not in the storyline conceptualised by the parties involved in the filmmaking, that the project was shelved, that as per the agreement JA was to refund the money in case of non-acceptance of script, that JA did not refund the money, that assessee initiated arbitration proceedings, that the project was scrapped and the assessee made necessary entries about payment made to JA as provision expenditure. The AO held that procedure adopted by the assessee in claiming the expenditure was not as per the provisions of the Act, that the expenditure should not have been debited to the AY. Under reference, that it did not pertain to the year under consideration, that proper and transparent method of claiming the expenditure should have adopted, that as per the schedule O to the balance sheet the amount in question was appearing as current assets under the name loans and advances, that the schedule indicated that assessee's claim survive and rightly so as arbitration proceedings were ending, that the claim of the assessee in that regard was premature, that it had not written of the amount in its books of accounts, that the assessee was trying to take benefit of the claim that was not proved. Finally, he made an addition of Rs.50 lakhs to the income of the assessee.

**10.**Before the FAA, the assessee argued that complete details of agreement, scrapping of the project and arbitration proceedings were filed before the AO, that in the books of accounts the amount was shown as advance given to JA for services to be rendered, that the project was

shelved, the amount paid to JA was return of two profit and loss account under the head professional fees and a liability to that extent was created in the books of accounts, that the AO erred in not appreciating the fact that the amount in question could not be adjusted against the advance given to JA as the arbitration proceedings were going on.

**11.**After considering the submission of the assessee and assessment order, the FAA held that the payment was made towards professional fees for services to be rendered by JA, that tax was deducted at source as per the provisions of section 194J of the Act, that to claim of write off had to be substantiated by actual writing off of the claim in the regular books of accounts, that the assessee had included the disputed amount as asset under the head loans and advances, that arbitration proceedings were going on, that the claim of the assessee was premature and did not pertain to the AY. under consideration. Finally, he upheld the order of the AO.

**12.**We find that the assessee had paid an amount of the 50 lakhs to JA, that it had deducted tax at source as per the provisions of the act, it had claimed that project was abandoned, that JA did not return the money, that arbitration proceedings were going on at the time of assessment proceedings, that it had shown the amount in question in the balance sheet under the head loans and advances. In our opinion, the FAA was justified in holding that claim made by the assessee was premature and did not pertain to the AY. under appeal. As the order of the FAA does not suffer from any legal infirmity, so, confirming the same we decide the third ground against the assessee.

**ITA/2746/Mum/2011:**

**13.**The first ground of appeal, raised by the AO, is about deleting the addition of Rs. 1.50 Crores, made on account of reversal of provision doubtful debts and bad debts. During the assessment proceedings, the AO found that the assessee had claimed deduction of Rs. 1.50

Crores on account of reversal of provision for doubtful debts.He directed the assessee to explain and justify the claim. The assessee contended that provisions for doubtful debts were added back in respect of year as under:

AY.	Amount in Rupees
2003-04	Rs. 90 lakhs
2002-03	Rs. 30 lakhs
2001-02	Rs. 24.40 lakhs
2000-01	Rs. 3 lakhs
1999-00	Rs. 2.60 lakhs

**14.**It was further argued that the amounts had already been added to the total income of the respective years in the AY.2003-04,that the provisions were reversed,that the provisions made in earlier years and added back in the respective years would not alter the claim, that during the assessment proceedings details of bad debts written off were filed before AO vide letter dt.13/12/06.

**15.**After considering the submission of the assessee and the assessment order, the FAA held that provision of doubtful debts were added back to total income in the earlier years, that same were written off and claimed by the assessee in the impugned years, the amounts in question were written off as bad debts which were earlier considered as doubtful debts, that the entire break-up of the written off amount was submitted, that Schedule-F of the Balance sheet gave the details of the disputed amount, that instead of cumulative provision for doubtful debts from the earlier years the assessee had only shown the provision for the current years doubtful debts, the sum of Rs.150 crores (Rs.363 crores – Rs.211crores) had been netted off and was claimed as bad debts written off, that same was appearing in the Schedule-M to P&L account.Finally, the FAA deleted the addition made by the AO.

**16.**Before us the DR supported the order of the AO. We find that the FAA has clearly given a finding of facts that the assessee has filed the details of amounts written off by it and same constituted the part of the audited accounts.In our opinion, once the amounts have been written and not have been shown as provisions, same have to be allowed.Considering the facts and circumstances of the case, we are of the opinion that the order of the FAA does not suffer from any legal or factual infirmity.So confirming her order we decide the effective Ground of appeal against the Revenue.

As a result appeals filed by the assessee and the AO stand dismissed.

फलतःनिर्धारिती और निर्धारिती अधिकारी द्वारा दाखिल की गई अपीलें नामंजूर की जाती है.

Order pronounced in the open court on 16<sup>th</sup> November, 2016.

आदेश की घोषणा खुले न्यायालय में दिनांक 16 नवंबर, 2016 को की गई ।

Sd/-

(शक्तिजीत डे / Saktijit Dey)

न्यायिक सदस्य / JUDICIAL MEMBER

मुंबई Mumbai; दिनांकDated : 16 . 11.2016.

Jv.Sr.PS.

**आदेश की प्रतिलिपि अग्रेषित/Copy of the Order forwarded to :**

1.Appellant /अपीलार्थी

2. Respondent /प्रत्यर्थी

3.The concerned CIT(A)/संबद्ध अपीलीय आयकर आयुक्त, 4.The concerned CIT /संबद्ध आयकर आयुक्त

5.DR “K” Bench, ITAT, Mumbai /विभागीय प्रतिनिधि, खंडपीठ,आ.अ.न्याया.मुंबई

6.Guard File/गार्ड फाईल

सत्यापित प्रति //True Copy//

आदेशानुसार/ BY ORDER,

उप/सहायक पंजीकार Dy./Asst. Registrar

आयकर अपीलीय अधिकरण, मुंबई /ITAT, Mumbai.