

आय अाधकरण, "डी+यायपीठ, चेनई
PELLATE TRIBUNAL 'D' BENCH, CHENNAI

श्री ए. मोहन अलंकामणी, लेखा सदय एवं श्री धुवु आर.एल रेडी, यायक सदय के सम
Before Shri A. Mohan Alankamony, Accountant Member &
Shri Duvvuru RL Reddy, Judicial Member

आयकर अपील सं./I T.A. No. 36/Mds/2015

नधाण वष/Assessment Year:2010-11

The Assistant Commissioner of
Income Tax,
Non-Corporate Circle 20,
Chennai 34.

M/s. Shree Balaji Communications,
Vs. No. 18/126, Dhan Enclave,
Bhajani Kovil St., Choolaimedu,
Chennai 600 094.

[PAN:ABIFS0605A]

(अपीलाथ /Appellant)

(यथ /Respondent)

अपीलाथ क ओर से / Appellant by : Dr. M.M. Bhusari, CIT

यथ क ओर से/Respondent by : Shri M.P. Senthil Kumar, Advocate

सुनवाई क तारख / Date of hearing : 26.04.2016

घोषणा क तारख /Date of Pronouncement : 08.07.2016

आदेश /O R D E R

PER DUVVURU RL REDDY, JUDICIAL MEMBER:

This appeal filed by the Revenue is directed against the order of the
Id. Commissioner of Income Tax (Appeals) IV, Chennai, dated 16.10.2014
relevant to the assessment year 2010-11. In this appeal, the only effective
ground raised by the Revenue is with regard to deletion of addition made
under section 40(a)(ia) of the Income Tax Act, 1961 [Act+in short] towards

section 194J of the Act in respect of payment for purchase of film copyrights.

2. Brief facts of the case are that the assessee is firm and filed its return of income for the assessment year 2010-11 on 28.09.2010 admitting an income of .1,11,168/-. The return filed by the assessee was processed under section 143(1) of the Act on 16.04.2011. Subsequently, the case of the assessee was selected for scrutiny and notice under section 143(2) of the Act dated 30.09.2011 was issued and duly served on the assessee. Notice under section 142(1) of the Act dated 29.10.2012 was also issued along with questionnaire. In response thereto, the assessee filed all the details and after verifying the details and particulars furnished by the assessee, the Assessing Officer has completed the assessment order under section 143(3) of the Act on 19.03.2013 by determining total income of the assessee at .1,63,61,170/- after making addition of .1,62,50,000/- towards purchase of film copyrights by invoking provisions of section 40(a)(ia) of the Act.

3. On appeal, the Id. CIT(A) after considering the submissions of the assessee and considering various decisions, the Id. CIT(A) allowed the appeal of the assessee.

4. On being aggrieved, the Revenue is in appeal before us.

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es, perused the materials on record and gone through the orders of authorities below. The assessee is engaged in the business of media, movie (film) satellite rights purchase and sales. The assessee obtains film satellite rights by taking them on assignment basis and reassigning to the channels and derives income from salary, business and other sources. The assessee had debited a sum of .1,62,50,000/- for purchase of film copyrights. The Assessing Officer has noticed that in the agreement copies submitted by the assessee, the assessee firm was assigning the rights to another person for periods ranging from 3 months to 99 years. The Assessing Officer was of the view that as it was not an unconditional sale, the assessee was the owner of the film rights even after transferring the rights and held that the transaction clearly fell within the definition of 'royalty' and the assessee was bound to deduct TDS under section 194J of the Act meant for professional/technical services/royalty but the assessee has deducted TDS under section 194C meant for contract business. The Assessing Officer asked the assessee as to why the amount paid on purchase of film satellite rights should not be disallowed under section 40(a)(ia) of the Act. The AR of the assessee replied that the assessee has purchased the film rights as goods and sold it as goods without using any rights. Hence the question of royalty under section 9(1)(vi) read with section 194J of the Act does not arise. The AR of the also relied on the decision in the case of Abdulgafar A. Nadiadwala v. ACIT 267 ITR 488

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Case of film right is neither covered under section 194J nor under section 194C of the Act. The Id. AR claimed that to safeguard the interest of the assessee, TDS under section 194C of the Act was deducted on the above said purchase cost. The Assessing Officer has not convinced with the submissions of the assessee. By relying on the decision in the case of Samsung Electronics Co. Ltd. & Others [2011] 16 taxmann.com 141 (Kar.)IT/ILT, the Assessing Officer was of the opinion that it was an unconditional sale, the assessee was the owner of the film rights even after transferring the rights and that the transaction clearly fell within the definition of royalty and therefore, the Assessing Officer has concluded that the assessee is bound to deduct TDS under section 194J of the Act meant for professional/technical services/royalty. The Assessing Officer disallowed the sum of ₹1,62,50,000/- by invoking the provisions of section 40(a)(ia) of the Act and added back to the total income of the assessee. The Id. CIT(A) allowed the claim of the assessee by relying on the decision in the case of K. Baghyalakshmi v. DCIT 221 Taxman 225. Before us, the Id. DR submits that in assessee's own case for the assessment year 2008-09 reported in 30 taxmann.com 100, the Tribunal has decided the very same issue in favour of the department by observing that Explanation 2 under section 9(1)(vi) of the Act, clearly brought such type of payments within the purview of Royalty. Further, he submits that in respect of satellite rights transfer agreements for a period of 3 months to 25 years would come under

the transfer is not of perpetual nature. He also submits that the judgement relied on by the Id. CIT(A) in the case of K. Baghyalakshmi v. DCIT (supra) is applicable only to satellite rights transfer agreements of perpetual nature viz. 99 years. Per contra, the Id. Counsel for the assessee has submitted that in the assessment year under consideration 2010-11, the assessee has purchased satellite rights for 3 months to 99 years and therefore, the order of the Tribunal in assessee's own case for assessment year 2008-09 has no application.

6. We have also perused the copy of agreement filed by the assessee in the form of paper book and noticed that Sl.No. 2 to 8 are pertaining to for a perpetual period of 99 years lease agreement, whereas, Sl.No. 9 and 10 pertaining to 25 years. We have also gone through the ratio laid down in the case of K. Baghyalakshmi v. DCIT (supra), wherein, the Hon'ble Madras High Court has held as under:

“17. We have seen the various conditions contained in the sample transfer deed and there is a transfer of copy right in favour of the assessee. Though the agreement speaks of perpetual transfer for a period of 99 years, in terms of Section 26 of the Copy Right Act, 1957, in the case of cinematographic film, copy right shall subsist until 60 years from the beginning of the calendar year next following the year in which the film is published. Therefore, the agreement in the case on hand, is beyond the period of 60 years, for which the copy right would be valid, the document could only be treated as one of sale.

18. As far as the decision of the Co-ordinate Bench in the case of Balaji Communications (cited supra), the rights which was the subject matter of the said decision were only for a period of 20 to 25 years and not of permanent nature. Therefore, the said decision is clearly distinguishable on facts and cannot be applied to the assessee's case.

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*ve discussion, we have no hesitation to hold that
ellate Authority was perfectly justified in holding
that the transfer in favour of the assessee as sale and therefore, excluded from
the definition of "Royalty" as defined under clause (v) to Explanation (2) of
Section 9(1) of the Act."*

In view of the above decision of the Hon'ble Madras High Court, we are of the considered opinion that the assessee has purchased the satellite rights for a period of 99 years. Thus, the transaction is of permanent in nature and the same is to be excluded from the definition of %oyalty+as defined under cause (vi) to Explanation (2) of section 9(1) of the Act. It is seen from the copy rights assignment agreement that all the agreements are for a period of 99 years except Sl.No. 9 and 10. Hence, the assessee is not liable to deduct tax under section 194J of the Act for Sl.No. 2 to 8 and the assessee is liable to deduct tax for agreements in Sl.No. 9 and 10 within the meaning of section 194J of the Act. Accordingly, the Assessing Officer is directed to work out the disallowance and decide the issue afresh. Thus, the appeal filed by the Revenue is allowed for statistical purposes.

7. In the result, the appeal filed by the Revenue is allowed for statistical purposes.

Order pronounced on the 08th July, 2016 at Chennai.

Sd/-
(A. MOHAN ALANKAMONY)
ACCOUNTANT MEMBER
Chennai, Dated, the 08.07.2016
Vm/-

Sd/-
(DUVVURU RL REDDY)
JUDICIAL MEMBER



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I.T.A. No.36/M/15

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