

आयकर अपीलिय अधिकरण "F" न्यायपीठ मुंबई में।

**IN THE INCOME TAX APPELLATE TRIBUNAL "F" BENCH,
MUMBAI**

**BEFORE SHRI SHAILENDRA KUMAR YADAV, JM AND
SHRI RAMIT KOCHAR, AM**

श्री शैलेंद्र कुमार यादव, न्यायिक सदस्य एवं श्री श्री रमित कोचर, लेखाकार सदस्य के
समक्ष ।

आयकर अपील सं./I.T.A. No.1288 & 1289/Mum/2012
(निर्धारण वर्ष / Assessment Years : 2008-09 & 2007-08

Income Tax Officer-
9(1)(4),
R. No. 224,
Aayakar Bhavan,
M.K. Road,
Mumbai - 400 020.

बनाम/
Vs.

M/s Universal Arts Ltd.,
(Formerly Goldmines
Media Ltd.),
M.G. Road,
Goregaon (W),
Mumbai - 400 062.

स्थायी लेखा सं./PAN : AACCG4664P

(अपीलार्थी / **Appellant**)

..

(प्रत्यर्थी / **Respondent**)

Appellant by

Shri Rajesh Ranjan

Respondent by :

Shri Vipul Joshi

सुनवाई की तारीख / **Date of Hearing**

: 15-9-2015

घोषणा की तारीख / **Date of Pronouncement** : **30.09.2015**

↓

आदेश / O R D E R

PER SHAILENDRA KUMAR YADAV, J.M.

:

शैलेंद्र कुमार यादव, न्यायिक सदस्य

These two appeals have been filed by the Revenue on following ground. Since common issue is involved in these

appeals with difference in amount, the same have been heard together and are being disposed of by this single consolidated order for the sake of convenience.

2. The following ground raised by the Revenue for A.Y. 2008-09:-

“Whether on the facts and circumstances of the case and in law, the Ld. CIT(A) was correct in holding that the assessee is not required to follow the method of valuation prescribed u/r 9B of I.T. Rule, 1962 and thereby deleting the addition made as a result of disallowance of excess cost claimed of Rs. 27,52,935/-.

The appellant prays that the order of the CIT(A) on the grounds be set aside and that of the Assessing Officer is restored.”

3. Brief facts of the case are that the Assessing Officer observed that the assessee is following conservative method of accounting for valuation of closing stock. The films purchased are shown at cost if the same are sold in the year, the profit or loss on the same is recorded. In respect of unsold films, the same is carried forward as stock at purchase cost in the next financial year. He observed that as the assessee is engaged in the business of distribution of rights of feature films, Rule 9B of the Income-tax Rules, 1962 is attracted in this case. Rule 9B of the Income-tax Rules specifies the deduction that is to be allowed in respect of cost of

acquisition of a feature film for computing the profits and gains of the business of distribution of feature films. Referring to sub Rule 4 & 5 of Rule 9B, the Assessing Officer disallowed the excess cost of Rs. 27,52,935/-. The matter carried before the first appellate authority in appeal and after considering the submissions made on behalf of the assessee, the CIT(A) granted relief to the assessee. Aggrieved, the Revenue is in appeal before us.

4. The ld. D.R. contended that the CIT(A) was not justified in holding that the assessee is not required to follow the method of valuation prescribed under Rule 9B of the Income Tax Rules, 1962 and thereby the CIT(A) was not justified in deleting the addition made as a result of excess cost claimed of Rs. 27,52,935/- and accordingly prayed that the order of the CIT(A) be set aside and that of the Assessing Officer be restored. On the other hand, the ld. Authorised Representative of the assessee strongly supported the order of CIT(A).

5. Having considered the rival submissions and perusing the material on record, we find that the assessee is engaged in sale of T.V. serial, editing and film software development. The stand of the assessee has been that it is buying satellite/TV telecasting rights of the movie and that the

purchase of movies is not for theatre release and thus Rule 9B of the Income Tax Rules, 1962 is not applicable. It is not in dispute that the assessee has been valuing the closing stock of movies at cost for past many years and in assessment years 2007-08 and 2008-09, the valuation method has been challenged by the concerned Assessing Officer. If the method followed by the assessee is accepted, the loss claimed in assessment years 2007-08 and 2008-09 is as under;-

A.Y. 2007-08	Rs. 10,17,210/-
A.Y. 2008-09	Rs. 18,22,482/-

In case, the Rule 9B of the I.T. Rules is applicable, the following position in respect of valuation of closing stock would emerge.

5.1. In terms of sub rule 2 to Rule 9B, if the film is released at least 90 days before the end of previous year, entire cost of acquisition is to be allowed in that year. In terms of sub rule 3 to Rule 9B if the film purchased is not released least 90 days before the end of previous year but amount realized on sale of rights during previous year, is less than cost price, the amount realized would be allowed as reduction and the balance cost of acquisition is to be carried forward to next year. In terms of sub rule 4 to Rule 9B if the film purchased is not released or sold during previous year, entire cost of acquisition is to be carried forward allowed in next year. In terms of sub rule 5 to Rule 9B the amount realized

on sale during previous year, should be credited in the books of account. From above, it is clear that the cost to be allowed during the year depends upon the closing stock of the previous year, purchases during the year and the valuation of the closing stock would be dictated by sub Rule 2 & 3. From the assessment order, it appears that the Assessing Officer has misconstrued the provisions of Rule 9B and has not applied sub Rule 2,3 properly. In fact ignored sub Rule 4 completely and did not allow the closing stock of the previous year of unsold films which is to be allowed as deduction irrespective of sale or not. In case, the correct adjustments are made to opening and closing stock as per Rule 9B, the computation of net profit is as under:-

Total sales		7075000
Less: Total cost of Sales	7501000	
Opening Stock of A.Y. 2007-08 to be allowed.		
Current year's purchase against which sales have been made	2795000	(10296000)
Gross loss		(3221000)
Add: Other Income	213977	
Beta charges disallowed in Asst. order	172935	
		(2834088)
Less: Expenditure claimed		
Administrative expenses	3266813	
Depreciation	193467	(3460280)
Net Loss		(6294368)

Thus, instead of loss of Rs. 18,22,482/- claimed by the assessee in the return, loss of Rs. 62,94,368/- have to be allowed as per Rule 9B. We find that as per the cost of acquisition, closing stock adjustment in past year's closing stock may lead to allowing higher losses in the instant

assessment year. The method followed by the assessee is endorsed and the addition made by the Assessing Officer was rightly deleted by the CIT(A) in the assessment year i.e 2007-08. This factual legal finding needs no interference from our side. We uphold the same.

6. Similar issue arose in other appeal wherein the facts being similar, so following the same reasoning, the order of CIT(A) is upheld.

7. In the result, appeals filed by the Revenue is dismissed. Order pronounced in the open court on 30th September, 2015.

आदेश की घोषणा खुले न्यायालय में दिनांक: को की गई ।

Sd/-
(RAMIT KOCHAR)
ACCOUNTANT MEMBER

Sd/-
(SHAILAENDRA KUMAR YADAV)
JUDICIAL MEMBER

मुंबई Mumbai; दिनांक Dated 30/09/2015

व.नि.स./ R.K., Ex Sr. PS

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

1. अपीलार्थी / The Appellant
2. प्रत्यर्थी / The Respondent.
3. आयकर आयुक्त(अपील) / The CIT(A)-2
Mumbai
4. आयकर आयुक्त / CIT- 1,, Mumbai
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण,
मुंबई / DR, ITAT, Mumbai F Bench
6. गार्ड फाईल / Guard file.

आदेशानुसार/ BY ORDER,

सत्यापित प्रति //True Copy//

उप/सहायक पंजीकार (Dy./Asstt. Registrar)
आयकर अपीलीय अधिकरण, मुंबई / **ITAT, Mumbai**