

C.R.

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE K.VINOD CHANDRAN

&

THE HONOURABLE MR. JUSTICE ASHOK MENON

TUESDAY, THE 26TH DAY OF JUNE 2018 / 5TH ASHADHA, 1940

ITA.No. 80 of 2010

AGAINST THE ORDER/JUDGMENT IN ITA 17/COCH/2009 of I.T.A.TRIBUNAL,
COCHIN BENCH

APPELLANT(S)/APPELLANT:

MALAYALA MANORAMA CO.LTD.,
K.K.ROAD, KOTTAYAM.

BY ADVS.SRI.E.K.NANDAKUMAR
SRI.P.BENNY THOMAS
SRI.P.GOPINATH
SRI.K.JOHN MATHAI
SRI.RAJA KANNAN

RESPONDENT(S):

ASST.COMMISSIONR OF INCOME TAX,
CIRCLE-1, KOTTAYAM.

R, BY ADV. SRI.P.K.R.MENON,SR.COUNSEL, GOI (TAXES)
R, BY ADV. SRI.JOSE JOSEPH, SC, FOR INCOME TAX

THIS INCOME TAX APPEAL HAVING BEEN FINALLY HEARD ON 25-05-2018,
THE COURT ON 26-06-2018 DELIVERED THE FOLLOWING:

APPENDIX

APPELLANT(S) ' ANNEXURES:

ANNEXURE A: COPY OF THE ASSESSMENT ORDER DATED 21-12-2007.

ANNEXURE B: COPY OF THE ORDER OF THE COMMISSIONER OF INCOME TAX
(APPEALS) DATED 22-10-2008.

ANNEXURE C: COPY OF THE ORDER OF THE INCOME TAX APPELLATE TRIBUNAL,
COCHIN BENCH IN ITA.17/COCH/2009 DATED 11-08-2009.

RESPONDENT(S) ' ANNEXURES:

NIL

/TRUE COPY/

PA TO JUDGE

dkr

K.VINOD CHANDRAN & ASHOK MENON, JJ.

I.T.A. No. 80 of 2010

Dated this the 26th day of June, 2018

J U D G M E N T

Ashok Menon, J.

The assessee is before us aggrieved by the finding of the Tribunal rejecting the appeal claiming the benefit under the provisions of Rule 9B(4) of the Income Tax Rules, 1962 (for brevity 'the Rules'). The following substantial questions of law arises for consideration:

- “1. Whether the Hon'ble Tribunal was right in law and on facts in upholding the order of the lower authorities, by finding that Rule 9B(4) would not entitle the appellant to claim deduction in respect of expenditure of acquisition of distribution rights of feature film during the previous year relevant to the assessment year 2005-06 ?*
- 2. Ought not the Tribunal have found that as per the express provision of Rule 9B(4) of the Income Tax Rules, 1962, the deduction in respect of expenditure on acquisition of distribution rights of feature films, in cases where there was no exhibition of the film on a commercial basis or a sale of the rights for exhibition of the film, either during the previous year in which the feature film was acquired, or in the next following previous year, the deduction has to be granted to the*

assessee in the previous year next following the previous year during which the feature film was acquired by the film distributor ?

3. *Whether the Hon'ble Tribunal was right in law and on facts in upholding the orders of the lower authorities, which held that the provisions of rule 9B(5) have an overriding effect over the provisions of Rule 9B(4), especially when the two provisions operated in separate fields and did not contain any provision that was contrary to each other."*

2. The assessment pertains to the year 2005-06 and the assessee filed returns declaring a total income of Rs.19,90,63,060/- on 27-10-2005. Notice was issued on 05-04-2006 and the claim of the assessee for deduction of the amounts in connection with the acquisition of satellite distribution rights on three Malayalam films in the financial year 2003-04 was rejected vide assessment order at Annexure A. The First Appellate Authority also rejected the claim of the assessee vide order at Annexure B. Appeal preferred by the Revenue as well as the cross-objection filed by the assessee before the Income Tax Appellate Tribunal, Kochi Bench were dismissed vide order at Annexure C.

3. The contention of the assessee is that the lower authorities erred in holding that the appellant-Company was not entitled to claim the deduction in respect of expenditure on

acquisition of distribution of feature films obtained by the appellant in the year 2003–04 for the reason that there was no exhibition of the films on commercial basis during the period of acquisition or in the next year. The assessee claims that in accordance with the specific provisions in Rule 9B(4), deduction of the cost of acquisition made in the year 2003–04 (previous year to the assessment year 2004–05), has to be carried forward to the next following previous year (ie., 2004–05) and allowed as a deduction in that year, since the assessee has not commercially exploited the film in the year of acquisition. It is pointed out that the reasoning of the lower authority that the *non-obstante* clause contained in Rule 9B(5) qualifies all the previous clauses of Rule 9B and hence the assessee was not entitled to claim deduction during a previous year, when no amount was realised by exhibition of the film, is contrary to the express provisions in the Rules and hence not legally sustainable. It is urged that the lower authority ought to have found that the impact of the *non-obstante* clause contained in Rule 9B(5) could only be in such situation and circumstances, as were expressly contemplated by the said clause. Rule 9B(5) deals exclusively with

cases where there has been an exhibition of the feature film or sale of rights of exhibition of the feature film and in such cases, the said clause restricts the availment of deduction and mandates that the deduction shall be claimed only in the year of realisation of the amount pursuant to exhibition of the film and crediting of the said amount in the books of account maintained by the assessee. It is submitted that Rule 9B(5) does not apply to a situation covered by Rule 9B(4), where there is no exhibition of the film on a commercial basis for more than two years in a row, including the year in which the distribution rights of the feature film was acquired by the assessee. The learned Standing Counsel for the Department submits that the *non-obstante* clause operates to avoid the effect of all contrary provisions.

4. We heard the learned Counsel for the appellant and the learned Standing Counsel for the Government of India (Taxes).

5. Rule 9B(5) starts with a *non-obstante* clause. Under the said rule, it is laid down that deduction under Rule 9B shall not be allowed unless the distributor credits in the books of accounts, the amounts realised by the distributor in case where the distributor

himself has exhibited the film on commercial basis. The assessee was therefore required to credit the amount realised by him by exhibiting the film in the profit and loss account. Hence the deduction is permissible under Rule 9B only if the film has been commercially exploited and an income received. Sub-rule (4) of Rule 9B only permits carrying forward of the cost of acquisition to the next year for the purpose of claiming deduction, which can be claimed only if there is income generated by the film and the same is credited to the books of accounts as provided in the overriding sub-rule at Rule 9B(5). There can be no deduction permissible on the cost of acquisition without generation of income credited in the books of account. The subject films were never commercially exploited and generated absolutely no income.

6. The High Court of Bombay in *Commissioner of Income Tax v. Prakash Pictures*, [2003] 260 ITR 456 (BOM) held thus:-

“Having come to the conclusion that the modified agreement dated March 28, 1978, stood covered by rule 9B, the main question which we have required to decide in this case is whether the assessee was entitled to claim the entire deduction of Rs.4.25 lakhs under rule 9B, during the accounting year ending June 30, 1978, corresponding to assessment year 1979-80. Rule 9B, inter alia, lays down that for computing the profits and gains of the

business of distribution of films, deduction in respect of cost of acquisition shall be allowed in accordance with sub-rule (2) to sub-rule (4). Under sub-rule (4), it is, inter alia, laid down that if during the previous year the distributor does not exhibit the film, no deduction shall be allowed in respect of the cost of acquisition and the entire cost shall be carried forward for the next following previous year and allowed as deduction in that year. In other words, deduction is admissible only qua the receipts credited in the profit and loss account and if there are no receipts credited in that account, on account of failure of the distributor (assessee) to exploit the film then, no deduction was admissible. Rule 9B is, therefore, a special code in the matter of deduction vis-a-vis computation of profits and gains of business of distribution. Sub-rule (5) of rule 9B commences with a non-obstante clause. This sub-rule also makes it clear that the deduction under rule 9B shall not be allowed unless the amounts realised by exhibiting the film are credited in the profit and loss account of the assessee in respect of the year in which the deduction is admissible. This rule, in our view contemplates amortization. Briefly, it contemplates admissibility of deduction proportionate to the income earned/collections made during the year in which deduction is sought, failing which, the true profits may get distorted as in the present case.”

We respectfully agree with the above declaration.

7. It is an admitted case that the feature films were never exhibited and there was no amount credited in the profit and loss account as amount received on exhibition of films. The finding of the Appellate Authority as well as the Tribunal is therefore, to be upheld and we find no reason to interfere and the claim of the

assessee fails. We answer the questions of law in favour of the Revenue and against the assessee. Hence, the Appeal is dismissed.

Sd/-
K. VINOD CHANDRAN
Judge

Sd/-
ASHOK MENON
Judge