

**IN THE INCOME TAX APPELLATE TRIBUNAL
Hyderabad 'B' Bench, Hyderabad**

Before Smt. P. Madhavi Devi, Judicial Member

AND

Shri A. Mohan Alankamony, Accountant Member

ITA No.1505/Hyd/2017		
Assessment Year: 2012-13		
M/s. Asian Theatres Private Limited, Hyderabad PAN:AAFCA0643P (Appellant)	Vs.	Asst. Commissioner of Income Tax, Circle 13(1) Hyderabad (Respondent)
Assessee by:	Sri P. Murali Mohan Rao	
Revenue by:	Sri Solgy Jose T. Kottaram, DR	
Date of hearing:	05/03/2020	
Date of pronouncement:	02/06/2020	

ORDER

Per Smt. P. Madhavi Devi, J.M.

This is assessee's appeal for the A.Y 2012-13 against the order of the CIT (A)- 1, Guntur, dated 20-04-2017.

2. Brief facts of the case are that the assessee company which is into the business of distribution and exhibition of films, filed its return of income for the A.Y 2012-13 on 26.09.2012 admitting a total income of Rs.3,63,09,060/-. The said return was initially processed u/s 143(1) and subsequently was selected for scrutiny under CASS. During the assessment proceedings u/s 143(3) of the Act, the AO observed that the assessee has claimed

“loss on pictures” of a total amount of Rs.19,16.082/-. The assessee had claimed loss on the following movies:

Sl. No.	Movie Name	Amount of Loss Claimed (Rs)	Date of release
1	Micheal Madana Kamaraju	2,00,000	18.04.2008
2	Mithrudu	6,00,000	01.05.2009
3	Snehithudu	2,19,000	27.01.2012
4	Yamadonga	8,97,082	15.08.2007

The AO observed that Rule 9B of I.T. Rules, 1962 specifies the deduction in respect of expenditure on acquisition of distribution rights of feature films and specifies the following two conditions:

- (i) If the film is exhibited for more than 90 days before the end of such previous year, the entire cost of acquisition of film shall be allowed as deduction in computing the profits and gains of such previous year.
- (ii) If the film is not released for exhibition atleast 90 days before the end of such previous year, balance cost of acquisition of the film over and above the amount realized by the distributor, shall be carried forward to the next following previous year and the same shall be allowed as deduction in that year.

He observed that in the case of the assessee, three movies on which the assessee has claimed loss, were released and exhibited on commercial basis for more than 90 days in the relevant previous years i.e. 2008-09, 2009-10 and 2007-08 respectively. Therefore,

according to him, under Rule 9B, the same needs to be allowed in the corresponding assessment years and not in the A.Y 2012-13.

3. With regard to the fourth movie “Snehithudu” released on 27.01.2012, he observed that since it was exhibited for less than 90 days before the end of the previous year, the balance amount shall be carried forward to the next following previous year i.e. 2012-13 (A.Y 2013-14) and shall be allowed as a deduction in that year. He therefore, called for assessee’s explanation.

The assessee claimed that these amounts were written off as bad debts u/s 36 & 37 of the I.T. Act during the relevant previous year. But on perusal of ledger copies of these accounts filed by the assessee, the AO noticed that –

- *Complete ledger copies of these accounts were called for during the scrutiny assessments. In the ledger copies, the amounts corresponding each movie were simply transferred to P&L account on 31.03.2011. The assessee neither claimed these amounts as bad debts nor entered into his books of accounts as bad debts. As the assessee did not declare these amounts as bad debts, the same cannot be written off as bad debts as per the provisions of Sec.36.*
- *Further, Rule-9B is a specific section to allow deduction in respect of expenditure on acquisition of distribution rights. When there is specific section for an expenditure, general section cannot be applied. In view of these facts, the assessee’s objections were not acceptable and these amounts were disallowed and added back to the returned income.*

He therefore, disallowed the claim of expenditure and brought entire sum of Rs.19,16,082/- to tax.

4. Further, the AO also directed the assessee to furnish the bills/vouchers for the expenditure of Rs.26,53,736/- claimed in the P&L A/c. Since the assessee submitted the vouchers which were self-made, the AO held that the said vouchers could not be verified with the expenditure incurred. He therefore, disallowed 1/5th of the expenditure i.e., Rs.5,30,747/- and brought it to tax. Aggrieved, the assessee preferred an appeal before the CIT (A), who confirmed the order of the AO and the assessee is in appeal before us by raising the following grounds of appeal:

"1) The Ld. CIT(A) erred in law and on facts in dismissing the appeal.

2) The Ld.CIT(A) ought to have allowed the expenditure of Rs. 19,16,082/-debited to Profit and Loss account under the head "Loss on Pictures" as per the provisions of section 36(1)(vii) of the Act.

3) The Ld. CIT(A) erred in not allowing the expenditure claimed of Rs. 19,16,082/- by referring to the provisions of Rule 9B of the I.T Rules, 1962.

4) The Ld. CIT(A) ought to have appreciated that the allowance of expenditure under Rule 9B of I.T. Rules, 1962 is not to be misinterpreted and used against the interests of the appellant.

5) The Ld. CIT(A) ought to have appreciated that the loss of Rs. 19,16,082/- represents the refundable advance paid for purchase of picture-rights which had become a bad debt allowable u/ s 36(1)(vii) of the Act.

6) The Ld. CIT(A) ought to have appreciated that both the provisions of Rule 9B of the I.T. Rules, 1962 and the provisions of sec 36(1) (Vii) of the I.T. Act, 1961 are set out for giving relief to the assessee and that they are not to be interpreted in such a way that they are opposite to each other.

7) The Ld. CIT(A) ought to have appreciated that the specific Rule 9 B of I.T. Rules, 1962 which is applicable to cases of Exhibition of movies, is not to be used against the general provisions of section 36(1)(vii) of the Act.

8) The Ld. CIT(A) ought to have deleted the disallowance made on an adhoc basis for Rs.5,30,747/-.

9) The Ld. CIT(A) ought to have appreciated that merely because the expenditure claimed is not supported by pucca bills and is supported by kucha vouchers, the disallowance of the same at a very high percent of the order of 20 % is unreasonable and is not justified.

10) The Ld. CIT(A) ought to have appreciated that, if at all any disallowance is warranted in the appellant's case for the year under consideration on account of non-maintenance of pucca bills for the expenditure claimed, the reasonable disallowance is not to exceed 1 % or 2%.

11) The assessee may add, alter or modify, delete all or any of the grounds at any time before or at the time of hearing of the case”.

5. The learned Counsel for the assessee has filed the written submissions as under:

“The assessee is a Private Limited Company engaged in the business activity of distribution and exhibition of films. For the assessment year 2012-13, the assessee filed its return of income on 26.09.2012 admitting total income of Rs.3,63,09,060/-. In the assessment completed u/s 143(3) of the Act on 08.07.2014, the Assessing Officer determined the total income at Rs.3,87,55,889/- by making the following disallowances:

- i) Disallowance of loss claimed on pictures: Rs.19,16,082
- ii) Disallowance of 1/5th of expenditure claimed under different heads: Rs. 5,30,747

2. Aggrieved by the assessment, the assessee preferred an appeal and it was dismissed by the Ld. CT(A). Hence, the present appeal.

3. The loss claimed of Rs.19,16,082/- is allowable' as bad debts u/s 36(1)(vii) of the Act - [Ground nos.2 to 7] :

It is to submit that the assessee, for the assessment year under consideration, has claimed the loss of Rs.19,16,082/- the details of which have been given at para 3 of the assessment order. For the reasons given in para nos.3 to 3.6 of the assessment order, the Assessing Officer disallowed the same. The Ld. CIT(A) has dealt with this issue at page nosA to 10 of his order and has dismissed the grounds by holding, among other things, that when specific sections/rules are specified for various types of business, they will prevail over the general sections/provisions.

In this connection, it is to submit that the Assessing Officer and the Ld. CIT(A) have relied on the provisions of Rule 9B of the Income Tax Rules, 1962 in support of their view with regard to the dis-allowability of the impugned loss. But the appellant herein, has claimed the impugned loss which represents advances paid for the impugned pictures in earlier years. It is submitted that, the assessee purchases the films from the production house by paying certain amount. The actual price is fixed at the time of release of the movie. The balance amount, if any, is either paid to the producers or recovered from them. In the appellant's case, an amount of Rs.57,52,000/- was paid by the assessee in financial year 2009-10 to M/s. Vijay Bhaskara Productions and an amount of Rs.6,00,000/- was outstanding as at 31.03.2012. The assessee also paid Rs.12,77,000/- in financial year 2009-10 to M/s. Laxmi Narasimha Films and an amount of Rs.2,19,000/- was outstanding as at 31.03.2012.

Similarly Rs.5,10,00,000/- and Rs.1,07,00,000/- were paid to M/s.Viswamithra Creations and M/s. Silver Screen Movies respectively in financial year 2011-12 and Rs.8,97,082/- and Rs.2,00,000/- respectively were outstanding as at 31.03.2012. Thus, the amounts claimed in the table given in para 3 of the assessment order, represent the advances receivable in earlier years for the above said pictures. Out of the amounts paid as advances, the impugned amounts have not been received for a period of more than 3 years and the same are clearly reflected in the ledger accounts submitted as additional evidence vide Paper Book filed on 04.01.2019. These are the recoverable amounts. Since the same have not been received so far, they have been treated as "bad debts" and have been written off in P & L account as "Loss on Pictures". This treatment is in accordance with the provisions of section 36(1)(vii) and 37 of the Act. In this regard, the assessee relies on the decision of Delhi High Court in the case of M/s. Mohan Meakins vs. CIT (348 ITR 109) (Delhi). As detailed above, the impugned amounts represent unrecovered advances which do not represent the expenditure incurred for the films. Therefore, the provisions of Rule-9B of Income Tax Rules 1962, are not applicable to the appellant's case. Since these advances have not been recovered, they are treated as "bad debts" and claimed u/s 36(1)(vii) of the Act. Merely because, these amounts are not exhibited as "bad debts" in P & L account of the year under consideration, they cannot be disallowed. The amount of Rs.19,16,082/- is very much qualified for the claim u/s 36(1)(vii) of the Act. It is an admitted fact that the assessee has incurred the loss which is ascertained during the financial year 2011-12 relevant to the assessment year 2012-13. The fact also remains that the impugned expenditure has not been claimed in any earlier years of account. Since the amounts are not actually received by the assessee, they are treated as "bad debts" and claimed as "Loss on Pictures" as per the provisions of section 36(1)(vii) of the Act which is required to be allowed. In support of this view, the assessee relies on the decision of Delhi High Court in the case of Mis. Mohan Meakins vs. CIT, Delhi, (348 ITR 109) (Delhi).

In the instant case, the Assessing Officer and the Ld. CIT(A) have relied on the provisions of Rule 98 whereas the appellant claims the impugned loss under section 36(1)(vii) of the Act. It is humbly submitted

that the allowance of expenditure under Rule 98 of Income Tax Rules 1962 is not to be misinterpreted and used against the interests of the appellant. The loss of Rs.19,16,082/- represents the refundable advance paid for purchase of picture which has become a bad debt allowable u/s 36(l)(vii) of the Act. It is to submit that both the provisions of Rule 98 of the Income Tax Rules 1962 and the provisions of section 36(1)(vii) of the Act are set out for giving relief to the assessee and that they are not to be interpreted in such a way that they are opposite to each other. The specific Rule 98 of Income Tax Rules 1962 which is applicable to cases of Exhibition of Movies, is not to be used against the general provisions of section 36(1)(vii) of the Act. In such cases, the interpretation has to be construed in a manner beneficial to the assessee as held by the Apex Court in the case of CIT vs. Vegetable Products Limited [1973] 88 ITR 192 (SC).

In view of the submissions it is prayed to allow the grounds of appeal and to delete the disallowance of Rs.19,16,082/-.

4. The ad hoc disallowance of Rs.5,30,747/- towards expenditure claimed under different heads is not warranted - [Ground nos.8, 9 & 10] :

The Assessing Officer vide para 4 of the assessment order disallowed the amount of Rs.5,30,747/- (1/5th of Rs.26,53,736/-) under different heads on the ground that the relevant vouchers/bills were selfmade and that some of the vouchers were unverifiable. The Ld. CIT(A) confirmed the disallowance on the ground that the expenditure was supported by Kucha Vouchers but not by pucca bills. In this connection, it is submitted that the Assessing Officer made the adhoc addition arbitrarily, unreasonably and without identifying as to what amount was found to be not genuine. It may be submitted that the entire expenditure is verifiable, but only some of the vouchers are self-made. This is because, in the line of assessee's business, majority of the expenditure is incurred on manual services from unorganised sectors and individuals. No printed vouchers could be obtained from those persons or services, for the payments made. In that case, the stamped receipts are taken on the assessee's printed receipts/slips, some times, on a white sheet. This itself cannot be taken as though the expenditure is not genuine for making the adhoc and unreasonable disallowance. In this regard, it is also submitted that the assessee is maintaining regular books of account, which are duly audited u/s 44AB of the Act. There was neither a change in the method of accounts nor was there any defect noticed in maintenance of accounts. Therefore, there is no reason to make the estimated disallowance. In this regards the assessee relies on the following decisions:

- i) CIT vs. Vallabhnbhai Gonadhai [2014] 221 Taxmann 385 (Guj.)*
- ii) Tourist India Convention & Hotel Pvt. Ltd., v. DCIT, Central Circle-2 [ITA No.1329/Hyd/2017] (ITAT, Hyderabad)*

Without prejudice to the above submissions, it may be submitted that the Assessing Officer has made the ad hoc disallowance at an exorbitantly high rate of 20% without taking the average expenditure in comparable

cases. It would have been reasonable, if the disallowance is made at 1% or 2%.

As such, the grounds may be allowed and the disallowance of Rs.5,30,747/- may be deleted..

5. In view of the above submissions, it is prayed to allow the appeal”.

He has also filed additional evidence which are copies of the ledger a/c of advances received and written off by the assessee in respect of the four movies on account of which the assessee is claiming loss. The learned Counsel for the assessee reiterated the submissions made by the assessee before the authorities below and submitted that since Sections 36 & 37 of the I.T. Act are general provisions under which the assessee can claim set off of losses, it is to be accordingly allowed. He submitted that the provisions of Rules 9A and 9B are applicable to compute the cost of acquisition of a movie and not with regard to loss incurred by an assessee. Therefore, he submitted that the loss from its business should be allowed to the assessee. With regard to the disallowance of other expenditure on estimation basis, he submitted that the disallowance of 20% of expenditure by the AO is excessive and prayed for restricting the disallowance to 5% of the expenditure.

6. The learned DR was also heard, who relied on the provisions of Rule 9B of I.T.Rules and submitted that where specific provision is there, the same has to be applied as rightly done by the AO and the CIT(A).

7. Having regard to the rival contentions and Rule 9B of the I.T.Rules, we find that the assessee is not claiming the expenditure incurred on the acquisition of movies but the assessee is claiming loss due to non-recovery of advances paid. Rule 9B only provides a method of computing deduction available in respect of expenditure on acquisition of distribution rights of feature films, but does not address the sequence in which deductions are to be allowed. The Hon'ble Delhi High Court in the case of Honey Enterprises Vs. CIT in ITA No.163/2002, dt.08.12.2015 has considered the provisions of Rule 9B and has held as under:

“13. Rule 9B of the Rules has been framed under Section 295 of the Act by the Central Board of Direct Taxes (hereafter 'CBDT') and provides for the deduction in respect of expenditure incurred on acquisition of distribution rights of feature films. Rule 9B(1) of the Rules provides that deduction in respect of cost of acquisition of a feature film shall be allowed in accordance with sub-rule (2) to sub-rule (4) of Rule 9B of the Rules. A plain reading of the explanation to Rule 9B(1) of the Rules indicates that where the rights of exhibition have been acquired on a minimum guarantee basis, the minimum guarantee amount, not being the expenditure incurred by the distributor for preparation of the positive prints of the film and the expenditure incurred by him in connection with the advertisement of the film, would be taken as a cost of acquisition for the purposes of Rule 9B of the Rules. Thus, it has been expressly indicated that the cost of acquisition for the purposes of Rule 9B would not include any publicity expenditure in connection with films or any expenditure incurred for preparation of the positive prints of films. Indisputably, in view of the plain language of Rule 9B, the expenditure incurred on preparation of positive prints of a film cannot be carried forward for amortization in terms of Rule 9B of the Rules as cost of acquisition of distribution rights of that film.

14. In terms of sub-rule (3) of Rule 9B of the Rules, if a film is not released for exhibition on a commercial basis at least 180 days (now amended to 90 days w.e.f. 1st April, 1999) before the end of the relevant previous year, the cost of acquisition of the distribution rights of that film insofar as it does not exceed the amount realized by the film distributor by exhibiting the film on a commercial basis, would be allowed as a deduction in computing the profits and gains for

the relevant previous year. In the facts of the present case, the four films, namely, 'Farishtey', 'Saugandh', 'Patthar ke Phool' and 'Patthar ke Insaan' had not completed a commercial run of 180 days during the preceding financial year, i.e., financial year 1990-91 relevant to the AY 1991-92. Therefore, the Assessee was entitled to a deduction to the extent that the cost of acquisition of the films did not exceed the amount realized by the Assessee from exhibiting the film on a commercial basis and/or sale of rights of exhibition in respect of some of the areas”.

Thus, Rule 9B does not preclude the assessee from claiming the loss on the distribution of feature films in the year in which such loss is incurred by the assessee. We have gone through the copies of the ledger a/c of advances received and written off which are now filed as additional evidence and find that the assessee has incurred loss on the distribution of each of the films which was been claimed by the assessee during the relevant A.Y. The learned Counsel for the assessee had also relied upon the following decisions in support of his contention that loss should be allowed to him in this year:

- a) *Hon'ble High Court of Delhi in the case of Mohan Meakins vs. CIT, 348 ITR 109.*
- b) *Andhra Pradesh High Court in the case of P. Satyanarayana vs. CIT, 116 ITR 803.*
- c) *ITAT Hyderabad in the case of Ushodaya Enterprises in ITA No.1429/Hyd/2008.*
- d) *ITAT Hyderabad in the case of DCIT vs. ECI Engg. & Construction Co. in ITA No.111/Hyd/2014.*
- e) *Hon'ble Supreme Court in the case of CIT vs. Vegetable Products Ltd, 88 ITR 192.*
- f) *Hon'ble Gujarat High Court in the case of CIT vs. Vallabhbbhai Gonadhari, 221 Taxmann.385*
- g) *ITAT Hyderabad in the case of Tourist India Convention & Hotel P Ltd vs. DCIT in ITA No.1329/Hyd/2017.*

8. In the case of P. Satyanarayana vs. CIT (Supra), the Hon'ble High Court was considering the case of a film distributor

who had written off of the balance outstanding with the Producers and the Hon'ble High Court has stated that the loss sustained was in the course of business and incidental thereto and therefore, the trading loss is allowable u/s 28 of the Act. However, this decision is relevant to the A.Y 1969-70 when Rule 9B had not come into the statute book.

9. In the case of Ushodaya Enterprises (Supra) for the A.Y 2004-05, the issue was with regard to write off of bad debts and is not strictly applicable to the case on hand.

10. In the case of ECI Engg. & Construction Co. (Supra), it is the case of bad debts written off by the assessee following the decision of the Hon'ble Supreme Court in the case of TRF Ltd., vs. CIT (323 ITR 397) and it was held that the assessee does not have to establish beyond doubt that the debt had indeed become bad.

11. From the above decisions, it is clear that any debt which has become bad, can be written off as bad debt without having to establish that it has really become bad. In the case before us, the assessee has claimed to incurred Loss due to non-recovery of advances and therefore, claimed it as loss which is not impermissible under the law. However, the additional evidence filed by the assessee needs verification. Therefore, the issue is set aside to the file of AO for *denovo* consideration. The assessee's grounds

of appeal on this issue are accordingly treated as allowed for statistical purposes.

12. As regards the disallowance of expenditure debited to P&L A/c on the ground that it is not supported by pucca bills, we find that the AO has disallowed only 5% of the expenditure and not 20% as alleged by the assessee in its grounds of appeal. Except raising the above grounds, the assessee has not been able to establish as to why 5% disallowance is unreasonable. Therefore, the grounds against this disallowance are rejected.

13. In the result, assessee's appeal is treated as partly allowed for statistical purposes.

Order pronounced in the Open Court on 2nd June, 2020.

Sd/-
(A. MOHAN ALANKAMONY)
ACCOUNTANT MEMBER

Sd/-
(P. MADHAVI DEVI)
JUDICIAL MEMBER

Hyderabad, dated 2nd June, 2020.

Vinodan/sps

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- 5 The DR, ITAT Hyderabad
- 6 Guard File

By Order