

आयकर अपीलीय अधिकरण, 'डी' न्यायपीठ, चेन्नई।
IN THE INCOME TAX APPELLATE TRIBUNAL
'D' BENCH: CHENNAI

श्री एन.आर.एस. गणेशन, न्यायिक सदस्य एवं
श्री एस जयरामन, लेखा सदस्य के समक्ष

BEFORE SHRI N.R.S. GANESAN, JUDICIAL MEMBER AND
SHRI S.JAYARAMAN, ACCOUNTANT MEMBER

आयकर अपील सं./ITA Nos.3131 & 3132/Chny/2018
निर्धारण वर्ष /Assessment Years: 2011-12 & 2014-15

M/s.AVM Productions,
38, Arcot Road,Vadapalani,
Chennai 600 034.

Vs. The Assistant Commissioner of
Income Tax,
Non Corporate Circle 20(1),
Chennai 600 034.

[PAN: AADFA 1418 R]

(अपीलार्थी/Appellant)

(प्रत्यर्थी/Respondent)

अपीलार्थी की ओर से/ Appellant by

: Mr.R.Visvanathan,C.A

प्रत्यर्थी की ओर से /Respondent by

: Mr. AR.V.Srinivasan,JCIT,D.R

सुनवाई की तारीख/Date of Hearing

: 20.02.2020

घोषणा की तारीख /Date of

: 04.03.2020

Pronouncement

आदेश / O R D E R

PER S.JAYARAMAN, ACCOUNTANT MEMBER:

These two appeals filed by the assessee are directed against the separate order of the Commissioner of Income Tax (Appeals)-14, Chennai in ITA No.01/CIT(A)-14/2013-14, dated 29.08.2018 for the

assessment year 2011-12 & I.T.A. No. No.210/CIT(A)-14/2016-17 dated 29.08.2018 for assessment year 2014-15.

2. The sole issue in both the appeals of the assessee is that the Id. CIT(A) has erred in upholding the disallowance of depreciation on compensation paid by the assessee towards easement rights and capitalized along with the cost of construction of the office block.

3. The assessee, M/s.AVM Productions is engaged in the business of production and distribution of feature films, production of TV serials, short films and financing. The assessee filed its returns of income for the assessment years 2011-12 & 2014-15. The returns filed by the assessee was selected for scrutiny and notices under section 143(2) of the Income Tax Act, 1961 ["Act" in short] was issued for both the assessment years. During the course of assessment proceedings, the assessee was asked as to why the depreciation claimed towards easement rights amounting to ₹ 3 crores (A.Y.2011-2) & ₹ 15,14,607(A.Y.2014-15) should not be disallowed. In response, the assessee stated before the Ld. A.O. that the assessee filed appeals before the Hon'ble Jurisdictional High Court for the assessment years 2009-10 & 2010-11 against the Tribunal's decision in favour of Department. The case has been admitted and is pending.

3.1 The Assessing Officer has completed the assessments for the impugned assessment years under section 143(3), inter alia, disallowing

depreciation claimed by the assessee on compensation paid towards easement rights, which was capitalized with cost of construction of the office block for both the assessment years. On appeals, the Id. CIT(A) following his predecessor as well as the decision of the Tribunal in assessee's own case for the earlier assessment years, dismissed the appeals filed by the assessee on identical facts and circumstances.

4. On being aggrieved, the assessee is on appeals before the Tribunal for the above two assessment years. The Id. Counsel for the assessee has submitted that against the order of the Tribunal in assessee's own case for the assessment years 2007-08 and 2008-09, the assessee preferred appeals before the Hon'ble Madras High Court and the case has been admitted in T.C. No. 283 & 284/Mds/2013 and therefore, he pleaded that the disallowance made by the Assessing Officer and confirmed by the Id. CIT(A) may be deleted.

5. Per contra, Ld. D.R. submitted that the learned CIT(A) following the principle of consistency and judicial discipline, has upheld this issue. The Ld. D.R. further relied on the Tribunal decision in assessee's own case for the assessment years 2007-08 and 2008-09.

6. We heard the rival submissions. The relevant portion of the order in I.T.A. Nos.2669,2670 and 2671/Mds./2016 for assessment years 2009-10, 2010-11 & 2012-13 dated 03.03.2017 is extracted as under:-

"We have also perused the order of the Tribunal in assessee's own case for the assessment years 2007-08 & 2008-09 in I.T.A. No. 982 & 983/Mds/2012 dated 05.09.2012, wherein the Coordinate Benches of the Tribunal has observed and held as under:

"9. We have heard both the parties at length and also perused the relevant findings, contents of paper book referred as well as the case law (supra). It transpires that MB had instituted a writ petition against one M. Saravanan (MS) in the Hon'ble Madras High Court alleging therein that the construction sought to be raised on the land in question was unauthorised. We find that in the array of respondents in the petition, the assessee's name nowhere figures out. The other respondents in the Writ Petition are Commissioner, Corporation of Chennai and Member Secretary, Chennai Metropolitan Development Authority. Since copy of injunction order dated 27.4.2006 is also available on record, we further observe that the assessee is nowhere mentioned in the same. Thereafter, the Writ Petition was withdrawn on 8.2.2007 (copy of the above said proceedings are available at page 4 to 8 of the paper book). Then, NB and MS (supra) entered into a compromise on 25.1.2007 wherein MS paid F 3 crores to MB through Bankers Cheque. The Memorandum of Compromise which is available at page 21 to 24 of the paper book reads as under :-

"Now this Memorandum of Compromise Witnesseth as under:

- (1) The MS Group hereby agrees to compensate the MB Group for their loss of easementary rights on account of the MS Group putting up of a construction adjoining the premises and to give up their easementary rights, if any, to enable the MS Group to obtain necessary sanctions/approvals from the statutory authorities in respect of the said construction. The said compensation has been mutually agreed to be a sum of ₹ .3,00,00,000 (Rupees Three Crores only).

- (2) The party of SECOND PART agrees to receive the aforesaid sum of Rupees Three Crores in full quits of all claims of the MB Group against the MS Group in the construction put up by them. The MB Group consequently hereby expresses and confirm their 'No Objection' to the MS Group in obtaining necessary sanctions approvals from the statutory authorities and the Government of Tamilnadu in respect of the subject construction at the B & C Block (delineated in Red in the plan attached to the Annexure to this agreement).
- (3) The aforesaid compensation of F3.00 crores has this day been tendered by MS Group vide Banker's Cheque No.871255 dated 24th January 2007 drawn in favour of M. BALASUBRAMANIAN on Indian Overseas Bank, Kodambakkam, Chennai 600 024 and MB Group hereby agrees to unconditionally withdraw the W.P. No.5670/2006 as well as the Contempt petition No.529/2006 presently pending on the file of the Hon'ble Madras High Court. The aforesaid Demand draft has this day been handed over to the Mediator Mr. L. Suresh of Ananda Films, who will hand over the same to MB Group on receiving the orders in original from the Hon'ble High Court of Madras in confirmation that the above mentioned W.P. No.5670/2006 and Contempt Petition No.526/2006 have been unconditionally withdrawn."

After perusing the terms and conditions of payment as well as mode of payment, it becomes crystal clear that MS had made the payment through cheque and the assessee's name nowhere finds mention. Therefore, once it does not find any mention qua the proof of payment in the terms of compromise note, we are unable to accept the contention that the assessee had made any payment at all to MB. Hence, we are constrained to hold that no payment had been made by the assessee to MB.

10. Without prejudice to our above conclusion regarding payment made by the assessee, even if we accept the claim

that it had made the payment, then also, in our opinion, there is no commercial expediency involved, because as already stated the writ petition was withdrawn much before the terms of compromise (supra). Once the petition was withdrawn, the injunction granted by the Hon'ble High Court immediately stood vacated. Thereafter, there is no justification as to why the assessee in commercial expediency (which is ordinary business prudence) would have made payment of ₹ . 3 crores to MB that too after a period of about 7 months from the date of withdrawal of the petition. Hence, we also hold that there was no commercial expediency involved in assessee making the alleged payment in question. As far as case law cited by the assessee is concerned, we notice that the said precedent of Hon'ble Supreme Court as well as various Hon'ble High Courts do not help the assessee's contentions being distinguishable in view of our discussion as above. Therefore, we see no reason to interfere in the well reasoned findings of the CIT(Appeals). Accordingly, the appeal is dismissed.

11. Since both parties are ad idem with our findings herein above qua ITA No.982/Mds/2012 (supra) also cover the sole issue involved in this case, we dismiss this appeal."

6.1 The Id. Counsel for the assessee has not filed any order of the higher Courts, having modified or reversed the above decision of the Coordinate Benches of the Tribunal in assessee's own case. Just because the Hon'ble Madras High Court has admitted the appeals filed by the assessee, we cannot take a different view in the present appeals filed by the assessee. Hence, respectfully following the above decision of the Tribunal in assessee's own case for earlier assessment years, the appeals filed by the assessee for the assessment years 2009-10, 2010-11 and 2012-13 are dismissed."

Following the Co-ordinate Bench decision, supra, we find merit in the argument of the Ld. D.R. Therefore, the corresponding grounds raised by the assessee are dismissed.

7. In the result, the appeals of the assessee for the assessment years 2011-12 & 2014-15 are dismissed.

Order pronounced on the 04th March,2020 in Chennai.

Sd/-

(एन.आर.एस .गणेशन)

(N.R.S. GANESAN)

न्यायिकसदस्य/Judicial Member

Sd/-

(एस जयरामन)

(S. JAYARAMAN)

लेखा सदस्य/ACCOUNTANT MEMBER

चेन्नई/Chennai,

दिनांक/Dated: 04th March,2020.

K S Sundaram

आदेश की प्रतिलिपि अग्रेषित/**Copy to:**

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|------------------------------|-------------------------|
| 1. अपीलार्थी/Appellant | 4. आयकर आयुक्त/CIT |
| 2. प्रत्यर्थी/Respondent | 5. विभागीय प्रतिनिधि/DR |
| 3. आयकर आयुक्त (अपील)/CIT(A) | 6. गार्ड फाईल/GF |