

(2014) 09 DEL CK 0063**Delhi High Court****Case No:** ITA 501/2014

Commissioner of Income Tax

APPELLANT

Vs

Achila Sabharwal

RESPONDENT

Date of Decision: Sept. 10, 2014**Acts Referred:**

- Income Tax Act, 1961 - Section 260A, 32, 32(1)

Citation: (2015) 279 CTR 305 : (2015) 371 ITR 219**Hon'ble Judges:** V. Kameswar Rao, J; Sanjiv Khanna, J**Bench:** Division Bench**Advocate:** N.P. Sahni, Sr. Standing Counsel and Nitin Gultai, Advocate for the Appellant**Judgement**

Sanjiv Khanna, J.

The present appeal by the revenue pertains to assessment year 2010-11. The respondent assessee had filed return declaring income of Rs.44,65,471 on 14.10.2010 and subsequently the return was taken up for scrutiny assessment. The assessee has claimed depreciation of Rs.1.20 Crores on cinematographic films @ 100%. The assessment order records that the assessee was required to file evidence in the form of copies of agreement entered into with the parties. The Assessing Officer observed that the assessee did not purchase any cinematographic films for consumption but what was purchased were broadcasting/exhibition rights, satellite rights etc. and, therefore, in terms of Section 32 of the Income Tax Act, 1961, depreciation should be allowed @ 25% instead of 100% depreciation as claimed. There is no other discussion in the assessment order, though the assessee had relied upon Rule 9B of the Income Tax Rules, 1962 and had stated that the rights in the feature films were sold to different parties like National Film Development Corporation, Doordarshan at Mumbai, Srinagar, Shimla and Lucknow and the film rights were also sold to other distributors and parties. The Assessing Officer rejected the said contention by recording that the assessee had not fulfilled the necessary conditions of Rule 9B, which obviously had reference to the fact that the

Assessing Officer observed that the assessee did not purchase cinematograph films for her own consumption but they were purchased for broadcasting/exhibition rights, satellite rights etc. As noticed below, this finding of the Assessing Officer for non-application of Rule 9B is wrong and erroneous.

2. The Commissioner of Income Tax (Appeals) accepted the assessee's plea, and after reference to the contention of the respondent assessee observed as under:-

4.1 The facts emanating from the order of the AO and the submissions of the assessee is that the assessee is in business of purchase and sale and distribution of old cinematographic films and songs. The assessee purchases the rights over the films and songs and the same are sold to various parties. During the year the assessee has purchased the rights of the films for Rs. 1,20,00,000/- and the same has been sold during "the year and the assessee has claimed depreciation/deduction @ 1000/0 (Sic 100%) as the cost of acquisition under Rule 9B(2). The AO has allowed the depreciation u/s 32(1) @ 25% only after treating the commercial rights as intangible assets and accordingly, the AO has allowed the depreciation @ 25% of Rs. 30,00,000/- and has disallowed the balance depreciation/deduction of Rs. 90,00,000/- (Rs 1,20,00,000/- (-) Rs. 30,00,000/-) vide the order of the AO.

4.2 XXXXXX "

4.3 I have considered the order of the AO and the submissions of the assessee and I find considerable merit in the submission of the assessee that in the case of purchase and sale of cinematographic films and songs etc the provisions of Rule 9B is applicable and the assessee is eligible to claim the deduction of the entire cost of purchase if the films are sold in the same year. In the present case, the assessee had made the purchase of Rs. 1,20,00,000/- and the entire films has been sold as discussed above and as such the assessee is eligible for full deduction @ 100% as provided under Rule 9B(2). After considering all the case facts and circumstances of the case, I am of the view that there is no merit in the addition made by the AO and as such the addition made by the AO are without any justification and accordingly, the same are deleted.

3. The said finding has been affirmed by the Income Tax Appellate Tribunal by the impugned order dated 24.01.2014.

4. Before us, learned Sr. Standing Counsel has produced photocopies of order sheet, profit and loss account, balance sheet etc. of the respondent assessee and a new factual plea is raised that the assessee may not have sold the films during the year in question. It is also stated that Rule 9B would not be applicable, if conditions of sub Rule 5 were not satisfied. It is accordingly submitted that if the assessee had not sold or transferred the rights of exhibition of films etc., benefit under Rule 9B(2) would not be applicable.

5. We find that the aforesaid plea cannot be and should not be permitted to be raised in an appeal u/s 260A of the Income Tax Act, 1961 for the first time as it requires examination and verification of fact before any legal opinion can be formed. As noticed above, the Assessing Officer had proceeded altogether on a different basis. Before the Tribunal also, where revenue was the appellant, no such submission was raised and made.

6. The Commissioner of Income Tax (Appeals) in his order has specifically noted and recorded that the films were sold. He has also recorded that films had been sold to different Doordarshan Kendras as also to National Film Development Authority, which are independent third parties and not closely related to the respondent assessee. These were also sales to other parties. There is no finding in the assessment order that the purchase and sale had not taken place and, therefore, Rule 9B(2)(a) relied upon by the assessee was not applicable. The Assessing Officer did not dispute the contention of the respondent assessee that the exhibition rights in the films were purchased during the year and also sold. On the other hand as noticed above, the Assessing Officer took a very narrow view on the term "distribution rights" and held that exhibition rights, television rights or satellite rights cannot be treated as distribution rights. We do not agree with the said view as what was purchased and sold by the respondent assessee were the "distribution rights". The said right would include and consist of acquisition and transfer of rights to exhibit, broadcast and satellite rights. These rights are integral and form and represent rights of a film distributor. Even otherwise, if Rule 9B would not be applicable, purchase and sale of the film would result in a business transaction i.e. sale consideration received less purchase price paid.

7. The appeal is accordingly dismissed.