

**IN THE INCOME TAX APPELLATE TRIBUNAL
HYDERABAD BENCH "A", HYDERABAD**

**BEFORE SMT P. MADHAVI DEVI, JUDICIAL MEMBER
AND SHRI S. RIFAUR RAHMAN, ACCOUNTANT MEMBER**

**ITA No. 1806/Hyd/2017
Assessment Year: 2014-15**

Dy. Commissioner of Income-
tax, Circle – 16(1), Hyderabad.

vs. Eenadu Television Pvt. Ltd.,
Hyderabad.

PAN – AACCM 7226 P

(Appellant)

(Respondent)

Assessee by : Shri Rajeev Ranka
Revenue by : Shri V. Siva Kumar

Date of hearing : 10/04/2018
Date of pronouncement : 13/04/2018

ORDER

PER S. RIFAUR RAHMAN, A.M.:

This appeal filed by the revenue is directed against the order dated 04/08/2017 of CIT(A) – 4, Hyderabad for AY 2014-15 wherein the revenue has raised the following grounds of appeal:

"1. The CIT (A) erred in deleting the disallowance of cost of Production of TV serials and programmers of Rs. 50,03,09,683/- claimed as revenue expenditure.

2. The CIT (A) erred in ignoring the fact that Revenue's appeal on identical issue in the assessee's own case for A.Y. 2011-12 is pending adjudication by the Hon'ble High Court.

3. The CIT (A) erred in allowing depreciation of Rs. 14,07,72,573/- on Film Software Library @ 25% by treating it as an intangible asset.

4. *The CIT(A) erred in ignoring the fact that Revenue's appeal on identical issue in the assessee's own case for A.Y. 2011-12 is pending adjudication by the Hon'ble High Court.*

5. *Any other ground that may be urged at the time of hearing.*

2. As regards ground Nos. 1 & 2 regarding disallowance of cost of production on TV Serials and programs of Rs. 50,03,09,683, the AO observed that the assessee company debited an amount of Rs. 66,70,79,577/- towards cost of production of TV serials and programs and this expenditure relates to the year under consideration. Further, he observed that instead of claiming depreciation, the entire expenditure was claimed as revenue expenditure and debited to P&L a/c. The cost of production of TV serials and programs was not covered under Rule 9A or Rule 9B. In view of the observations, AO considered the programs as intangible assets of the company and allowed the depreciation @ 25% on the said expenditure.

3. Aggrieved, the assessee preferred an appeal before the CIT(A). The CIT(A) after considering the submissions of the assessee, which were extracted at page 5 of his order, allowed the assessee's ground by following the decision of ITAT in assessee's own case for AY 2011-12 in ITA No. 760/Hyd/2015 vide order dated 13/05/2016.

4. Aggrieved by the order of CIT(A), the revenue is in appeal before us.

5. Considered the rival submissions and perused the material on record. Similar issue came up for consideration before the ITAT, Hyderabad in assessee's own case for AY 2012-13 in ITA No. 1245/Hyd/2016, order dated 09/08/2017 wherein the coordinate bench has held as under:

"8. The learned Counsel for the assessee submitted that this issue had arisen in the case of M/s. Prism Television (P) Ltd also in the case cited Supra wherein the Coordinate Bench of this Tribunal has considered the issue at length

and has allowed the assessee's ground of appeal. The relevant portion is reproduced hereunder for the sake of clarity and ready reference:

"9. Having regard to the rival contentions and the material on record, we find that the 'A' Bench of this Tribunal at Chennai in the case of ACIT, Media Circle-II, Chennai vs. M/s. Sun TV Network Ltd., Chennai in ITA.Nos.1515 to 1520/Mds/2013 by its order dated 31.10.2013 has held as under :

"8. Now, we take up the common issue involved in all the appeals. The assessee is in the business of running satellite television channels. These channels telecast films, serials etc., through satellite channels. The rights over these films are purchased from the producers of the respective films for broadcasting through satellite television. These rights come with an embargo that the films shall not be broadcasted or aired for a specified period from the date of release in theatres depending upon the success at the box office and other factors. Till the time, such films are broadcasted, they are to be treated as stock in trade. Once the films are broadcasted, the purchase value of the films is written-off. The expenditure on purchase of films is claimed in the first year itself. The assessee has got only satellite telecasting rights and has no universal rights for airing the films or serials. Once the film or the serial is aired, its value is diminished in subsequent telecasts. The assessee earns substantial revenue in the first telecast itself. In repeat telecast, the assessee is able to generate marginal revenue. Whatever income is earned from the subsequent telecasts is offered as income without claiming any expenditure.

The assessee also generates revenue from broadcasting serials through satellite channels. The assessee gets revenue from production and broadcasting serials on the lines of feature films, the rights of broadcasting such serials are also treated as stock in trade till the time they are aired and the expenses are debited to the Profit & Loss account. The assessee treats the films and the serials at par and applied the provisions of Rule 9A and 98 of the Income Tax Rules, as are applicable in case of films on serials as well.

On the other hand, the contention of the Revenue is that the film and serial broadcasting rights acquired by assessee are perpetual in nature. After first telecast, the assessee does not discard the films but carefully store the same in digital library for airing the same again. Therefore, the assessee gets enduring benefit from the rights acquired in films and serials and they do not expire on the date of first telecast as contemplated by the assessee. The rights are intangible assets within the meaning of Explanation (iii) to [Section 32](#) and do not fall

within the purview of [Section 37\(1\)](#). The assessee is entitled to claim depreciation on same.

9. The issue of amortization of cost of movie and serial rights, programme production expenses, consumable and media expenses by treating them as intangible assets u/s.32(1)(ii) has been dealt in detail by the CIT (Appeals) in his order dated 23-02-2013 relevant to the A Y. 2006-07 and 2007-08. We fully agree with the detailed findings and the reasoning given by the CIT(Appeals) in his order allowing this ground of appeal of the assessee. For the sake of brevity, we are not reproducing the findings of CIT (Appeals) in accordance with the judgment of the Hon'ble Supreme Court of India in the case of CIT Vs. K. Y. Pillah & Sons reported as 63 ITR 411 subsequently followed by the Hon'ble Delhi High Court in the case of CIT Vs. Global Vantage (P) Ltd., reported as 354 ITR 21 (Del). The Id. DR has not been able to controvert the well reasoned order of the CIT (Appeals) on the issue. Accordingly, the findings of the CIT (Appeals) on the issue are affirmed and this ground of appeal of the Revenue in respect of all the AYs is dismissed."

9.1. In the case of Zee Media Corporation Ltd., (Formerly known Zee News Limited), Mumbai vs. DCIT, Circle-7(3), Mumbai, the 'G' Bench of Tribunal at Mumbai in ITA.No.1590/Mum/2015 by order dated 12.08.2015 has held as under :

"25. We have heard both the parties and perused the orders of the Revenue Authorities as well as the cited precedents and paper book filed before us. The case of the assessee on the merits is that the assessee has a method of valuation of the news items/non fictional in nature, TV programs and the film rights. The details are given in the aforementioned 'Note No 7' to the financial statements. According to the same, while the news items purchased are debited to the P and L account as they do not have the repeat telecast value, other items like the TV program and the film rights constitutes 'current assets', which are amortised over the years and the period of such amortization is given in the said Note. Per contra, the case of the revenue on these issues is that these items constitute 'intangible depreciable capital assets' and provisions of section 32 of the Act apply. Considering the same, we shall now undertake to discuss the item wise adjudication as follows.

a. On the debits relating to the purchases of the News items: Regarding the nature of the news items purchased by the assessee and debited to the P and L account, we find it is in the common knowledge of every citizen that the news items do not have enduring benefit. Normally, the news items/non fictional items purchased by the assessee lose its value once they are telecast. Therefore, such items do not have repeat telecast value in terms of the revenue generation by way of advertisement from the sponsors. As such, it is a settled

issue at the level of Hon'ble Delhi High Court in the case of Television Eighteen India Ltd (supra) that the claims of the assessee relating to news/non-fictional items are allowable. Even otherwise, even if some income generated, that is not criterion for describing the items as 'intangible assets' for the purpose of invoking the provisions of [section 32\(ii\)](#) of the Act. We rely on the above referred Delhi High Court's Judgment in the case of Television Eighteen India Ltd (supra). Further, we find that the assessee has a declared method of accounting relating to accounting of these transactions. He has been consistently following the same without any change. In fact, the Revenue has consistently allowed the claim in the past. This is for the first time, AO disturbed the claim of the assessee and invoked the provisions of [section 32 \(ii\)](#) of the Act, without any sustainable reasoning. Therefore, considering all the points mentioned above, we are of the firm opinion that the decision of the AO/CIT(A) is unsustainable legally. Hence, the assessee is entitled to claim the purchases of news items/non-fictional items as an allowable expenditure. Accordingly, we direct the AO to delete the relevant addition.

b. On the debits relating to the purchases of the TV Programs/Film rights: Assessee amortised the 'inventories' as per the method of accounting consistently followed by him over the years. In fact, the Revenue has consistently allowed the claim in the past. This is for the first time, AO disturbed the claim of the assessee and invoked the provisions of [section 32 \(ii\)](#) of the Act without any sustainable reasoning. We have perused the judgment of Hon'ble High Court of Delhi and the order of the Tribunal of Chennai Bench in the case of M/s Sun TV Networks Ltd (supra). We have also extracted the relevant paragraphs and already placed in this order above. We find similar issue of amortization of the TV Programs/Film rights came up before the Chennai Bench of the Tribunal wherein the issue was decided in favour of the assessee and rejected the AD's proposal to invoke the provisions of [section 32\(ii\)](#) of the Act in respect of the above programs/rights. As such, the Ld DR's argument on the applicability of the AS-26 to the TV Programs and Film rights is not supported by any precedents and therefore, the arguments raised by the Revenue are not allowed. Thus, considering the covered nature of the issue as well as the consistent method of accounting followed by the assessee in this regard and also in the absence of any contrary material to support the arguments of the Revenue against the assessee's claim, we are of the opinion that the decision taken by the CIT (A) in the impugned order is required to be reversed. Accordingly, Ground nos. 2 and 3 raised by the assessee are allowed.

9.2. In coming to this conclusion, the Tribunal has followed the judgment of the Hon'ble Delhi High Court in the case of [CIT vs. Television Eighteen India Limited](#) reported in (2014) 364 ITR 597

(Del.). The relevant portion of the judgment of the Hon'ble Delhi High Court is reproduced as under :

"The revenue has preferred this appeal claiming to be aggrieved by an order of the Income Tax Appellant Tribunal (ITAT) dated 17.03.2006. The question of law framed in this case is:-

(i) Whether the Income Tax Appellate Tribunal was right in holding that the entire expenditure incurred by the assessee on production of programmes which became part of news archives should be allowed as a revenue expense under [Section 37](#) of the Income Tax Act, 1961 and should not be treated as incurred for creating a capital asset?

The assessee, at the relevant time, was in the business of television programme production. The assessee reflected Rs.88,83,128/- being 10% of the total expenditure incurred by it as value of "news archives" under the head of fixed assets. In the return filed by the assessee for the Assessment Year 1997, the said amount was claimed as revenue expenditure. According to the assessee this expenditure was allocated for the creation of "news archives", which comprised of its published or telecasted programmes. The AO capitalised this amount holding that the expenditure led to creation of an asset of enduring advantage. The CIT (Appeals) on appeal, however, reversed the findings of the AO. It was noticed that the news archives were not in the nature of plant or income generating apparatus but part of the product. It was also held that the unavailability of any objective basis, to quantify with any degree of accuracy future revenue that were likely to be generated and the proportionate cost of production that could be deferred, led to the conclusion that the 10% of the total expenditure earmarked for creation of "news archives" could not be treated as a capital expenditure.

On the revenue's appeal, the ITAT held as follows:-

"12. It is admitted that no separate account was maintained wherein any expenditure was debited which could be earmarked towards creation of News Archives library. The assessee felt a part of footage of the news based on programmes produced has repeat value which could be used for the production of programme in future. The assessee, therefore, estimated 10% expenditure incurred as reasonable to be attributable to the News Archives library. The assessee has been engaged in the production of such programmes since assessment year 1994-95 and all along the cost of production of such expenditure has been treated as revenue expenditure and also allowed by the Department. Learned A.R. has referred to judgment of Hon'ble Supreme Court in the case of [Alembic Chemical Works Ltd. vs. CIT 177 ITR 377](#) which laid down that what is capital expenditure and what is revenue are not eternal verities but must needs to be

flexible so as to respond to the changing economic realities of business. Viewed in that perspective, we are of the opinion that the estimated value assigned to the News Archives cannot be treated to be an expenditure incurred in the capital field. We, therefore, uphold the order of CIT (A) on this ground.

In this case, there is no dispute that the data base of the programmes which are utilised for the creation of "news archives" belonged to the assessee. The future likelihood of these resources being a possible source of revenue, cannot in the opinion of this Court justify its inclusion in the capital stream. Furthermore, this Court notices that the expenditure i.e. 10% Rs.88,83,128/- is a part of the entire total expenditure incurred by the assessee which is concededly treated as revenue, even otherwise.

In view of the above discussions, this Court is of the opinion that the question of law framed is answered in favour of the assessee and against the revenue.

The appeal is dismissed."

9.3. Thus, it is seen that the issue is fairly covered in favour of the assessee by the above decision and the A.O. is directed to treat the expenditure incurred by the assessee on cost of production of TV programmes as revenue expenditure. This ground of appeal of the assessee is accordingly allowed.

Following the said decision, we uphold the decision of the CIT(A) and dismiss the grounds raised by the revenue on this issue.

6. As regards ground Nos. 3 & 4, the facts are, the business activity of the assessee company is satellite television broadcasting and claimed depreciation of Rs. 19,52,90,820/- on opening WDV (Rs. 78,11,63,278) of Film Software Library @ 25% stating the same as intangible asset. Whereas the AO followed various case law and allowed the depreciation @ 15% on the ground that business of satellite television broad casting and the film software library forms an important apparatus of its business which squarely fall within the definition of 'Plant & Machinery' and hence, depreciation allowable is only 15%. Accordingly AO reworked the depreciation and the excess depreciation claimed amounting to Rs. 14,07,72,573/- (Rs. 19,52,90,820 – 5,45,18,247) was disallowed.

7. The CIT(A) after considering the submissions of the assessee, allowed the depreciation claim @ 25% as claimed by the assessee following the decision of ITAT in assessee's own case for AY 2011-12.

8. Aggrieved, the revenue is in appeal before us.

9. Considered the rival submissions and perused the material on record. In AY 2012-13 in assessee's own case (supra) on similar issue against the revenue appeal (ITA No. 1389/Hyd/2016) has held as under:

14. Coming to the Revenue's appeal the only ground raised by the Revenue is against the direction of the CIT (A) in allowing depreciation on the film software library at 25% treating it as an intangible asset. We find that this issue is covered in favour of the assessee by the decision of the ITAT in the case of M/s. Ushodaya Enterprises (P) Ltd in ITA No.760/Hyd/2015 wherein the Tribunal has remanded the issue to the file of the AO to examine the issue of valuation of the asset and thereafter to allow depreciation @ 25% treating the software library as an intangible asset. We find that the CIT (A) has only followed the direction of the ITAT in holding that, subject to the revaluation of the asset, the depreciation is to be allowed at 25% as claimed by the assessee. Therefore, we see no reason to interfere with the order of the CIT (A) on this issue.

As the issue under consideration is materially identical to AY 2012-13, following the decision therein, we uphold the order of CIT(A) and dismiss the grounds raised by the revenue.

10. In the result, appeal of the revenue is dismissed.

Pronounced in the open Court on 13th April, 2018.

Sd/-

(P. MADHAVI DEVI)
JUDICIAL MEMBER

Sd/-

(S. RIFAUR RAHMAN)
ACCOUNTANT MEMBER

Hyderabad, Dated: 13th April, 2018

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Copy to:-

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- 3) CIT(A) – 4, Hyderabad.
- 4) Pr. CIT - 4, Hyd.
- 5) The Departmental Representative I.T.A.T., Hyderabad.
- 6) Guard File