

Exp. incurred by Dharma Productions on publicity of film after getting censor board certification allowed u/s 37

Summary – The High Court of Bombay in a recent case of Dharma Productions (P.) Ltd., (the Assessee) held that where assessee was engaged in business of production and distribution of films, cost of prints as well as publicity and advertisement incurred after production as well as their certification by Censor Board, same would not be governed by Rule 9A, same would be allowable as business expenditure under section 37(1)

Facts

- The assessee was engaged in business of production and distribution of feature films. The assessee claimed expenditure incurred for positive prints of feature film and further expenditure on account of advertisement.
- The Assessing Officer noticed that these expenditures were incurred by the assessee after issuance of certificate of Censor Board and, hence, he disallowed the assessee's claim holding that such expenditure was not allowable deduction in terms of rule 9A and rule 9B.
- On appeals, the Commissioner (Appeals), confirmed the disallowance stating that any expenditure which was not allowable under rule 9A could not be granted in terms of section 37; thus, he held that the expenditure on the prints and publicity expenses are neither allowable under rule 9A nor under section 37.
- On second appeal, the Tribunal by impugned judgment allowed the assessee's claim.
- On the revenue's appeal to the High Court:

Held

- Sub-rule (1) of rule 9A provides that in computing the profits and gains of the business of production of feature film, the deduction in respect of the cost of production of a feature film certified for release by the Board of Film Censors in a previous year would be allowed in accordance with the provisions of sub-rule (2) to sub-rule (4).
- Clause (ii) of Explanation to sub-rule (1) explains the term 'cost of production' in relation to feature film as to mean expenditure incurred for preparation of the film but excluding (a) expenditure incurred in preparing positive prints and (b) expenditure incurred in connection with advertisement of the film after it is certified for release by the Board of Film Censors. The sub-rules (2) to (4) of rule 9A makes special provisions for deduction in respect of profits and gains of the business of production of feature film. For example, in terms of sub-rule (2) of rule 9A, where a feature film is certified for release by the Board of Film Censors in any previous year and in such previous year, the film producer sells all rights of exhibition of the film, the entire cost of production of the film shall be

allowed as a deduction in computing the profits and gains of such previous year. However, for the film producer either himself exhibits the film on a commercial basis or sells the rights of exhibition of the film in respect of some of the areas or he himself exhibits the film in certain areas and sells the rights in the rest and the film is released for exhibition at least 90 days before the end of such previous year, the cost of production of the feature film will be allowed as a deduction in computing the profits and gains of such previous year. As per sub-rule (3) of rule 9A, if the feature film is not released for exhibition on commercial basis at least 90 days before the end of previous year, a different formula for allowing the cost of production would apply. These provisions thus make special scheme for deduction for cost of production in relation to the business of production of feature films. One thing to be noted is that no part of the cost of production as defined in clause (ii) of *Explanation* to sub-rule (1) is to be denied to the assessee permanently. It is only to be deferred to the next assessment year under certain circumstances.

- All these provisions would necessarily be applied in relation to the cost of production of a feature film. In other words, if a certain expenditure is claimed by the assessee by way of business expenditure, which does not form part of cost of production of a feature film, rule 9A would have no applicability. In such a situation, the assessee's claim of expenditure would be governed by the provisions of the Act. If the assessee satisfies the requirements of section 37, there is no reason why such expenditure should not be allowed as business expenditure. To put it differently, the expenditure that would be governed by rule 9A of the Rules, would only be which is in respect of the production of the feature film.
- In the instant case, the cost of print and the cost of publicity and advertisement (which was incurred after the production and certification of the film by the Censor Board) are under consideration. These costs fail to satisfy the description 'expenditure in respect of cost of production of feature film'. The term 'cost of production' defined for the purpose of this rule specifically excludes the expenditure for positive print and cost of advertisement incurred after certification by the Board of Film Censors. What would therefore, be governed by the formula provided under rule 9A is the cost of production minus these costs. The Legislature never intended that those costs which are in the nature of business expenditure but are not governed by rule 9A due to the definition of cost of production are not to be granted as business expenditure. In other words, if the cost is cost of production of the feature film, it would be governed by rule 9A. If it is not it would be governed by the provisions of the Act. The Commissioner was, therefore, wholly wrong in holding that the expenditures in question were covered under rule 9A and therefore, not allowable. The Tribunal was correct in coming to the conclusion that such expenditure did not fall within the purview of rule 9A and therefore, the assessee's claim of deduction was governed by section 37.
- The Madras High Court in case of *CIT v. Prasad Productions (P.) Ltd.* [\[1989\] 179 ITR 147/45 Taxman 95](#) has held that in view of *Explanation* (ii)(a) to rule 9A(1), the expenditure incurred for the preparation of the positive prints of the film could not be included within the expression 'cost of production'. The production and exhibition of film constitutes two different and separate stages.

Therefore, any expenditure in connection with the preparation of the positive prints for the purpose of exhibition would really be a post production expenditure an item of expenditure in relation to the business of production and exhibition of films and, therefore, would qualify for deduction as expenditure laid out wholly and exclusively for the purpose of business.

- Under these circumstances, there was no error in the view of the Tribunal. Even if the Commissioner's contention that the expenditure would fall within rule 9A has to be accepted, there would be no implication of the assessee's tax liability, since in the instant case, the feature film was exhibited long before the completion of 90 days period before the end of financial year. Even as per rule 9A, such expenditure was otherwise allowable. Be that as it may, on interpretation of the relevant statutory provisions, the Tribunal is absolutely correct. Hence, both the appeals are to be dismissed.