

A tale of Lights, Camera and Taxation!

JUNE 24, 2009

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THE entertainment sector has witnessed rapid changes in recent times with large investments in film and serial production and mushrooming of production companies in India. Banks started financing film projects and insurance companies started providing insurance cover to films against any loss caused during the shooting of the film. Film producers got the necessary cover and impetus to invest more. India soon became a production friendly destination and attracted several foreign collaborations.Â

With more investments and churning of money, the tax liability of producers increased substantially. However, there are certain provisions under taxation laws of India that allows the producers of a cinematographic film to make certain deduction while calculating their taxable income. The present article discusses the taxation issues in the evergreen movie business, the specific permissible deductions, and how film producers may strategize the release of their film in order to avail maximum tax benefits.Â

Submissions to be made by producers

The producer(s) of any cinematograph film is required to furnish a statement to the to the tax authorities with details of all payments in excess of INR 50,000 made by him or due from him to any person engaged by him in the production of film. Section 285B of the Income Tax Act, 1961 (“**Act**”) read with rule 121A of the Income tax Rules, 1962 (“**Rules**”) holds the producer entirely responsible to furnish the statement, which has to be delivered within the prescribed period of 30 days from the end of the financial year during which production of the film is carried on or within 30 days from the date of completion of the production of the film, whichever is earlier. Non-compliance of the said provision attracts a penalty of INR 100 for each day of default.

Deductions permissible on production of a film

Cost of production, as defined in rule 9A of Rules refers to all expenditure incurred on the production of the film except any expenditure incurred on positive prints of the film and in connection with the advertisement of a film after it is certified for release by the censor board. Remuneration paid in kind to actors or any other member of the production is also added while computing the cost of production. However, any subsidy received by the producer from the government is allowed to be deducted at the time of computation.

Rule 9A does not have any overriding effect on other provisions of the Act or Rules. Expenditures that cannot be deducted under Rule 9A can be deducted under section 37 of the Act. If the producer incurs loss due to the film getting abandoned, such loss may be deducted as a business loss. The subsidies that are received by the producer(s) are taxed as revenue receipts. (*Madras High Court in B. Nagi Reddy v. CIT {(1993) 199 ITR 451}*) . This position was upheld by the Supreme Court in *Sahney Steel & Press Work Ltd v. CIT, Hyderabad (2002-TIOL-11-SC-IT)* wherein it was held that subsidy received to assist in carrying trade or business is “revenue” and taxable as revenue receipts. Preference should be given to other provisions of the Act while computing deductions. Related party payments and statutory payments can also be deducted subject to section 40(A)(2) and 43B respectively.

Subject to the aforesaid, the entire cost of production can be allowed as a deduction while computing profits and gains. This is possible if in the previous year,

- (a)Â the feature film is exhibited on a commercial basis by the producer(s) in some or all areas;
- (b)Â if he sells the rights of exhibition in some or all areas; or
- (c)Â if he does both, and the film is released for exhibition on a commercial basis 90 days before the end of such previous year.

In case the film is not released for exhibition on a commercial basis 90 days before the end of the previous year, the cost of production, as long as it does not exceed the amount realized by the film producer(s) by exhibiting the film on a commercial basis or the amount for which the producer(s) sells the right to exhibit a film on a commercial basis, will be allowed as deduction while computing the profits and gains of the previous year. In case there is any balance, it

will be carried forward to the next previous year as deduction in that year. If the film is not exhibited on a commercial basis, no deduction will be allowed and the entire cost will then be carried forward to the next following previous year and allowed as deduction.

It is also pertinent to note the meaning of “exhibition on a commercial basis” which has evolved through various judicial pronouncements. The Income Tax Appellate Tribunal in *Vieshesh Films Pvt. Ltd v. Deputy CIT, Mumbai*, order dated August 27, 2008, held that since no mode of exhibition is prescribed under rule 9A of the Rules, an exhibition of films on television on a commercial basis will also fall within the scope of rule 9A.

Lucrative option for foreign players

India is considered a very “production friendly” place for producers from all over the globe. In India no income is deemed to accrue from the shooting of a feature film if the producer(s) is a non-resident Indian who is also not a citizen of India. In case the producer is a firm or a company, no income will deem to accrue if there is no partner or shareholder in the firm and company respectively, who is an Indian resident or citizen. Further, if a foreign company hired an agent in India to carry out its activities and the agent in India is remunerated at arms length, no tax liability will arise against the foreign company (Supreme Court in *DIT (International Taxation), Mumbai v. Morgan Stanley &C. Inc.* ([2007-TIOL-125-SC-IT](#))).

Conclusion

Most producers are careful and keep in mind their tax liability while assessing simple things like date of production, remuneration in kind, licence fee paid to radio channels, etc. With a lot of foreign production houses coming to India and entering into contractual arrangements with Indian producers, the aspect of tax liability assumes a lot more significance. The dynamics of film production has undergone a great change in India and with heightened tax liabilities, the producers are required to be just more cautious and vigilant to take best advantage of the existing tax laws.Â

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