

IN THE INCOME TAX APPELLATE TRIBUNAL
"E" BENCH, MUMBAI
BEFORE SHRI PAWAN SINGH, JUDICIAL MEMBER&
SMT.RENU JAUHRI, ACCOUNTANT MEMBER
ITA No. 3204/MUM/2025 (AY: 2016-17)
(Physical hearing)

Assistant Commissioner of Income-tax-16(1) Room No. 439, 4 th Floor, Aayakar Bhavan, M.K. Road, Mumbai – 400020]	Vs	Eagle Films, 220 Famous Cine Building, Dr. E Moses Road, Mahalaxmi, Mumbai-400 011 PAN: AAAFE3147N
Appellant / Revenue		Respondent / Assessee

Assessee by	Shri Prakash Jotwani, Advocate
Revenue by	Shri Ritesh Mishra, CIT-DR
Date of Institution	06.05.2025
Date of hearing	25.08.2025
Date of pronouncement	24.09.2025

Order under section 254(1) of Income Tax Act

PER PAWAN SINGH, JUDICIAL MEMBER;

1. This appeal by revenue is directed against the order of Id. CIT(A) / NFAC dated 05.02.2025 for A.Y. 2017-18. The revenue in its appeal has raised following grounds of appeal:

"1. Whether on facts and Circumstances of the case and in law, the Hon'ble CIT(A) is right in ignoring the fact that assessee is in the business of producing and distributing film and therefore sum so received from selling films rights shall be treated as 'Business Income'?

2. Whether on facts and circumstances of the case and in law, the Hon'ble CIT(A) is correct in directing the AO to treat the sum so received of Rs. 14,11,22,957/- after selling of film rights to Red chillies entertainment private limited as 'Capital gains' instead of 'Business Income', ignoring the fact that assessee has not acquired any such right from any other producer or person and therefore cannot treat such rights as an investment and hence no question of considering the income as Capital gains?

3. Whether on facts and Circumstances of the case and in law, the Hon'ble CIT(A) is correct in not considering the fact that the assessee has carried out

the same activity of selling film rights in preceding years and shown profit earned from such sale as 'Business Income' then on what rationality the instant case is treated differently?"

2. The brief facts of the case are that the assessee is firm, engaged in production and distribution of films filed its return of income for A.Y. 2017-18 on 30th July, 2017, declaring income of Rs.16.33 crores. In the computation of income, the assessee has shown income from House Property, Business income, capital gain and Income from other sources. Case was selected for scrutiny. During the assessment, the Assessing Officer noted that assessee has shown 'capital gain' of Rs.14.11 crores on sale of films' rights to Red Chillies Entertainment Private Limited. The Assessing Officer doubted the taxability of surplus on sale of rights in films as to whether it is 'business income' or 'capital gain'. The Assessing Officer, on recording factual background of assessee, noted that assessee is a partnership firm and has been engaged in business of production of cinematographic films, since many years. The assessee had produced 31 feature films and held right, title and interest in such films. On 20th April, 2016, the assessee, by way of Assignment Agreement, the assessee assigned all their rights, title and interest in all 31 films to Red Chillies Entertainment Private Limited. The rights narrated in agreement included all the present and future rights in the assigned films including exploitation of rights, intellectual property rights and derivative rights. The Assessing Officer issued the show cause notice to justify such taxability under the head 'Capital Gains' vide notice dated 10/12/2019. The extract of show cause notice is recorded at paragraph 4.4.

of assessment order. The assessee replied to the said show cause notice. The reply of the assessee is summarised by the Assessing Officer at paragraph 4.4.1 of assessment order. The assessee stated that film rights were capital asset as defined in section 2(14) of the Act. The film rights were intangible assets within the meaning of section 55(2)(a) of the Act. Such rights were received by closure. The assessee was holding exclusive copyright on all these films. On sale of such rights, the assessee has deprived itself of any earning in the subsequent years. The sale of such right is taxable as Long Term Capital gain. The reply of the assessee was not accepted by Assessing Officer. The Assessing Officer was of the view that income from exploitation; distribution and execution of these films in preceding years were admittedly a business income. The key difference between the income received from the very same films in preceding years in comparison with current year, the film rights were accepted for certain period, whereas in the current year, exploitation is for indefinite period. Had the assessee sold these films in year on first sale itself on perpetual basis, the entire proceeds received on sale of such film offered to tax as the business income as per assessee's own logic or methodology. The amount received during the year is nothing but overflow or extended profit from the exploitation of very same film. The change in the treatment of current year profit on sale of films to Red Chillies Entertainment Private Limited is not in accordance with law and is not admissible. The Assessing Officer treated the long term 'capital gain' as assessable under the head 'Business income'.

3. Aggrieved by the action of Assessing Officer, the assessee filed appeal before the CIT(A). Before CIT(A), the assessee filed detailed statement of fact as well as submission. In this statement filed, the assessee stated that assessee firm is in the business of production of cinematographic films, since 1953. Till day, the assessee produced 31 feature films. All the films with their right, title and interest were sold to Red Chillies Entertainment Private Limited for a consideration of Rs.14.31 crores. The right transferred by assessee includes present and future rights as well as all intellectual property rights. The assessee also delivered film negatives and not sound negatives comprising 634 films cans plus hard drives beta cams tops and poster. The assessee was owner of trademark and copy rights of these films. The rights attached to these films were undeniably capital asset. The trademark and copyright cannot be disputed. The goodwill and copyright constitute assets of the business and were profit earning apparatus.
4. The Ld.CIT(A) on considering the submission of assessee noted that Assessing Officer computed tax on gross total income and in the computation sheet income has assessed at Rs.16.33 crores. The Assessing Officer was directed to verify the correct figure both in the assessment order as well as in the computation sheet. There was further mistake in assessing income on sale of films in the assessment order at Rs.13.82 crores, but in computation sheet at Rs.14.21 crores. The Assessing Officer was directed to verify and correct the figure. On merit of the addition, the Ld.CIT(A) held that Assessing Officer failed to take into account that amortisation of cost of films

either in the hands of purchaser or distributor is governed by Rule 9A and 9B of Income Tax Rules, 1962. These rules lay down procedure for computing profits and gains from film production and/ or film distribution business. The expenses incurred in relation to film have been amortised over the years and the Assessing Officer cannot make unfounded mistake that expenditure should be sizeable enough over the years to keep these rights in-tact, live and reusable in the form of business expenditure debited to Profit & Loss Account over the years. The cost of acquisition of feature films as per the books of account of Assignor is Nil. Such fact is not controverted with reason. The Ld.CIT(A) further noted that Ld.AO failed to take into consideration that films' rights are intangible assets, whose cost is zero and, therefore, would not appear in the books of account. There can be no mention in the balance-sheet about the intellectual property right, unless one has acquired it for a consideration from either party, which is not in this case and there is no specific item in the balance-sheet. The nature of rights in the film is in the nature of asset and to hold the same as an investment and to accept it to earn business income. Thus, on sale of film rights, the income shall be in the nature of 'capital gain' and not 'business income'. Aggrieved, by the order of Ld.CIT(A), the revenue has filed present appeal before the Tribunal.

5. We heard the rival submission of Commissioner of Income-tax (Departmental Representative) [Ld. CIT-DR, for short] and the Authorised Representative of the assessee (Id AR) of the assessee and have gone through the orders of lower authorities carefully. The Ld. CIT-DR for the revenue supported the

order of AO and would submit that assessee was in the business of production of films and on its exploitation and distribution, have always shown business income. Now, the assessee has completely sold their business right, thus, it is nothing but business income, as has been held by Ld.AO. The Ld. CIT(A) simply accepted the submission of assessee and treated the surplus as capital gain instead of business income. The Ld. CIT-DR for the revenue prayed to reverse the order of Ld.CIT(A) and restore the order of Ld.AO.

- 6.** On the other hand, the Ld.AR of the assessee submits that admittedly, the assessee was in the business of film production. The film contains bundles of rights including exhibition, and various other allied rights. There are intangible assets in the form of goodwill etc. The assessee sold and transferred all their business rights in a slump sale. Thus, it was a sale of capital asset and once capital assets are sold, it has to be considered as capital gain. The Ld.AR of the assessee submits that in Johnson & Johnson Private Limited vs DCIT in ITA No.1756/Mum/2023 it was held that all intangible asset is to be treated as capital asset, and gain earned on sale of such right is to be treated as capital gain, copy of decision is placed on record. Further, in Novartis Healthcare Pvt Ltd vs Additional Commissioner of Income-tax in ITA No.7643/M/2012 it was held that the transfer of assignment, trademark and interest thereof shall be taxed as capital gain. Mumbai Tribunal, on similar set of facts in Shri Jammu C Sugandh vs DCIT in

ITA No.711/MUM/2009 dated 2/09/2010 also held that on sale of films, the sale consideration / receipts thereof shall be treated as capital receipt.

7. We have considered the rival submissions of the parties and have gone through the orders of lower authorities carefully. We have also deliberated on various case laws relied by the Id AR of the assessee. We find that there is no much dispute on the factual aspect of the case. On sale of all rights titles and interest to Red Chillies Entertainment Private Limited in all 31 feature films, the assessee offered the capital gain. The Assessing Officer treated such receipts as business receipts in place of capital gain. The Id.CIT(A), while allowing relief to the assessee held that undisputed facts are that the assessee has transferred all rights, title, interest held by them at the time of transaction as well as those may arise in future in perpetuity. All 31 films were produced by the assessee itself from the period 1958 to 1998. All the rights were acquired by the assessee themselves and not from other producer. The Id CIT(A) also considered the objection of AO that production of films by assessee is like builder. The Id CIT(A) held that there is distinction between the produce and all attendant rights with it, which needs to be appreciated. It was held that there was ownership as well as all convincible attendant rights which existed in present and might arise in future, which includes copyright, exploitation rights, intellectual rights, property rights and derivative rights. All such rights does not exists in vacuum. The rights may be foreseen here particularly. These films may earn revenue in future. And transfer of such rights by assessee will forfeiture of assesses legal right and

of earning revenue. The Id CIT(A) on relying on the decision of Karnataka High Court Syndicate bank Bs ACIT (155 ITR 681) wherein it was held that term 'capital asset' has all –embracing connotation and includes every kind of property as generally understood except those are expressly excluded from the definition. It was further held various rights in the films are intangible assets and their cost may be zero and cannot be appeared in the books of account.

8. Before us, the Ld.AR of the assessee vehemently argued that assessee has transferred bundle of rights in all feature films and stopped the production of feature films. Any such rights in all films are tangible coupled with intangible asset and transfer of entire assets with rights is like a sale of capital asset and gain arising thereon is nothing but a capital gain. We find that co-ordinate bench of Mumbai Tribunal in Johnson & Johnson Private Limited vs DCIT (supra) held that transfer of trademark and other rights gave rise to capital gain. Further, in Khandelwal Laboratories Pvt Ltd vs CIT in ITA No.2765 and 2702/Mum/2014, it was held that the sale of brand is a capital receipt and not a business receipt. Further in Novartis Healthcare Pvt Ltd vs Additional Commissioner of Income-tax (supra), the assignment of trademark and right, interest thereon were treated as rights to capital gain. Thus, considering the aforesaid factual and legal discussion, we confirm the order of Ld.CIT(A) with our additional observation. In the result, the grounds of appeal raised by the revenue are dismissed.

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

Order was pronounced in the open Court on 24/09/2025.

Sd/-

SMT. RENU JAUHRI
ACCOUNTANT MEMBER

Sd/-

PAWAN SINGH
JUDICIAL MEMBER

MUMBAI, Dated: 24/09/2025
Pavanan

Copy of the order forwarded to:

- (1) The Assessee;
- (2) The Revenue;
- (3) The PCIT / CIT (Judicial);
- (4) The DR, ITAT, Mumbai; and
- (5) Guard file.

By Order

Assistant Registrar
ITAT, Mumbai