

IN THE INCOME-TAX APPELLATE TRIBUNAL “C” BENCH MUMBAI  
BEFORE SHRI G.S. PANNU, ACCOUNTANT MEMBER

AND SHRI PAWAN SINGH JUDICIAL MEMBER

ITA No. 2482/Mum/2017 (Assessment Year 2012-13)

ACIT- 16(1) Room No. 439, Aayakar Bhavan, M.K. Road, Churchgate, Mumbai-400020.	Vs.	M/s Inox Leisure Ltd. (Erstwhile M/s. Fame India Ltd.), 9 <sup>th</sup> Floor, Viraj Towers, Near W.E. highway, Next to Andheri Flyover, Mumbai-400093. <b>PAN: AADCS7809P</b>
Appellant		Respondent

Appellant by : Shri H.N. Singh (DR)

Respondent by : Shri Rohan Despande (AR)

Date of Hearing : 19.09.2018

Date of Pronouncement : 19.09.2018

**ORDER UNDER SECTION 254(1) OF INCOME TAX ACT**

**PER PAWAN SINGH, JUDICIAL MEMBER;**

1. This appeal by Revenue under Section 253 of Income-tax Act is directed against the order of Id. CIT(A)-7, Mumbai dated 18.01.2017 for Assessment Year 2012-13. The Revenue has raised the following grounds of appeal:

1. Whether on facts and in circumstances of the case and in law, the Ld. CIT(A) has erred in directing to delete the addition being receipts of Entertainment tax subsidy of Rs. 11,57,59,471/- and treating it as capital in nature, without appreciating the fact that the subsidy was not given before the commencement of operations but for running the business and thus qualifying this amount as revenue receipts.
2. Whether on facts and in circumstances of the case and in law, the Ld. CIT(A) has erred in directing to delete the disallowance on depreciation on plant and machinery of Rs. 1,76,02,133/- particularly when the entertainment subsidy was held to be capital in nature and as such the cost of acquisition of

capital assets should be reduced by the amount equivalent to the subsidy received.

3. The appellant prays that the order of CIT (A) on the above s be set aside and that of Assessing Officer be restored.

2. At the outset of hearing, the Id. Authorized Representative (AR) of the assessee submits that both the grounds of appeal raised by Revenue are covered in favour of assessee. The Id. AR of the assessee further submits that the Id. CIT(A) while passing the impugned order followed the decision of Tribunal in assessee's own case for Assessment Year 2007-08 in ITA no. 6046/Mum/2010 dated 21.08.2015. The Id. AR of the assessee further submits that Hon'ble Supreme Court in case of CIT V/s Chaphalkar Brothers Pune [2018] 400 ITR 279 held that the object of subsidy scheme of State Government is to encourage development of Multiplex Theatre Complexes and such incentives is capital in nature. For Ground No. 2, the Id. AR of the assessee submits that Ground No.2 of the appeal is also covered in favour of the assessee by the decision of Tribunal in assessee's own case for Assessment Year AY 2010-11 and 2011-12 in ITA No. 5212/Mum/2015 & 5213/Mum/2015 dated 07.08.2017. The Id. Departmental Representative (DR) for the Revenue after going through the grounds of appeal and the copy of decisions relied by Id. AR of the assessee fairly conceded that both the grounds of appeal raised by Revenue are covered in favour of assessee and against the Revenue.

3. We have heard the rival contention of both the parties and perused the material available on record and deliberated on the decisions furnished by Id. AR. Ground No.1 related to deleting the addition on account of receipt of entertainment subsidy by treating it as capital in nature. We have noted that the Id. CIT(A) while granting relief to the assessee followed the decision of Tribunal in assessee's own case for Assessment Year 2007-08 in ITA No. 6046/Mum/2010 dated 21.08.2015. No contrary decision is brought to our notice by Revenue. Further, we have noted that this issue has been settled by Hon'ble Apex Court in case of CIT V/s Chaphalkar Brothers Pune (supra), wherein the Hon'ble Apex Court held that object of the subsidy scheme of State Government is to encourage development of Multiplex Theatre Complexes incentives would be capital in nature and not revenue receipt. Therefore, respectfully following the decision of Hon'ble Apex Court and the decision in assessee's own case for Assessment Year 2007-08, the ground of appeal raised by Revenue is dismissed.
4. Ground No.2 relates to deleting the disallowance on depreciation on plant and machinery. We have noted that Id. CIT(A) granted relief to the assessee by following the decision of Tribunal in assessee's own case for Assessment Year 2007-08 in ITA No. 6046/Mum/2010 dated 21.08.2015, which was followed by Tribunal in assessee's own case in AY 2010-11 and 2011-12 in ITA No. 5212/Mum/2015 5213 and 5213/Mum/2015

dated 07.08.2017. No contrary decision is brought to our notice. Therefore, respectfully following the decision of Tribunal, we do not find any merit in the grounds of appeal raised by Revenue.

5. In the result, appeal of the Revenue is dismissed.

Order pronounced in the open court on 19 /09/2018.

**Sd/-**  
**G.S. PANNU**  
**ACCOUNTANT MEMBER**

**Sd/-**  
**PAWAN SINGH**  
**JUDICIAL MEMBER**

Mumbai, Date: 19.09.2018

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**Copy of the Order forwarded to :**

1. Assessee
3. The concerned CIT(A)
5. DR "C" Bench, ITAT, Mumbai
6. Guard File

2. Respondent
4. The concerned CIT

**BY ORDER,**  
**Dy./Asst. Registrar**  
**ITAT, Mumbai**