

CHAPTER 4

360 degree analysis

Lakshmi

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Chapter 4

360 Degree Analysis

The Department rarely used information given by an assessee during his assessment to cross verify the correctness of the information furnished by another assessee (who had transacted with the former) during the assessment.

4.1 Creation of separate film circles was expected to facilitate the correlation of assessments of related assesses towards arresting tax evasion as all the industry related assesseees are to be assessed in one unit.

4.2 We attempted to correlate the information collected from assessment records with the assessment of related assesseees and found escapement of income having tax effect of ₹ 1.64 crore in 11 cases whereas in one case tax effect could not be quantified as the income escaped from assessment was not ascertainable. We observed that

- Shri B. V. S. N. Prasad, proprietor of Sri Venkateswara Cine Chitra⁵⁹ offered income of ₹ 25 lakh from sale of satellite rights of film 'Chatrapati' to 'MAA TV'. We observed that 'MAA TV' purchased satellite rights of this film for ₹ 81 lakh, thus there was understatement of income by ₹ 56 lakh having a tax effect of ₹ 21.11 lakh.
- Shri M. L. Kumar Chowdary, proprietor of M/s. Shree Keerthi Creations⁶⁰ disclosed income of ₹ 65 lakh from sale of satellite rights of his film 'Vikramarkudu' to 'MAA TV'. However, as per records of 'MAA TV', they paid ₹ 81 lakh for acquiring satellite rights. This resulted in escapement of income of ₹ 16 lakh leading to short levy of tax of ₹ 7.17 lakh.

The Department replied that the amount received by the assessee from 'MAA TV' was only ₹ 65 lakh and the balance ₹ 16 lakh were paid to third party on his behalf for hiring camera. The reply is not tenable as ₹ 16 lakh paid to third party for hiring of camera was part of the total consideration for satellite rights. This should have been treated as expenditure, if it has not been charged already in accounts.

- M/s. Turner Broadcasting System Asia Pacific⁶¹ included ₹ 2.32 crore in its total income for assessment year 2007-08 as royalty received from M/s. Global Broadcast News Pvt. Ltd. whereas the assessment records of M/s. Global Broadcast News Pvt. Ltd. for the assessment year 2007-08 disclosed that ₹ 4.57 crore was paid to M/s. Turner Broadcasting System Asia Pacific towards royalty. This resulted in underassessment of income by ₹ 2.25 crore involving short levy of tax of ₹ 31.31 lakh (including interest).

⁵⁹ Assessment charge: Film Circle, Hyderabad, AY-2006-07

⁶⁰ Assessment charge: CIT, Central, Hyderabad, AY-2007-08

⁶¹ Charge: DIT (IT), Delhi.

360 Degree Analysis of select films

4.3 We selected nine films in four regions with a view to examine assessments of all the persons involved in production, distribution and exhibition of these films.

4.3.1 Two films⁶² in Andhra Pradesh were selected for detailed examination. Out of the 178 assesseees identified, records of only 59 assesseees were made available. Whereas 42 assesseees were being assessed in other states, PAN of 27 assesseees were not available. During examination we observed that both the films were commercially successful but the producers declared income of ₹ 20.16 lakh and ₹ 32.91 lakh from these two films. Further details are as under:

Film 'Lakshmi'

- There was a wide variation between the expenditure of the film as declared in Form 52A (₹ 5.56 crore) and as reflected in profit & loss account and allowed in assessment (₹ 11.13 crore). The Department made no efforts to reconcile this wide variation.
- As per Form 52A, Ms Surdeep Kaur Uppal alias 'Charmee', an artist was paid ₹ 10 lakh whereas she offered ₹ 25 lakh from this film. This indicates that either the assessee did not declare full expenditure or the recipient Ms. Surdeep Kaur has income from undisclosed sources.
- Two distributors⁶³ of this film did not disclose transactions on expenditure incurred on acquisition of distribution rights of this film and income from the screening of the film whereas two other distributors⁶⁴ did not file their returns for AY 2006-07 though they purchased distribution rights for ₹ 81.40 lakh and ₹ 91.70 lakh respectively.
- One assessee (costume designer), Ms. Surjit Kaur Uppal⁶⁵ did not offer remuneration of ₹ 7.50 lakh received from this film for assessment.

Film 'Desamuduru'

- The assessee did not file Form 52A. No penalty u/s 272A was imposed.
- Against receipt of ₹ 23.60 lakh from M/s. Aditya Music (P) Ltd. for audio rights, the assessee offered ₹ 20 lakh as income.
- Two distributors⁶⁶ who purchased distribution rights for ₹ 1.23 crore and ₹ 63.03 lakh did not file their returns for 2007-08.

⁶² Film 'Lakshmi' produced by Shri Nallamalapu Srinivasa Reddy, AY-2006-07 and film 'Desamuduru' produced by Sri D. V. V. Daniyah, AY- 2007-08

⁶³ Sri N. Rama Krishna Reddy proprietor of M/s Kranti Krishna Pictures under CIT, Visakhapatnam and M/s Sri Lakshmi Devi Films under CIT, Vijayawada

⁶⁴ M/s Jayalakshmi Film Distributors for East Godavari area, under CIT, Rajahmundry and M/s D S Movements for Guntur area under CIT, Vijayawada

⁶⁵ Assessing charge : CIT Central Hyderabad, AY : 2006-07

⁶⁶ Sri A Mallikaarjuna proprietor of M/s Asha Film Distributors under CIT, Tirupati and M/s Sri Venkateshwara Creations, Guntur under CIT, Vijayawada

4.3.2 Three films⁶⁷ in Maharashtra were selected for detailed examination. Out of identified case records of 103 assesseees, records of only 66 assesseees were made available.

In the case of film Umrao Jaan⁶⁸ we noticed that the producer received ₹ 2.50 crore for satellite rights of the film from M/s. Adlabs Films Ltd., however, this amount was not offered for tax. This resulted in short levy of tax by ₹ 1.12 crore (including interest).

4.3.3 Two films⁶⁹ in Tamil Nadu were selected for detailed examination. The film 'Chandhramukhi' was released for exhibition in April 2005 and the total realization from the film was ₹ 25.53 crore. The film 'Thirupatchi' was released in January 2005 through distributors both under "minimum guarantee" and "outright sale" basis.

Film 'Chandhramukhi'

Though the assessment of the producer of the film for 2006-07 was selected for scrutiny under section 143 (3) under the orders of CCIT, we observed that some of the following aspects were not examined in detail:

- Four distributors could not be identified with their PAN.
- Telugu rights of feature film were sold for ₹ 4 crore. However, the assessee declared only ₹ 2.27 crore. This resulted in underassessment of income with short levy of tax amounting to ₹ 77.83 lakh.
- Sale value of overseas rights⁷⁰ was understated by ₹ 17 lakh involving a tax effect of ₹ 7.61 lakh.
- Products of M/s. TATA Indicom were displayed as in-film advertisement in the film. This extended benefit should have been assessed under section 28(iv).
- Similarly, income earned by displaying Sunfeast biscuit as in-film advertisement was not offered for tax.
- The producer celebrated 200th day function of the film spending ₹ 20.52 lakh which was telecast on satellite channel-Sun TV. Income earned from sale of satellite rights was not offered for assessment.

Film 'Thirupatchi'

- Seven distributors to whom distribution rights were sold for ₹ 3.05 crore could not be identified with the information available in the records of the producers.
- Entire cost of acquisition of distribution rights by M/s. Jothimurugan Films⁷¹, Salem ₹ 50 lakh was allowed under Rule 9B though the film was not released for 90 days in the year and the collection was only

⁶⁷ Umrao Jaan by Shri J P Dutta, Salam Namaste by M/s Yashraj Films Pvt Ltd and Apaharan by Shri Prakash Jha

⁶⁸ Produced by Shri Jyoti Prakash Dutta (J P Dutta) under CIT-11, Mumbai charge, AY 2007-08

⁶⁹ Chandhramukhi by M/s Sivaji Productions under CIT-IV, Chennai charge, AY 2006-07 and Thirupatchi by M/s Super Good Films (Pvt) Ltd. under CIT-IV, Chennai charge, AY-2005-06

⁷⁰ Overseas rights sold to M/s Sanjai Wadhva

⁷¹ Assessment charge: CIT, Salem, AY- 2005-06

₹ 24.35 lakh. Allowance should have been restricted to the amount of collection under Rule 9B (3). This has resulted in short levy of tax by ₹ 10.94 lakh (including interest).

- The producer paid ₹ 1.60 crore without deducting TDS under section 194J for acquiring story rights of the films. This amount was not disallowed u/s 40(a)(ia) having a tax effect of ₹ 83.23 lakh (including interest). Non deduction of TDS also attracts interest of ₹ 12.87 lakh u/s 201(1A) and penalty u/s 271C.

The Department's reply that provisions of section 194J are not applicable on 'story rights' is not acceptable since as per explanation (c) to Rule 6F, 'film artists' include 'story writers'.

4.3.4 Two⁷² films in Kerala were selected for detailed examination. Out of identified 42 case records, records of 16 cases were made available whereas PAN details and assessing charge in respect of 23 cases could not be ascertained. Our examination revealed the following:

Film 'Classmates'

- Director of the film Shri Lal Jose declared only ₹ 18.35 lakh as against payment of ₹ 31.49 lakh as declared by the assessee (producer) in Form 52A. There was a short levy of tax of ₹ 5.53 lakh.
- Story writer of the film Shri James Albert declared ₹ 19.57 lakh receipt from the film whereas in Form 52A payment of only ₹ 1.95 lakh was declared.
- Actress Kavya Madhavan was paid ₹ 2.1 lakh (as per Form 52A) for acting in the film, however, she declared only ₹ 1.11 lakh. There was a short levy of tax of ₹ 0.34 lakh.

Film 'Madhuchandralekha'

- Form 52A was not filed. No penalty was levied.
- Payment made to singers was not debited in P&L account.

Recommendation

4.4 *We recommend that the Department should develop a system which may ensure that the information furnished by an assessee is used to cross verify the correctness of the information given by other assesseees having transactions with the former, to avoid the evasion of tax by way of furnishing incorrect information.*

While noting the suggestion the CBDT stated (February 2011) that the Department has already put in place a system by which transactions of tax payers are captured electronically through AIR, CIB, ITS, TDS etc. The entire drive for computerization, in a way, aims to facilitate cross verification of information. While the first of objective of information capture has been met largely, the matching and dissemination of CIB information received without PAN is the challenge at the next level.

⁷² Classmates produced by M/s Arya Films Classmates under CIT, Kottayam charge, AY- 2007-08 and Madhuchandralekha produced by Shri Abdul Samad under CIT, Kozhikode charge, AY- 2006-07