

APPENDICES

Appendix-1
(Refer Para 1.5)
Legal Framework

Relevant Sections/ Rules of the Income Tax Act/ Rules governing the Entertainment industry

Section/ Rule	Contents
Section 44AA(3) read with Rule 6F	Maintenance of books of accounts by film artists.
Section 44AB	Submission of audit report certified by a Chartered Accountant
Section 80(IB)(7A) read with Rule 18BD ⁶²	Deduction to multiplex theatres for a period of five consecutive years beginning from the initial assessment year
Section 80RR read with Rule 29A ⁶³	Deduction of income in respect of professional income from foreign sources in case of author, playwright, artist, musician and actor; being a resident in India.
Section 194C	Tax deduction at source (TDS) for payment of any sum to any resident for any work in pursuance of a works contract. As per Explanation III thereto "works" shall include a) Advertising b) Broad casting and Telecasting including production of programmes for such broadcasting and telecasting etc.
Section 194J	TDS in respect of payment by way of fees for professional services or technical services and royalty payments. Royalty does not include consideration on the sale, distribution and exhibition of Cinematographic films.
Section 285B read with Rule 121A	Submission of statements of expenditure (viz. Form 52A) containing particulars of all payments over ₹ 50,000 by Film producers with respect to a particular film produced.
Section 272A	Penalty for non filing of Form 52A within prescribed time.
Rules 9A and Rule 9B	Deduction in respect of cost of production of a feature film and cost of acquisition of distribution rights of feature film respectively

⁶² Deduction available when Completion/ Occupancy Certificate was received between 1-04-2002 and 31-03-2005

⁶³ No deduction is available w.e.f. AY 2005-06.

CIRCULARS OF CBDT

Circular No. and date	Contents
675 dated 03-01-1994	CBDT clarified that a script writer can be regarded as "playwright" and similarly "director" can be treated as an 'artist' for the purposes of section 80RR of the Act. However, a producer would not be entitled to deduction under section 80RR of the Act, because he does not fall under any of the categories mentioned in the said section.
715 dated 08-08-1995	CBDT has given clarification on various provisions relating to tax deduction at source regarding changes introduced through Finance Act, 1995. Advertisement agencies, contract on hoardings, etc. are covered under this Circular.
742 dated 02-05-1996	CBDT has clarified that the income in the cases of the foreign telecasting companies (FTCs), which are not having any branch office or permanent establishment in India or are not maintaining country wise accounts, shall be computed by adopting a presumptive profit rate of 10 <i>per cent</i> of the gross receipts meant for remittance abroad or the income returned by such companies, whichever is higher and subject the same to tax at the prescribed rate, i.e., 55 <i>per cent</i> at present.
06 of 2001 dated 05-03-2001	<p>CBDT has clarified that the total income of FTCs from advertisements, hitherto computed on a presumptive basis shall now be determined in accordance with the other provisions of the Income tax Act, 1961 in relation to the AY 2002-03 and subsequent assessment years. In case, accounts for Indian operations are not available, the provisions of rule 10 of the Income tax Rules, 1962 may be invoked. Where an FTC is a resident of a country with whom India has a Double Taxation Avoidance Agreement (DTAA), its business income (including receipts from advertisement) can be taxed only if it has a Permanent Establishment in India. Taxation of FTCs who are residents of countries with whom India does not have a DTAA, shall be governed by the provisions of section 5, read with section 9 of the Income tax Act, 1961.</p> <p>It further reiterated that the guidelines for computation of profits of FTCs in Circular No. 742 and 765 were applicable only to the income stream from advertising. Other kinds of income like subscription charges receivable from cable operators in respect of pay channels and income from the sale or lease of decoders, etc., shall continue to be taxed in accordance with the paragraph 2 above.</p>
05 of 2002 dated 30-07-2002	CBDT has given further clarification on various provisions relating to tax deduction at source

	regarding changes introduced through Finance Act, 1995. Advertisement agencies, contract on hoardings, etc. are covered under this Circular.
04 of 2016 dated 29-02-2016	CBDT has clarified that while applying the relevant provision of TDS on a contract for content production, a distinction is required to be made between (i) a payment for production of content/programme as per the specifications of the broadcaster/ telecaster and (ii) a payment for acquisition telecasting rights of the content already produced by the production house. The first condition would be covered under the provision of Section 194C whereas the payments of second nature would fall under other TDS provisions of Chapter XVII B of the Act.
05 of 2016 dated 29-02-2016	CBDT has clarified that no TDS is attracted on payments made by television channels/ newspaper companies to the advertising agency for booking or procuring of or canvassing for advertisements. Further, 'commission' referred to in Question No.27 of Circular No.715 dated 08.08.1995 does not refer to payments by media companies to advertising companies for booking of advertisements but to payments for engagement of models, artists, photographers, sportspersons, etc. and, therefore, is not relevant to the issue of TDS.

Relevant Judicial Decisions:

Case details	Citation of the decision	Gist
Firoz Nadiadwala Vs. Additional CIT - 11(1), Mumbai	ITA No. 7977 /Mum/2011 (ITAT Mumbai Bench 'F')	It was held that the interest on loan borrowed specifically for production of a film which was not released during year was not allowable, and should be carried forward to next year as cost of production in terms of rule 9A.
Sagar Sardhadi Vs. ITO, Ward 11(1)(4), Mumbai	ITA No. 5525/ Mum/2010, ITAT Mumbai Bench 'E'	It was held that the cost of production of film can be allowed as deduction only when conditions as specified under rule 9A are satisfied, and such deduction cannot be permitted by adopting an indirect method of reducing the value of film.
Malayala Manorama Co. Ltd. Vs. ACIT Circle - 1, Kottayam	ITA Nos. 429 & 481 of 2010	It was held that where equipment purchased for starting FM radio broadcasting services could not put to use till end of relevant financial year as licence could not be obtained from Ministry, depreciation thereon cannot be allowed. Further, where assessee could

		not generate any income during year from films in respect of which it acquired television rights, deduction for cost of their acquisition could not be allowed
DCIT, Central Cir-24, Mumbai Vs. Salman Khan	ITA No.2836 & 2837/Mum /2008	It was held that where some personal complaints had been lodged against assessee which had got nothing to do with his professional activities, expenditure incurred in defending against those allegations was definitely of personal nature and, such expenditure could not be allowed against income from business and profession
Jalan Distributors (P.) Ltd. Vs CIT, Kolkata	Supreme Court of India [2016]	The Tribunal has rejected the assessee's claim of interest expenditure u/s 36(1)(iii) where it was paid against security deposit given to the landlord for taking business premises on rent, however, the assessee could not submit any evidence to prove that said premises was used for its business premises. The High Court upheld the order of Tribunal and SLP filed against it was dismissed by the Supreme Court of India.
Salim Akhtar Vs ACIT-11(1), Mumbai	ITA No.907 / Mum /2012; ITAT Mumbai Bench 'E'	It was held that where assessee having purchased distribution right of a film from sister concern at a very high price on minimum guarantee basis, entered into agreement with another sister concern for exhibition of said film on commission basis, there was a valid basis with revenue authorities that the transaction in question was device, and loss, thus, was self-inflicted in order to reduce assessee's taxable income earned from production of another film and, therefore, penalty order passed for raising a false claim of set off of loss was valid.
Vishesh Entertainment Ltd. Vs ACIT, Circle-11(1), Mumbai	ITA No. 305/ MUM 2009 ITAT, Mumbai Bench 'F'	The Tribunal held that the assessee failed to substantiate its claim of sending the person, who was the son of a major shareholder, for training abroad for benefit of its business and expenditure incurred on training was rightly disallowed by authorities below.
ACIT vs. Seven Arts Films	ITA No.1291/ Mds /2013. ITAT Chennai Bench	It was held that where assessee, a filmproducer, paid compensation to exhibitors of its films which did not do well in theaters resulting loss to exhibitors, such payment not being to

		discharge any legal obligations but to protect assessee's goodwill, would be treated as capital expenditure.
DCIT, 8(3)(1), Mumbai Vs United Home Entertainment (P.) Ltd.	ITA No. 1977/ Mum/ 2015 ITAT Mumbai Bench 'F'	It was held that where the programs (assets) without incurring dubbing costs, could not be utilised for earning revenue, all expenditure incurred would amount to be capital expenditure and would form part of cost of acquisition rights under license and should be amortised along with cost of license.

Appendix-2
(Refer Para 1.6)
Sample Size

Name of the State	Number of PCsIT/CsIT Selected	Total Number of Assessment Units	Units Selected
Andhra Pradesh & Telangana	12	123	30
Bihar	3	81	24
Chhattisgarh	Nil	Nil	Nil
Delhi	19	365	94
Gujarat	15	289	42
Haryana	6	116	23
Himachal Pradesh	1	21	3
J&K	1	18	3
Jharkhand	3	81	13
Karnataka and Goa	12	194	73
Kerala	6	131	36
Madhya Pradesh	3	47	47
Maharashtra	23	282	88
North East Region	3	22	14
Odisha	5	54	14
Punjab	11	236	29
Rajasthan	9	98	29
Tamil Nadu	18	284	80
Uttar Pradesh	11	328	43
Uttarakhand	1	48	21
West Bengal	14	150	60
Total	176	2,968	766

Basis of selection: Aggregated data was provided by DGIT (Systems) with respect to AO charges. 100 *per cent* Corporate Circles, minimum 25 *per cent* Central Circles/non-Corporate Circles/mixed Circles and minimum 5 *per cent* Wards were selected for audit⁶⁴. The dedicated film circles/wards⁶⁵ were compulsorily selected for audit. All scrutiny, appeal and rectification cases were audited from the selected units for FYs 2013-14 to 2016-17.

64 For Maharashtra, the parameters of selection were-Minimum 50 *per cent* Corporate Circle, minimum 25 *per cent* Central Circle, minimum 10 *per cent* non-corporate/mixed circles and minimum 5 *per cent* Wards

65 For Maharashtra, minimum 50 *per cent* Film Wards

Appendix-3
(Refer Para 1.7)
Non Production of Records

State	PCIT/CIT Charge	Number of cases identified and requisitioned	Number of cases produced	Number of cases not produced
Karnataka	PCIT-1, Bangaluru	46	34	12
	PCIT-2, Bangaluru	167	151	16
	PCIT-3, Bangaluru	17	14	3
	PCIT-4, Bangaluru	33	28	5
	PCIT-5, Bangaluru	32	30	2
	PCIT-7, Bangaluru	17	13	4
Haryana	PCIT, Gurgaon	46	45	1
Tamil Nadu	PCIT-10, Chennai	855	760	95
Kerala	PCIT-1, Kochi	47	46	1
	PCIT, Kottayam	57	56	1
Andhra Pradesh & Telangana	PCIT/CIT-6, Hyderabad	282	270	12
Odisha	PCIT-1, Bhubaneswar	40	39	1
Uttar Pradesh & Uttrakhand	PCIT-2, Lucknow	43	41	2
Maharashtra	PCIT (C)-2, Mumbai	132	128	4
	PCIT-13, Mumbai	64	61	3
	PCIT-14, Mumbai	76	74	2
	PCIT-16, Mumbai	1,904	1,901	3
	PCIT-3, Mumbai	27	24	3
	PCIT-7, Mumbai	91	88	3
West Bengal	PCIT-2, Kolkata	13	12	1
	PCIT-11, Kolkata	16	15	1
Total		4,005	3,830	175

Appendix-4
(Refer Para 3.8)
Mismatch in the data provided by DGIT (Systems) and
Assessment Charge data

DCIT		FY 2013-14	FY 2014-15	FY 2015-16	FY 2016-17
Circle 14(1), Hyderabad	No. of Scrutiny Assessment of Entertainment Sector as per DGIT System	0	43	51	44
	No. of Scrutiny Assessment of Entertainment Sector as per D & CR Register	0	53	76	69
	Variation in number of cases	0	10	25	25
Ward 14(5), Hyderabad	No. of Scrutiny Assessment of Entertainment Sector as per DGIT System	0	34	50	34
	No. of Scrutiny Assessment of Entertainment Sector as per D & CR Register	0	80	66	56
	Variation in number of cases	0	46	16	22
Circle 2(3)(1), Bengaluru	No. of Scrutiny Assessment of Entertainment Sector as per DGIT System	10	8	15	20
	No. of Scrutiny Assessment of Entertainment Sector as per D & CR Register	12	11	30	28
	Variation in number of cases	2	3	15	8
Ward 2(3)(5), Bengaluru	No. of Scrutiny Assessment of Entertainment Sector as per DGIT System	5	13	14	15
	No. of Scrutiny Assessment of Entertainment Sector as per D & CR Register	4	17	19	24
	Variation in number of cases	-1	4	5	9
Circle 16(1), Mumbai	No. of Scrutiny Assessment of Entertainment Sector as per DGIT System	162	231	275	282
	No. of Scrutiny Assessment of Entertainment Sector as per D & CR Register	293	238	416	376
	Variation in number of cases	131	7	141	94
Circle 20(1), Chennai	No. of Scrutiny Assessment of Entertainment Sector as per DGIT System	96	93	111	98
	No. of Scrutiny Assessment of Entertainment Sector as per D & CR Register	152	212	187	131
	Variation in number of cases	56	119	76	33

Ward 20(5), Chennai	No. of Scrutiny Assessment of Entertainment Sector as per DGIT System	22	24	22	33
	No. of Scrutiny Assessment of Entertainment Sector as per D & CR Register	37	45	31	60
	Variation in number of cases	15	21	9	27

