

Rajasthan Tax Board, Aimer

Appeal No. 1802/2010/Jaipur
Appeal No. 1803/2010/Jaipur
Appeal No. 1804/2010/Jaipur
Appeal No. 1805/2010/Jaipur
Appeal No. 1806/2010/Jaipur

M/s Luvkush Cinema
(A unit of Bardi Const. Co. Pvt. Ltd.),
01, Ashram Marg, Tonk Road,
Jaipur

...Appellant

VERSUS

Assistant Commissioner,
Commercial Taxes, Circle-J,
Jaipur

.....Respondent

S.B.

SHRI OMKAR SINGH ASHIYA, MEMBER

Present :

Shri Vivek Singhal, Advocate
Shri Ramkaran Singh,
Dy. Govt. Advocate

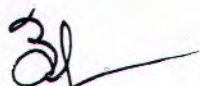
for Appellant

for Respondent

Dated : 02/08/2018

JUDGMENT

1. These appeals have been filed by the appellant under section 13B of the Rajasthan Entertainments & Advertisements Tax Act, 1957 (hereinafter called the "Act"), against order of the Deputy Commissioner (Appeals)-I, Commercial Taxes, Jaipur (hereinafter called the "appellate authority") who while disposing off the five Appeals bearing Nos. D-44 to D-48/RVAT/J/ 08-09 vide common order dated 16.06.2010, has disallowed the same against orders of the Assistant Commissioner, Circle-J, Jaipur (hereinafter called the "**assessing officer**" or "**AO**") for the assessment orders for the months of August, 2005 to January, 2006 passed under Section 5B of the Act.
2. Brief facts leading to the present appeals are that the appellant is in the business of exhibition of movies and liable to payment



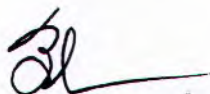
of tax on the amount received for admission to an entertainment. This cinema enterprise was granted benefit of tax exemption to the extent of 50% of the tax payable under the Act, as per the Entitlement Certificate issued by the Member Secretary, State Level Screening Committee (in short "SLSC") under the Rajasthan Investment Promotion Scheme-2003 (in short 'RIPS-2003'). This Entitlement Certificate No. 3/35 dated 01.12.2005 was valid from 23.08.2005 (i.e. date of application) for the period as available under the RIPS-2003 (precisely it was 7 years). The AO while finalizing the assessments for the months of August, 2005 to January, 2006 determined following amounts as refundable:

Assessment period	Order date	Refundable Amount (Rs.)
August, 2005	06.12.2006	26124
September, 2005	06.12.2006	348880
October, 2005	06.12.2006	15546
November, 2005	06.12.2006	450905
December, 2005	06.12.2006	161669
January, 2006	06.12.2006	44144
Total		1047268

3. The cinema owner initially deposited the whole tax as per sale of the tickets, however, at the time of assessment, the assessee claimed adjustment of the excess amount so deposited, but the assessing officer did not accept request of the assessee because there was no provision under the Act for adjustment of the excess amount deposited or found refundable. Being aggrieved of the AO's orders, the assessee preferred Appeals before the appellate authority who not only rejected the appeals on the ground that there was no specific provision under the Act to issue refund adjustment voucher, has also made some comments that orders of the assessing officers to determine the excess amount to be refunded and for that matter to seek budget from the Department, as prejudicial to the interest of the revenue, and held the proceeding of refund as illegal.




4. The appellant, being aggrieved of the appellate orders has preferred these appeals before the Tax Board u/s 13B of the Act.
5. Heard the learned counsels for the appellant as well as that of the Revenue and perused the relevant record.
6. It is noteworthy that for promotion of investment in the State of Rajasthan, the State Government notified a scheme called '**The Rajasthan Investment Promotion Scheme, 2003**', vide notification dated 28.07.2003, in which, apart from the other benefits to varied types of the enterprises, the new cinema halls established during the operative period of the said scheme were provided the exemption from payment of the entertainment tax @ 50% of the tax payable by such enterprises. The appellant assessee submitted its application before the SLSC on 23.08.2005 and the SLSC granted exemption from Entertainment Tax to the enterprise as sanctioned vide Entitlement Certificate No. 3/35 dated 01.12.2005, w.e.f. 23.08.2005 (as mentioned in the certificate).
7. The assessments for the months of August, 2005 to January, 2006 were finalized on 06.12.2006 and net refundable amount was arrived at in all these assessments. The assessee sought adjustment of these refundable amounts against the tax liability for the months of January, 2007 to May, 2007 but the AO was of the view that there was no specific provision for adjustment of the excess amount deposited by the assessee which was otherwise refundable to him, but requested the Department to allocate budget for the same so that refund can be granted apparently as per the provisions of the General Finance & Accounts Rules (GF & AR).
8. The assessee preferred appeals against these orders wherein the adjustment of refundable amount was denied by the AO. The appellate authority held that there is no specific provision under the Act for adjustment of any excess amount deposited by the assessee, therefore, no Refund Adjustment Voucher



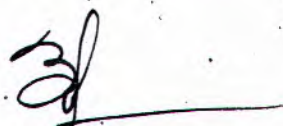
(RAV) as such can be granted. Not only this, the appellate authority questioned the very action of the AO to request the Commercial Taxes Department Head Office for release of sufficient budget so that refundable amount can be given to the assessee through treasury mode and held that this action of the AO was prejudicial to the interest of the exchequer.

9. This is true that no specific provision for refund of the excess Entertainment Tax deposited by the Cinema Owner, existed in the Act of 1957 till 31.07.2014 when the then existing Section 8 ('Refunds in certain cases') wherein any refundable amount was mandated to be refunded to proprietor of the entertainment or the person in certain cases, was substituted and specific provisions with wider scope for refund were inserted.
10. In light of the above stated facts, the issues before the Tax Board in the instant appeals are as follows:
 - i. If the assessment for a particular period is finalized and some amount is determined as refundable, whether the assessee can claim adjustment of this refundable amount against the tax liability for the forthcoming period(s);
 - ii. When there is no specific provision under the Act for issuance of refund order (RO) or refund adjustment voucher (RAV), in such an eventuality how the excess amount deposited by the assessee which has been assessed as refundable, would be refunded;
 - iii. Was the appellate authority justified to hold that since there is no specific provision under the Act for refund, so no refund can be granted at all. Further, whether observations of the appellate authority that action of the assessing authority to issue refund or to seek budget for issuance of the same was prejudicial to interest of the State exchequer, was correct and justified.
 - iv. whether under the facts and circumstances of the case, whether the appellate authority was justified in disallowing the appeal.
11. I have given considered thought to the facts and circumstances of the case as well as perused the legal provisions relating



thereto. It is cardinal principle of the taxation that if any excess amount is deposited by a taxpayer for any reason, that should be refunded to him unless the said assessee has not suffered the amount of tax so deposited. In the present case, though the assessment record as placed before this Bench does not show the reason as to why the amount has been adjudged as refundable, but it transpires from the record that the cinema owner was granted tax exemption @ 50% under the RIPS-2003 as per the Entitlement Certificate dated 01.12.2005 issued by the Member Secretary, SLSC which was effective from the date of application i.e. 23.08.2005. Apparently, the dispute pertains to the period August, 2005 to January, 2006 and it is not known exactly if the assessee collected the entertainment tax @ 50% or 100% during the period in question.

12. Undisputedly, the Assessing Officer has passed the assessment orders for the period- August, 2005 to January, 2006 and has determined a refundable amount of Rs. 10,47,268/-, however, the refund orders could not be issued owing to the non-existence of the specific provisions for issuance of refund (RO) or refund adjustment voucher (RAV). Later, the assessee claimed this refundable amount as adjustment towards tax liability for the months of January, 2007 to May, 2007, but the assessing officer turned down the request since no specific provisions existed for adjustment of the refundable amount. It is also evident that the AO has requested to its superior authorities to allocate budget of the said amount so that refund can be issued through the treasury bill mode.
13. The appellate authority has inferred that since there is no specific provision for refund or adjustment of the same, therefore, no refund or adjustment can be granted for the excess amount found refundable and has further castigated the AO for seeking budgetary provisions for issuance of refund, terming it as prejudicial to the interest of the revenue.



14. The statutory provision for refund as available under the Act is contained in section 8, which prior to 31.07.2014 is read as under: -

"8. Refunds in certain cases.-

Upon being satisfied that the whole of the net proceeds of an entertainment are devoted to philanthropic, religious or charitable purposes and that in calculating the net proceeds not more than twenty-five per cent of the gross proceeds have been deducted on account of the expenses of the entertainment, the State Government may repay to the proprietor the amount of the entertainment tax, if any, paid in respect of the entertainment."

After substitution of the said section 8 on 31.07.2014, the section so substituted, reads as under: -

"8. Refund.- (1) Where any amount is refundable to a proprietor or a person under the provisions of this Act, the prescribed authority shall, after having duly verified the fact of deposit of such amount, refund to such proprietor or person such amount in the prescribed manner.

(2) An amount refundable under this Act shall be refunded within thirty days from the date of submission of application and if such amount is not refunded within the aforesaid period of thirty days, the proprietor shall be entitled to get interest with effect from the date succeeding the date of expiry of the aforesaid period upto the date of payment, at such rate as may be notified by the State Government.

(3) Notwithstanding anything contained in this section or in any other law for the time being in force, only the proprietor or the person, who has actually suffered the incidence of tax or has paid the amount, can claim a refund and the burden of proving the incidence of tax so suffered or the amount so paid shall be on the proprietor or the person claiming the refund."

Since the section 8 is a procedural law, therefore, if any refund pertaining to the earlier periods could not be issued for any reason before 31.07.2014, the same shall be issued as per this amended provision.

15. In the facts and circumstances of the case as well as the legal provisions, as aforementioned, it is held that there was no specific provision existed under the Act prior to 31.07.2014 regarding refund of the excess amount deposited by the



assessee barring the cases where whole of the net proceeds of entertainment are devoted to philanthropic, religious or charitable purposes, but that does not preclude the authorities not to issue any refund in case the tax was deposited in excess of the required sum, may be the mode of issuance could have been as mandated under any general law applicable in this respect or the "General Finance and Accounts Rules" (GF & AR), as the case may be. So, in absence of specific provision under the Act for adjustment of refundable amount against the future tax liabilities, the AO was justified to not to issue RAV for the same as sought by the assessee and he was also justified to seek budget allocation from the Government/Department for issuance of the refund as per the procedure mandated under the GF & AR. Therefore, the observation of the appellate authority that AO's action to seek budget to issue refund was prejudicial to the interest of the State exchequer, is held to be uncalled-for, injudicious, irrational and against the principle of natural justice, hence deserves to be deleted from the appellate order.

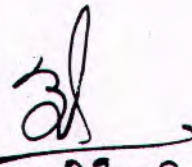
16. It is further held that the refund arising out of the assessment orders for the months of August, 2005 to January, 2006, has yet not been issued, therefore, the said amount stands refundable to the assessee in the prescribed manner as mandated by the amended section 8 of the Act.
17. It is also clarified that this Bench has not gone into the issue as to whether the amount as determined refundable by the assessment orders dated 06.12.2006, was refundable at all or not, because that question has not been posed before the Tax Board either by the appellant or the respondent.
18. In the circumstances as narrated above, the appellate order is set aside, and the AO is directed to issue the refund in light of the provisions of section 8 of the Act read with rule 34 of the Rajasthan Entertainments and Advertisement Tax Rules, 1957. However, the AO before issuing the refund, shall verify from the

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record for the period August, 2005 to January, 2006 that the amount found refundable was in-fact deposited by the proprietor of the cinema out of his own pocket and the same was not collected from the spectators while issuing the tickets. If, in case, it is found that the amount found refundable in the assessment orders dated 06.12.2006 was in fact collected from the 'spectators, then looking into the 'principle of unjust enrichment', the refund would not accrue to the appellant.

19. Resultantly, the impugned appellate order is set aside and the Appeals stand accepted with the abovementioned observations and directions.

20. Order pronounced.


02.08.2018

(Omkar Singh Ashiya)
Member