IN THE INCOME TAX APPELLATE TRIBUNAL
'F' BENCH, MUMBAI.

BEFORE SHRI R.V.EASWAR, PRESIDENT AND SHRI P.M. JAGTAP, AM

I.T.A. No.1582/Mum/2010
(Assessment Year : 2003-04)

The Assistant Commissioner of Income Tax-11(1), 439, Aayakar Bhavan, M.K.Marg, Mumbai-400 020.	Vs.	M/s. Ultra Movie Channel Ltd. 2-C, Thakkar Ind. Estate, N.M.Joshi Marg, Lower Parel(E), Mumbai-400 011. PAN:AAACU2478D
(Appellant)		(Respondent)

Appellant by : Smt. Ashima Gupta, DR
Respondent by : Mr. Vishwas Mehendale

O R D E R

Per R.V.Easwar, President: The following grounds have been taken by the revenue in this appeal:-

> *"1. On the facts and in the circumstances of the case and in law, the learned CIT(A) has erred in directing to allow the loss arisen out of sale of audio rights i.e. copyrights as revenue expenditure without appreciating the fact that as per the provisions of section 50 of the I.T.Act, loss arisen out of sale of audio rights is to be determined under the head "capital gain.*
>
> *2. The appellant prays that the order of CIT(A) on the above ground be set aside and that of the Assessing Officer restored."*

2. The assessment year is 2003-04. The assessee is a company. While completing the assessment under section 143(3) read with section 263, the Assessing Officer noted that the assessee had sold certain assets being audio rights and

claimed loss of Rs.17,28,722/- on the same. According to the Assessing Officer, section 50 of the Income Tax Act was applicable and the loss was required to be determined under the head "capital gains". He held that even otherwise the loss being capital in nature was required to be added back while computing the business income. In this view of the matter, he disallowed the loss and added back the same to the assessee's income.

3. On appeal the assessee contended that out of the loss of Rs.17,28,722/-, only Rs.95,080/- can be disallowed as capital loss and the balance of Rs.16,33,642/- should be allowed on the basis of section 35A(3) of the Income Tax Act. The CIT(A) accepted the submission on the basis of the details filed by the assessee. He noted that not all the assets sold were depreciable assets as held by the Assessing Officer in order to invoke section 50 and that part of the claim was in respect of the assets on which amortisation has been claimed and allowed under section 35A(3). He therefore held that the loss on account of amortised assets which came to Rs.16,33,642/- is allowable under section 35A(3).

4. The revenue is in appeal. We have considered the rival contentions. Section 50 of the Act can apply only in the case of depreciable assets on which depreciation had been claimed. The facts of the case show that in respect of the part of the assets sold no depreciation had been allowed but only amortisation

under section 35A(3) had been claimed and allowed in the earlier years. In such a case, it cannot be said that depreciation was allowed in order to invoke section 50 of the Act. The CIT(A) is therefore right in saying that loss on amortised assets amounting to Rs.16,33,642/- is allowable by virtue of section 35A(3). We accordingly confirm his order and dismiss the appeal filed by the revenue with no order as to costs.

Order pronounced in the open court on this 19th day of January, 2011.

Sd/-	Sd/-
(P.M. JAGTAP)	**(R.V.EASWAR)**
Accountant Member	President

Mumbai, Dated 19th January, 2011.
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Copy to :

1. *The Appellant*
2. *The Respondent*
3. *The CIT-11, Mumbai.*
4. *The CIT(A)-3 , Mumbai*
5. *The DR 'F ' Bench*

/True Copy/ *By Order*

Asstt. Registrar, I.T.A.T, Mumbai