



Income Tax Department

Government of India

327. Rule 9A of the Income-tax Rules, 1962 - Whether subsidy received by producers of regional feature films, which has not been charged to tax, shall not be reduced from cost of production of the film

1. The Board has received representations against the taxation of the subsidy granted by the State Governments to producers of feature films in regional languages.
2. The income-tax authorities have been treating the subsidy as revenue receipt incidental to the carrying on of the business of film production and have been charging it to tax. Different Benches of the Income-tax Appellate Tribunal are divided on this issue. The Andhra Pradesh High Court, in the case of *CIT v. Chitra Kalpa* [1989] 177 ITR 540 held that the subsidy has the character of a capital receipt.
3. With a view to avoiding controversy and litigation in the matter, the Board has decided that such *subsidy received by producers of regional feature films should not be charged to tax as revenue receipt*.
4. In this connection, it may, however, be pointed out that the *Explanation* to sub-rule (1) of rule 9A of the Income-tax Rules, 1962, as amended by the Income-tax (Seventh Amendment) Rules, 1989 with effect from 7th July, 1989, provides, *inter alia*, that the cost of production of a feature film shall be reduced by the subsidy received by the film producer under any scheme framed by Government, where such amount of subsidy has not been included in computing the total income of the assessee for any assessment year. *Conversely the amount received by producers of regional feature films, which has not been charged to tax, shall be reduced from the cost of production of the film for the purpose of rule 9A of the Income-tax Rules, 1962.*
5. The aforesaid amendment which has come into force with effect from 7th July, 1989 will apply in relation to the assessment year 1990-91 and subsequent assessment years. Similarly, the concession provided under paragraph 3 of this Circular, which is intimately linked with the amendment of the aforesaid rule 9A, will also apply in relation to the assessment year 1990-91 and subsequent years.

Source : Circular No. 541, dated 25-7-1989, as amended by, Circular No. 544, dated 15-9-1989.

JUDICIAL ANALYSIS

APPROVED IN- The above circular was cited with approval in *Sadichha Chitra v. CIT* [1991] 189 ITR 774 (Bom.), with the following observations:

"... The view expressed by the High Court of Andhra Pradesh in *Chitra Kalpa's* case [1989] 177 ITR 540 was accepted by the Central Board of Direct Taxes in its Circular No. 541, dated July 25, 1989. We are somewhat surprised to find that the controversy is still being pursued by the Department notwithstanding the above-referred circular. . . ." (p. 781)