IN THE INCOME TAX APPELLATE TRIBUNAL
MUMBAI BENCHES "L", MUMBAI

BEFORE SHRI B.R. BASKARAN (AM) AND SHRI RAM LAL NEGI (JM)

ITA No. 1430/MUM/2015
Assessment Year: 2008-2009

ITA No. 1431/MUM/2015
Assessment Year: 2007-2008

ITA No. 1432/MUM/2015
Assessment Year: 2009-2010
&
ITA No. 1433/MUM/2015
Assessment Year: 2010-2011

The ACIT-10(3)(1), R. No. 212, Aayakar Bhavan, M.K. Road, Mumbai - 400020	Vs.	M/s Neo Sports Broadcast Pvt. Ltd., Nimbus Centre, Oberoi Complex, Andheri (West), Mumbai – 400053 **PAN: AACCN2854Q**

Revenue by: Shri T.A. Khan (Sr. DR)
Assessee by : Dr. K. Shivaram (AR)

Date of Hearing: 26/09/2017
Date of Pronouncement 29/09/2017

आदेश / O R D E R

PER RAM LAL NEGI (JM)

These appeals have been filed by the revenue against the four orders dated 29/12/2014 passed by the Ld. Commissioner of Income Tax (Appeals)-17, Mumbai, pertaining to the assessment years 2007-08, 2008-09, 2009-10 and 2010-11, whereby the Ld. Commissioner of Income Tax (Appeals) has partly allowed the appeals pertaining to the A.Y.2007-08 & 2010-11 and allowed the

appeals pertaining to the A.Y. 2008-09 and 2009-10 filed by the assessee against assessment orders passed u/s 143 (3) of the Income Tax Act (for short 'the Act').

2. Since, all the four appeals pertain to the same assessee for different assessment years and most of the issues involved are common in all the appeals, the same were clubbed, heard together and are being disposed of by this consolidated order for the sake of convenience.

ITA No. 1431/MUM/2015 (Assessment Year: 2007-08)

3. Brief facts of the case are that the assessee a subsidiary of M/s Zenith Sports Pvt. Limited Company, filed its return of income for the assessment year 2007-08 declaring the total loss of Rs. 1,84,36,23,962/-. The assessee filed revised return subsequently declaring loss of Rs. 1,90,87,35,894/- after taking into consideration the amortization of one time fees as per order u/s 143(3) for the A.Y. 2005-06. The case was selected for scrutiny and notice u/s 143(2) and 142(1) were accordingly issued. In response to the said notices, the authorized representative of the company furnished the information and details called for by the AO. The AO after taking into consideration the submissions made details furnished by the assessee made the following additions:-

a) Disallowance of Rs. 18,54,499/- u/s 36 (1) (va).
b) Disallowance of Rs. 3,26,47,300/- payments made to Panamset International System Inc. debited under direct cost (technical).
c) Disallowance of Rs. 32,41,056/- license fee to Ministry of Information and Broadcast.
d) Disallowance of Rs. 5,44,17,143/- license fee/programme amortization – payment to Nimbus Communication Ltd. for matches of BCCI.
e) Disallowance of Rs. 7,76,94,776/- advertisement and sales promotion.
f) Disallowance of Rs. 2,80,83,851/- legal fees.
g) Disallowance of Rs. 1,44,59,949/- expenditure on professional fees.

h) Disallowance of Rs. 2,00,00,000/- expenditure on programming production- payment covered u/s 40A (2b) under other direct cost and

i) Disallowance of Rs. 1,433/- u/s 14A read with Rule 8D of the Income Tax Rules.

4. After making the aforesaid disallowances, the AO determined the total income of the assessee at Rs. 167,79,19,173/-. The assessee challenged the assessment order before the Ld. CIT (A). The Ld. CIT (A) after hearing the assessee partly allowed the appeal and deleted the following additions made by the AO:

a) Addition of Rs. 18,54,499/- made on account of delay payment of employees contribution to PF u/s 36(1) (va), read with section (24) (x).

b) Addition of Rs. 3,26,47,300/- paid to Panamsat International System Inc.

c) Addition of Rs. 5,44,17,143/- u/s 40A(2)(b) license fee, programme amortization-payment to Nimbus Communication Ltd. for matches of BCCI.

d) Addition of Rs. 7,76,94,776/- claimed for advertising and sales promotion.

The revenue is in appeal before the Tribunal against the impugned order passed by the Ld. CIT (A) raising the following effective grounds of appeal:-

1. *"Whether on the facts and in the circumstances of the case and in law, the Ld. CIT (A) erred in deleting the disallowance of Rs. 18,54,499/- being employees contribution to PF made after due date prescribed under the relevant Acts ignoring that the Employees Contribution collected by the Employer is deemed to be his income u/s 2(24) (x) and is allowable as a deduction u/s 36(1) (va) only if it is paid to the relevant fund by the due date as prescribed in the relevant Legislation and S*

43B covers only the Employer's contribution to the PF & ESIC and Employee's contribution is outside its ambit."

2. *Whether on the facts and in the circumstances of the case and in law, the Ld. CIT (A) erred in upholding the assessee's claim that payment made towards Satellite space fess/ Transponder Charges to Panasmat International System Inc. is revenue expenditure ignoring that the assessee has derived long term and enduring benefits by way of buying the satellite spaces for broadcasting its channels and therefore, the impugned expenditure is capital expenditure?"*

3. *"Whether on the facts and in the circumstances of the case and in law, the Ld. CIT (A) erred in deleting the addition of Rs. 5,44,17,143/- being the differential license fees payable to sister concern M/s Nimbus forgone by the assessee ignoring the fact that the assessee has ignored the available credit note of Rs. 24.99 crores and paid only Rs. 19.55 crores only and waived off the differential amount rendering excess payment to the sister concern and clearly attracted the provisions of S 40A(2)(b) of the Act."*

4. *Whether on the facts and in the circumstances of the case and in law, the Ld. CIT (A) erred in directing AO to allow the claim for deduction of payments made to Bangladesh Cricket Control Board u/s 40(a)(i) towards broadcasting rights ignoring the fact that the impugned payments are not disallowed under section 40(a)(ia) in the preceding year but on the ground that payments were made by the assessee to Bangladesh Cricket Board in the absence of any contractual obligations to pay during the year?"*

5. As regards the first ground of appeal, the Ld. Departmental Representative (DR) submitted that the Ld. CIT (A) has erred in deleting the disallowance of Rs. 18,54,499/- being employees contribution to Provident Fund made after the due date prescribed under the relevant Acts ignoring that the employees contribution collected by the employer is deemed to the income

of the assessee u/s 2(24)(x). The said allowance is allowable as a deduction u/s 36(1)(v a) only if the same is credited by the assessee to the employees account on or before the due date. The Ld. DR further relying on the assessment order passed by the AO submitted that since the assessment order has been passed in accordance with the provisions of law, the impugned order is liable to be set aside.

6. On the other hand, the Ld. counsel for the assessee relying on the findings of the Ld. CIT (A) submitted that the findings of the Ld. CIT (A) is based on the law laid down by the Hon'ble Bombay High Court in the case of *CIT vs. Ghatge Patil Transport Ltd. 368 ITR 749 (Bom)*. The Ld. counsel further submitted that since the findings of the Ld. CIT (A) is based on the law laid down by the Hon'ble Bombay High Court, there is no merit in this ground of appeal of the assessee and the same is liable to be dismissed.

7. We notice that in the present case, the appellant has made payment of employee's contribution and other funds before the due date of filing return of income. In *Alom Extrusions Ltd. 319 ITR 306 (SC)*, the Hon'ble Supreme Court has held that the amendment to section 43B by the Finance Act, 2003 applicable w.e.f. 01/04/2004 was retrospective in nature and would operate from 01/04/1988. The Hon'ble Bombay High Court in CIT vs. *Ghatge Patil Transport Ltd.* (supra) following the law laid down by the Hon'ble Supreme Court in *Alom Extrusions Ltd* (supra) held that if the payment is made before the due date of filing of return no addition can be made. Since, the decision of the Ld. CIT (A) is based on the law laid down by the Hon'ble Supreme Court and the Hon'ble jurisdictional High Court, we uphold the findings of the Ld. CIT (A) and dismiss this ground of appeal of the revenue.

8. The second ground of appeal pertains to disallowance of transponder charges of Rs. 3,26,47,300/- paid to Intelsat Corporation Inc. (earlier known as

Pansmat International System Inc.). The Ld. DR submitted before us the Ld. CIT (A) has wrongly held the payment in question is a revenue expenditure ignoring that the assessee has derived long term and enduring benefits by way of buying the satellite spaces for broadcasting its channels and therefore, the same is capital expenditure. The Ld. DR further submitted that the assessee ought to have deducted TDS on the said payment. Having failed to do so, the AO has rightly disallowed the same and added back to the income of the assessee.

9. On the other hand, the Ld. Counsel for the assessee submitted that the assessee paid the amount in question to Intelsat Corporation Inc. (earlier known as Pansmat International System Inc.) as transponder fees. The Ld. CIT (A) has rightly held that tax at source was not required to be deducted in the present case as the charges paid by the assessee is revenue expenditure allowable u/s 37 of the Act. The Ld. counsel further pointed out that the revenue has filed the appeal against the findings of the Ld. CIT (A) that the transponder charges is revenue expenditure, however, the department has not filed appeal on non deduction of TDS. The Ld. counsel further submitted that the transponder charges are not one time payment but a recurring payment to be made every year. The Ld. counsel relied on the judgment of the Hon'ble Supreme Court delivered in *Empire Jute Company vs. CIT 124 ITR 1 (SC)*, judgment delivered by the Hon'ble Delhi High Court in *Asia Satellite Telecommunication Company Ltd. vs. DIT 332 ITR 340,* decision of Mumbai Tribunal rendered in *ADDIT vs. Taj TV Ltd. 161 ITD 339*, in support of the claim of the assessee.

10 We have heard the rival submissions and also perused the material on record. The Ld. CIT (A) has deleted the addition holding as under:-

> *"3.3.13 Adverting to the facts of the appellant's case it is seen that payment is to be made every year as lease charges for using the transponder segment capacity of communications satellite for uplinking the*

appellant's channel through satellite for which it is earning the income through Advertisement Sales and subscription every year. It is expenditure for the year and thus by no stretch of imagination can accrue a benefit of enduring nature as claimed by the Ld. AO. Photocopy of the agreement entered with Intelsat Corporation is placed on page 1081-1097 of compilation, from the same it can be seen that the payment is made towards annual lease charges for using transponder segment capacity of communication satellite for uplinking the appellant's channel through satellite without which channel cannot be aired. The payment made is for hiring of transponder through which telecasting companies are able to uplink the desired image/data and de-link the same in the desired areas. The payment is to be made every year and it is not one time payment for acquiring any right to use the transponder, hence the contention of the Ld. AO that it will derived long term and enduring benefits by way of buying the satellite spaces for broadcasting its channels is not correct. The appellant has also not paid any lump sum payment for uplinking its channel for future years but the said payment was made pertaining to the above assessment years nor it is the case that the appellant has incurred the same as an expenditure which will yield benefit in years to come. From the very nature of the payment it is abundantly clear that the payment in question is an annual event, the nomenclature of the expenditure suggest that it is an annual lease charges. Therefore, the conclusion drawn by the Ld. AO that expenditure will derive long and enduring benefit was not correct, as the Ld. A.O. has wrongly drawn the inference that buying the satellite spaces is permanent, but the expenditure is for usage (lease) of transponder segment capacity of communication satellite up-linking the channel. The Delhi High Court in the case of Asia Satellite Communications Co. Ltd. vs. DIT (2011) 238 CTR (Del) 233 has discussed the nature of payments and it has been held that the said amount is a 'Business Income' and not 'Royalty' in the hands of the recipient. The said expenditure is thus a revenue expenditure allowable u/s 37(1) of the Act. It is also a matter of record that the appellant had to pay lease charges throughout the year i.e. even in the month when there are no cricket matches being telecasted 'Live' as the channel is on Áir', viewers want continuity and therefore, the said payment has to be made every year against which the appellant is deriving revenue in the form of Subscription Income and Advertisement Sales. Thus the said expenditure is of recurring nature for which no long term benefit is received and requires for the

purposes of earning income and thus has to be categorized as a revenue expenditure allowable u/s 37(1) of the Act. The disallowance made by the Ld. AO is accordingly deleted and this ground of appeal is allowed."

11. We notice that the Ld. CIT(A) has decided the issue in question by following the principles of law laid down by the Hon'ble Supreme Court and the High Courts discussed in the order. The Ld. CIT(A) has pointed out that transponder charges are recurring in nature and the assessee has to pay the same every year. In our considered view the findings of Ld. CIT (A) is based on the decision of Hon'ble Delhi High Court rendered in *Asia Satellite Communications Co. Ltd. vs. DIT* (supra) wherein the Hon'ble Court has discussed the nature of the similar payment and held that payment received towards transponder charges is business income and not Royalty in the hands of the recipient. We are therefore, of the considered view that the findings of the Ld. CIT(A) is well reasoned and based on the principles of law laid down by the Hon'ble Supreme Court and the High Courts. Accordingly, we uphold the findings of the Ld. CIT(A) and dismiss this ground of the appeal of the revenue.

12. Ground No. 3 pertains to addition of Rs. 5,44,17,143/- u/s 40A(2)(b), the Ld. DR submitted that the Ld. CIT (A) has erred in deleting the addition in question being the differential license fees payable to sister concern M/s Nimbus, forgone by the assessee ignoring the fact that the assessee has ignored the available credit note of Rs. 24.99 crores and paid only 19.55 crores only and waived off the differential amount rendering excess payment to the sister concern, which attracts the provisions of section 40A (2)(b) of the Act. The Ld. DR further submitted that the AO has rightly added back the amount in question to the income of the assessee as the same has been done by the assessee in collusion with its sister concern.

13. On the other hand, the Ld. counsel for the assessee relying on the impugned order submitted that the observation of AO that there was a collusion between the Nimbus Communication Ltd. (NCL) and assessee is totally wrong as the terms and conditions between NCL and assessee were on back to back basis as per the agreement between NCL and BCCI. BCCI is a third party not related to the assessee. Therefore, the AO has wrongly relied on the decision of *Juggilal Kamlapat 73 ITR 702 (SC)*. The addendum between BCCI and NCL and back to back agreement between NCL and the assessee clearly provide that no compensation for cancelled match will be paid by BCCI to NCL and NCL to the assessee. Therefore, section 40A (2)(b) is not applicable.

14. We have heard the rival submission and perused the record and also gone through the cases relied upon the authorities below. The Ld. CIT (A) has deleted the addition taking into consideration, the entire facts on record and after due application of mind. The concluding para of the order of the Ld. CIT (A) on this issue reads as under:

> *"5.3.3 From the foregoing, it become apparent that the appellant had not given any amount as favour to its sister concern by adjustment of above mentioned license fees in respect of cancelled matches between India and England at Nagpur. Nimbus has transferred all the benefit which it has received from BCCI to the appellant and therefore, the Ld. AO had wrongly held that the payment made to Nimbus is unreasonable and made additions u/s 40A (2b) of the Act, as there is no favour given by the appellant to Nimbus. Except stating in generality, the ld.A O has not brought any evidence to suggest that the appellant has granted unreasonable favour to its sister concern. Further, as regards the addition made under section 40A(2)(b) which clearly provides for disallowance of amounts which the assessing authority considered to be in excess of the requirements of the business. The following are the conditions for attracting the provisions:*

"In the first place, the assessee should fall in one of the following categories, viz, individual, company, firm, AOP or HUF. (The section does not specify "body of individuals "or any artificial juridical person not falling within any of the above entities).

Secondly, such an assessee should have incurred expenditure in respect of which payment should have been made to any of the close associates referred to above.

Thirdly, the expenditure in respect of which payment has been made should be in respect of transactions involving "goods, services and facilities."

Fourthly, the expenditure in the case of company should not be one which results directly or indirectly in the provision of any remuneration or benefit or amenity to a director or of such person who has a substantial interest in the company or to a relative of the director or of such person as the case may be (vide proviso to this sub-section).

Fifthly, the expenditure in respect of which payment has been made should be excessive or unreasonable, having regard to-

(i) the fair market value of the goods, services or facilities for which the payment is made, or

(ii) the legitimate needs of the business or profession of the assessee, or

(iii) the benefit derived by or accruing to assessee from the payment.

If these conditions are satisfied then disallowance can be made of the expenditure to the extent it may be regarded as excessive or unreasonable on the basis of objective standard specified above."

Firstly, what is disallowed under the section 40A(2)(b) is the expenditure and not the income as is the issue in the impugned case. The appellant has not claimed any expenditure on this count and Ld. AO treating the entire receipt as notional income which the appellant in view of the AO must have charged from the Nimbus. One of the essential conditions for application of this sub-section is that the assessee should have incurred "expenditure" and payment to close associates should have been made in respect of "Expenditures". As explained by the Supreme Court in Indian Molasses Co. vs. CIT)1959) 37 ITR 66 (SC), expenditure connotes "spending" in the sense of "paying out or away" and is something which is "gone irretrievably" and there should not

be possibility of money forming, on again, a part of the funds of the assessee. Therefore, the additions made by the Ld. AO were on assumptions and surmises without considering all the facts and agreements and cannot be sustained both on facts and in law. The same is accordingly deleted and this ground of appeal is allowed."

15. We notice that the appellant had entered into an agreement with Nimbus Communication Limited in March 2006 and acquired the telecast rights of cricket matches to be played in India from the year 2006-2010. Vide para 15 of the agreement both the parties agreed that there will be no waiver of license fees in case of cancellation of matches. Nimbus Communication had acquired the said rights from BCCI and this clause was also there in the agreement between Nimbus Communication and BCCI. The assessee had to pay license fees for cancelled match. The assessee negotiated with Nimbus Communications and Nimbus further negotiated with BCCI and it was accordingly decided that no extra license fees will be charged for one extra match to be played in lieu of one cancelled match. Accordingly, supplementary agreements between Nimbus and BCCI and between assessee and Nimbus were entered into and Nimbus transferred all the benefits to the assessee, which it received from BCCI. As per the terms of agreement the assessee was required to pay 10% over and above the license fees which was being paid by Nimbus to BCCI.

16. Under these circumstances, the Ld. CIT(A) has rightly held that the appellant has not given any amount to its sister concern by making adjustment in license fees in respect of cancelled match as alleged by the AO. Further the Ld. CIT(A) has rightly pointed that the AO has not brought any evidence on record to substantiate the allegation that the assessee has extended unreasonable favour to its sister concern Nimbus Communication. Hence, do not find any infirmity in the order of the Ld, CIT(A) to interfere with. We

therefore, uphold the findings of the Ld. CIT(A) and dismiss ground No 3 of the appeal of the revenue.

17. Ground No. 4 pertains to payment made to Bangladesh Cricket Control Board of Rs. 65.64 lacs. Before us, the Ld. DR submitted that the Ld. CIT (A) has erred in directing the AO to allow the claim of deduction of payment made to Bangladesh Cricket Control Board towards broadcasting rights without appreciating the fact that the impugned payments are not allowed u/s 40(a)(i) in the preceding year but on the ground that payments were made by the assessee to (BCCB) in the absence of any contractual obligations to pay during the year. Since, the finding of the Ld. CIT(A) are erroneous, the same is liable to be set aside.

18. On the other hand, the Ld. Counsel for the assessee submitted that the assessee had entered into an agreement with BCCB for telecasting of matches to be played in Bangladesh for the period February/March 2007 to October/November 2009. Since the agreement was for a long duration and it required discussion and meetings between the two governments, the formalized agreement got delayed. The assessee in the subsequent year applied under section 195 (2) of the Act before the Deputy Director of Income tax Range 4(2) Mumbai, however, the same was rejected. But the Ld. CIT(A) in appeal decided the issue in favour of the assessee holding that payment of license fees to BCCB is not in the nature of royalty hence not chargeable to tax in India hence no withholding tax is payable in India. The Department challenged the impugned order before the ITAT. The ITAT dismissed the appeal filed by the department. The Ld. counsel for the assessee further submitted that as per the Indian contract Act, even oral contract is valid and enforceable under law. Hence, the AO has wrongly held that the subsequent agreement entered between the assessee and BCCB will not apply to the retrospective transaction and the addition made by the AO was unwarranted.

19. We have heard the rival submissions and perused the orders of the authorities below in the light of the rival contentions. The learned CIT (A) has deleted the addition in question holding as under:

> *"6.3.2 It is a matter of record that the appellant had entered into agreement with BCCB on 27-11-2007 for period February/March 2007 to October/November 2010 for telecasting of matches of various series to be played in Bangladesh in 'Neo Cricket Channel' for the agreement period. The appellant has entered into terms of agreement with BCCB before the event for obtaining/telecasting of cricket rights and which was finalized in the Long Form Agreement on International Pvt. Ltd. (NSI), (Singapore) who is a commercial agent of BCCB was duly submitted by the appellant to the Ld. AO and is placed on page 262-292 of the compilation. In clause 4-Term of the said agreement (page 273 of compilation) it is mentioned as under:-*
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> > *"This agreement shall be deemed to have started on 27 November 2006 and shall expire either on 30 November 2009, or upon the completion of the last Event as set out in Schedule 1, whichever is the later (unless terminated early in accordance with clause 10 hereof)."*
>
> *In Schedule-1 of the said agreement (page 291 of the compilation) the Schedule of events of matches viz. year, months, visiting team, number of matches to be played and attributable value of the consideration is mentioned. It duly mention the Bangladesh-Zimbabwe series held in November/December 2006 with 5 One Day International Matches (ODIs) having attributable value of 1.32%. According to the appellant the formalized agreement got delayed due to the fact that two countries were involved and require approval of the Government of both the countries. It will also stated by the appellant that due discussion with Solicitors (expert in Sports-Cricket) and the Cricket Control Board of both the countries took considerable time and being a cross border transaction, it involves international taxation issue w.r.t. Income Tax, Services Tax, VAT etc. are to be considered of the both the countries and other commercial consideration. Further as regards the applicability of withholding of tax which is also one of the bases for disallowance I find that issue has been*

settled by Ld. CIT (A)-XXIII who vide his order dated 29-09-2008 has decided the issue in favour of the appellant holding that payment of License fee towards 'Live Feed' to BCCB is not in the nature of royalty, hence, not chargeable to tax in India and therefore, no withholding tax is payable in India, against which the department has filed an appeal before the Hon'ble ITAT. The ITAT's order in the appellant's own case for AY 2008-09 dated 09/11/2011 reported in 133 ITD 468(Mum) is placed on page 1109-1125 of the compilation wherein it has held that payment made towards consideration for live feed of cricket matches cannot be held as royalty within the meaning of Section 9(1)(vi) of the Act and therefore, no withholding tax is payable in India thereby confirming the CIT appeal order. In view of the foregoing, the observations of the Ld. AO made in context of payment to BCCB are out of context and not supported by the findings of ITAT and deserve to be ignored. This ground of appeal is thus allowed."

20. We noticed that the AO has not doubted the existence of mutual understanding between the assessee and BCCB which gave the assessee the right to telecast live matches. AO has not doubted the existence of agreement between the assessee and BCCB for live telecast of matches during the year 2006 to 2009. The AO has not made any addition for non-direction of TDS under section 40 (a) of the Act, but, held that the expenses in question are not allowable because the same have been made in the absence of any expressed agreement between the parties. In our considered view, the Ld. CIT(A) has rightly allowed the appeal of the assessee. We do not find any reason to interfere with the findings of the Ld. CIT(A). Hence, we uphold the findings of the Ld. CIT(A) and dismiss this ground of appeal of the revenue.

ITA No. 1430/MUM/2015 (Assessment Year: 2008-09)

The revenue is in appeal before the Tribunal against the impugned order passed by the Ld. CIT (A) raising the following effective grounds of appeal:-

1. *"Whether on the facts and in the circumstances of the case and in law, the Ld. CIT (A) erred in upholding the assessee's claim that payment made towards Satellite space fees/Transponder Charges to Panasmat international System Inc. is a revenue expenditure ignoring that the assessee has derived long term and enduring benefits by way of buying the satellite spaces for broadcasting its channels and therefore, the impugned expenditure is capital expenditure?"*

2. *"Whether on the facts and in the circumstances of the case and in law, the Ld. CIT (A) erred in deleting the disallowance u/s 40(a) for non-deduction of TDS in respect of payment made towards Satellite space fees/Transponder charges to Panasmat International System Inc. by placing reliance upon the decision of Delhi High Court in the case of Asia satellite Telecommunications (2011) 238 CTR (DEL) 233 ignoring that the Department has not accepted the aforesaid decision in the case of Asia satellite Telecommunications (supra) and an SLP has been filed before Supreme Court, which is pending?.*

3. *"Whether on the facts and in the circumstances of the case and in law, the Ld. CIT (A) erred in directing AO to allow the claim for deduction of payments made to Bangladesh Cricket Control Board u/s 40(a)(i) towards broadcasting rights ignoring the fact that the impugned payments are not disallowed under section 40(a)(ia) in the preceding year but on the ground that payments were made by the assessee to Bangladesh Cricket Board in the absence of any contractual obligations to pay during the year?"*

4. *"Whether on the facts and in the circumstances of the case and in law, the Ld. CIT (A) erred in directing AO to allow the expenses which were incurred towards dealers conference held in Malaysia and towards relaunch of Neo Cricket Channel by ignoring the fact that they constitute brand building expenses with enduring benefit and does not constitute revenue expenditure?"*

5. The appellant prays that the order of the CIT (A) on the above ground be set aside and that of the A.O. be restored."

2. The first ground of the present appeal is identical to the second ground of the appeal in assessee's own case for the assessment year 2007-08 discussed above. Since, we have upheld the findings of the Ld, CIT(A) and dismissed the identical ground of revenue's appeal in assessee's own case for the assessment year 2007-08, we dismiss this ground of appeal of the revenue for the same reasons and direct the AO to delete the additions in terms of the order of the Ld. CIT(A).

3. Second ground pertains to disallowance of transponder charges u/s 40(a) of the Act. The Ld. DR submitted that the Ld. CIT (A) has erred in deleting the disallowance u/s 40(a) for non deduction of TDS in respect of payment made towards satellite space fees/transponder charges to Panasmat International System Inc. by relying on the decision of the Delhi High Court in the case of *Asia Satellite Telecommunication 238 CTR (Del) 233* ignoring that the department has not accepted the aforesaid decision and challenged the same before the Hon'ble Supreme Court by filing SLP. The Ld. DR further submitted that since the finding of the Ld. CIT (A) are erroneous, the same is liable to be set aside.

4. On the other hand, the Ld. counsel for the assessee submitted that since the Ld. CIT (A) has allowed this ground of appeal by following the decision of the Hon'ble High Court rendered in *Asia Satellite Telecommunication (supra),* there is no merit in the appeal of the revenue. Hence, the same is liable to be dismissed.

5. We have heard the rival submissions and also perused the orders passed by the authorities below. We notice that the findings of the Ld. CIT (A) is based on the decision of the Hon'ble Delhi High Court discussed above and the Ld. DR has not produced any document to establish that the Hon'ble Supreme Court has stayed the operation of the decision of the Hon'ble Delhi

High Court relied upon by the CIT (A). Since, the findings of the Ld. CIT (A) is based on the decision of the Hon'ble High Court rendered in the case of *Asia Satellite Telecommunication*, (supra) we do not find any reason to interfere with the findings of the Ld. CIT (A), we accordingly uphold the findings of the Ld. CIT (A) and dismiss this ground of appeal of the revenue.

6. Ground No 3 of the appeal pertains to payment made to Bangladesh Cricket Board on the ground that the same has been paid in the absence of any contractual liability. This ground is identical to ground No 4 of the revenue's appeal in assessee's own case for the assessment year 2007-08 discussed above. Since we have upheld the findings of the Ld, CIT(A) and dismissed the identical ground of revenue's appeal in assessee's own case for the assessment year 2007-08, we dismiss this ground of appeal of the revenue for the same reasons and direct the AO to delete the additions in terms of the order of the Ld. CIT(A).

7. Ground No 4 pertains to expenditure on dealers conference held in Malaysia to the tune of Rs. 40,73,800/- and Rs. 18,86,757/- towards re-launch of Neo Sports Channel claimed by the assessee as advertising sale promotion expenses. The Ld. DR submitted that the Ld. CIT (A) has erred in directing the AO to allow the expenses aforesaid by ignoring the fact that they constitute brand building expenses with enduring benefit. The Ld. DR further submitted that since the expenses are capital in nature, the Ld. CIT (A) ought to have confirmed the disallowance made by the AO.

8. On the other hand, the Ld. counsel for the assessee relying on the findings of the Ld. CIT (A) submitted that the expenditure being advertisement expenses are revenue in nature, therefore, the Ld. CIT (A) has rightly ordered to delete the said disallowance. The Ld. counsel further submitted that the findings of the Ld. CIT (A) is in accordance with the principles of law laid

down by the Hon'ble Bombay High Court rendered in *CIT vs. Asian Paints (2016) 243 Taxman 348 (Bom)*. In the light of the said decision, the expenses incurred on advertisement are allowable u/s 37 of the Act.

9. We have heard the rival submissions and perused the material on record including the cases relied upon by the assessee. We notice that the Ld. CIT (A) has allowed this ground of appeal of the assessee relying upon the various judgments of the High Courts including the decision of Hon'ble Bombay High Court rendered in *CIT vs. Asian Paints (India) Ltd. (2016) 243 Taxman 348 (Bom)*. The relevant portion of the order of the Ld. CIT (A) reads as under:-

> *"5.3.3 In the case of CIT vs. Geoffrey Manners & Co. Ltd (2011) 238 CTR (Bom) 49 while relying on CIT vs. Liberty Group Marketing Division (2008) 8 DTR (P&H) 28, the Hon'ble Bombay High Court has held that expenditure incurred by assessee on production of films by way of advertisement for promoting of products manufactured by it being in respect of ongoing business of assessee is allowable revenue expenditure. Similarly in the case of CIT Vs. Salora International Ltd. 308 ITR 199 (Del), the Hon'ble Delhi High Court has held that finding of the Tribunal that the assessee had to incur advertisement expenditure for launching of its products to meet the competition in the market for selling the products and thus the entire expenditure is allowable as revenue expenditure does not call for any interference and, therefore, no substantial question of law arises. Therefore, in view of the foregoing, the appellant has incurred advertisement expenses and other related expenses which are part of the sale promotion expenses and in no way relates to the expenses which can be categorized as capital expenditure as being one which are incurred annually as a part of sale promotion. The addition made by the Ld. AO is accordingly deleted. This ground of appeal is thus allowed."*

10. We find that the Ld. CIT (A) has based his finding on the law laid down by the Hon'ble High Court in *CIT vs. Asian Paints (India) Ltd.* (supra). The Ld.

CIT (A) has further relied on the decision of the Hon'ble Delhi High Court in the case of *CIT vs. Salora International Ltd. 308 ITR 199 (Del)*, whereby the Hon'ble High Court upheld the findings of the Tribunal that the assessee had to incur expenditure for launching of its products to meet the competition in the market, therefore, the entire expenditure is allowable as revenue expenditure. The Ld. CIT (A) is of the considered view that in the present case the expenditure incurred by the assessee is for advertisement and other related expenses, which constitute part of the sale promotion expenses. Since, we do not find any reason to interfere with the order of the Ld. CIT (A), we uphold the findings of the Ld. CIT (A) and dismiss this ground of appeal of the revenue.

ITA No. 1432/MUM/2015 (Assessment Year: 2009-10)

The revenue is in appeal before the Tribunal against the impugned order passed by the Ld. CIT (A) raising the following effective grounds of appeal:-

1. *"Whether on the facts and in the circumstances of the case and in law, the Ld. CIT (A) erred in upholding the assessee's claim that payment made towards Satellite space fees/Transponder Charges to Panasmat international System Inc. is a revenue expenditure ignoring that the assessee has derived long term and enduring benefits by way of buying the satellite spaces for broadcasting its channels and therefore, the impugned expenditure is capital expenditure?"*

2. *Whether on the facts and in the circumstances of the case and in law, the Ld. CIT (A) erred in deleting the disallowance of depreciation of Rs. 3,40,818/- in contravention of Rule 46A ignoring that the assessee has not produced purchase bills and other evidences during the assessment proceedings?*

3. *The appellant prays that the order of the CIT (A) on the above ground be set aside and that of the A.O. be restored."*

2. The first ground of the present appeal is identical to the second ground of the appeal in assessee's own case for the assessment year 2007-08 discussed above. Since we have upheld the findings of the Ld. CIT(A) and dismissed the identical ground of revenue's appeal in assessee's own case for the assessment year 2007-08, we dismiss this ground of appeal of the revenue for the same reasons and direct the AO to delete the additions in terms of the order of the Ld. CIT(A).

3. Ground No. 2 of the appeal pertains to disallowance of depreciation of Rs. 3,40,818/- claimed by the assessee The Ld. DR submitted before us that the Ld. CIT (A) has erred in deleting the disallowance of depreciation of Rs. 3,40,818/- in contravention of Rule 46A ignoring that the assessee has not produced purchase bills and other evidence during the assessment proceedings.

4. On the other hand, the Ld. counsel for the assessee submitted that the depreciation of Rs. 2,61,362/ was claimed on account of addition to the fixed assets in the block of furniture and fixtures. Since, AO did not ask for bills in respect of office renovation at Bangalore the same were not produced during the assessment proceedings. However, the bills were placed before the Ld. CIT (A). Hence, the Ld. CIT (A) has rightly allowed depreciation on amount incurred on renovation of office at Bangalore including furniture and fixtures @ 10%.

5. We have perused the orders passed by the authorities below. We notice that the revenue has mentioned that the Ld. CIT(A) has deleted the disallowance of Rs. 3,40,818/-on account of depreciation claimed by the assessee whereas the Ld. CIT (A) has allowed the depreciation of Rs. 2,61,362/-claim on the ground that since the details regarding the purchase of assets along with the bills are available with the appellant, there is no reason for making disallowance of depreciation. We notice that the assessee

has disputed the disallowance of depreciation to the extent of Rs. 2,61,362/- only. We notice that neither the Ld. CIT (A) verified the bills submitted by the assessee during the appellate proceedings nor any remand report was called for. Hence, in our considered opinion the bills in question are required to be verified by the AO. We accordingly, set aside the findings of the Ld. CIT (A) and remand this issue back to the file of AO for verification of bills produced by the assessee during the appellate proceedings and decide the issue of disallowance of Rs. 2,61,362/- afresh after affording a reasonable opportunity of being heard to the assessee.

ITA No. 1433/MUM/2015 (Assessment Year: 2010-11)

The revenue is in appeal before the Tribunal against the impugned order passed by the Ld. CIT (A) raising the following effective grounds of appeal:-

1. *"Whether on the facts and in the circumstances of the case and in law, the Ld. CIT (A) erred in upholding the assessee's claim that payment made towards Satellite space fees/Transponder Charges to Panasmat international System Inc. is a revenue expenditure ignoring that the assessee has derived long term and enduring benefits by way of buying the satellite spaces for broadcasting its channels and therefore, the impugned expenditure is capital expenditure?"*

2. *The appellant prays that the order of the CIT (A) on the above ground be set aside and that of the A.O. be restored."*

2. The only ground of the present appeal is identical to the second ground of the appeal in assessee's own case for the assessment year 2007-08 discussed above. Since we have upheld the findings of the Ld, CIT(A) and dismissed the identical ground of revenue's appeal in assessee's own case for the assessment year 2007-08, we dismiss this ground of appeal of the revenue

for the same reasons and direct the AO to delete the additions in terms of the order of the Ld. CIT(A).

In the result, appeals filed by the revenue for assessment years 2007-08, 2008-09 and 2010-11 are dismissed and appeal for the assessment year 2009-10 is partly allowed for statistical purposes.

Order pronounced in the open court on 29th Sept., 2017.

Sd/-	*Sd/-*
(B.R. BASKARAN)	(RAM LAL NEGI)
ACCOUNTANT MEMBER	JUDICIAL MEMBER

मुंबई Mumbai; दिनांक Dated: 29 /09/2017

Alindra, PS

आदेश प्रतिलिपि अग्रेषित/Copy of the Order forwarded to :

1. अपीलार्थी / The Appellant
2. प्रत्यर्थी / The Respondent.
3. आयकर आयुक्त (अपील) / The CIT(A)-
4. आयकर आयुक्त / CIT
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, मुंबई / DR, ITAT, Mumbai
6. गार्ड फाईल / Guard file.

आदेशानुसार/ BY ORDER,

सत्यापित प्रति //True Copy//

उप/सहायक पंजीकार (Dy./Asstt. Registrar)
आयकर अपीलीय अधिकरण, मुंबई **/ ITAT, Mumbai**