IN THE INCOME TAX APPELLATE TRIBUNAL
MUMBAI BENCH "D", MUMBAI

BEFORE SHRI C.N. PRASAD, HON'BLE JUDICIAL MEMBER AND
SHRI RAMIT KOCHAR, HON'BLE ACCOUNTANT MEMBER

ITA.NO.2166/MUM/2016 (A.Y.2011-12)

Asst. Commissioner of Income –tax – 8(3)(2) Room No. 615, 6th floor, Aayakar Bhavan, M.K. Road, Mumbai-400 020	*v.*	M/s. Zee Media Corporation Ltd. {formerly known as Zee News Ltd.,} Continental Building, 135, Dr. A.B. Road, Mumbai – 18 **PAN No: AAACZ 1213 B**
(Appellant)		**(Respondent)**

ITA.NO.2695/MUM/2016 (A.Y.2011-12)

M/s. Zee Media Corporation Ltd. {formerly known as Zee News Ltd.,} 135, Continental Building, Dr. Annie Besant Road, Mumbai – 400 018 **PAN No: AAACZ 1213 B**	*v.*	Addl. Commissioner of Income –tax – Range 7(3) {Present in-charge Dy. Commissioner of Income Tax – 8(3)(2) Aayakar Bhavan, M.K. Road, Mumbai-400 020
(Appellant)		**(Respondent)**

Assessee by	**:**	**Shri Jay Bhansali**
Revenue by	**:**	**Shri Ram Tiwari**
Date of Hearing	**:**	**01.02.2018**
Date of Pronouncement	**:**	**16.04.2018**

O R D E R

PER C.N. PRASAD (JM)

1. These two appeals are filed by the Revenue and assessee against the order of the Ld. Commissioner of Income Tax (Appeals)-14 Mumbai dated 22.01.2016 for the Assessment Year 2011-12.

2. The first ground of appeal in assessee's appeal is regarding upholding the addition of ₹.14,13,908/- being the difference in receipts as per the Profit and Loss Account and as per AS-26.

3. Briefly stated the facts are that, the Assessing Officer in the course of the Assessment Proceedings on perusal of the AIR data found that there was a discrepancy in income to the extent of ₹.14,13,908/- in AS-26 and the assessee was required to submit explanation why these transactions are not appearing in the Books of Accounts and why the same should not be considered as income of the assessee. Assessee submitted that transactions in respect of the discrepancies of ₹.14,13,908/- did not happen and they do not relate to the assessee. However, the Assessing Officer treated the said amount as income of the assessee for the reason that assessee claimed TDS on such transactions and only denied owning up of the said transactions. On appeal the Ld.CIT(A) sustained the addition observing that since the assessee

claimed TDS pertaining to these transactions the submissions of the assessee are not acceptable.

4. Before us Learned Counsel for the assessee referring to Page No. 26 and 32 of the Paper Book which is the reconciliation of the income as per AS-26 with Books of Accounts submitted that the transactions said to have been entered into with Infiniti Retail Ltd was never happened and it was not known as to how the transaction was reflected in the AS-26. Learned Counsel for the assessee further submitted that other transactions are also not related to the assessee. Therefore, there is no justification in bringing to tax such amounts which are appearing in the AS-26. Referring to Page No.33 of the Paper Book Ld. Counsel for the assessee submitted that the assessee filed before the Assessing Officer a rectification petition u/s. 154 of the Act requesting for withdrawal of corresponding TDS credit on the alleged difference of ₹.14,13,908/- claimed by the assessee at ₹.2,51,862/- whereas the withdrawal was considered only to the extent of ₹.28,278/-. Therefore, Ld. Counsel for the assessee submitted that assessee requested the Assessing Officer to withdraw the TDS of ₹.2,51,862/- corresponding to the income of ₹.14,13,908/- and to reduce such income by amending the Assessment Order for the Assessment Year under consideration. Therefore, it is submitted that since the assessee never entered into any transactions as

appearing in AS-26 to the extent of ₹.14,13,908/- there is no justification in treating the same as income and the corresponding TDS may be directed to be withdrawn.

5. Learned Counsel for the assessee further referring to Page No. 21 of the Paper Book submitted that in the course of the Assessment Proceedings it was submitted before the Assessing Officer that these transactions do not appear in the Books of Accounts of the assessee and the bank account also does not reflect any receipts from these parties. Referring to the Page No. 22 of the Paper Book, Learned Counsel for the assessee submitted that assessee requested the Assessing Officer to verify the Books of Accounts of the assessee and also by issue of notice u/s. 133(6) to the parties before making any such addition. Learned Counsel for the assessee submitted that, assessee in the course of the Assessment Proceedings requested the Assessing Officer for verification of the Books of Accounts, bank statements to satisfy that the assessee had never received any amount as was allegedly stated and it was submitted that assessee wrongly claimed TDS on the said amount on the basis of AS-26 at the time of filing return of income. The Learned Counsel for the assessee submitted that, it was also requested before the Assessing Officer that TDS pertaining to the said transactions may be withdrawn.

6. Ld.DR vehemently supported the orders of the authorities below.

7. We have heard the rival submissions, perused the orders of the authorities below. Apparently the Assessing Officer made addition of ₹.14,13,908/- based on the AIR information and AS-26 ignoring the submissions of the assessee that these transactions never happened and the TDS on such amount was wrongly claimed by the assessee and the TDS may be withdrawn. The assessee also requested the Assessing Officer to examine the parties by issuing the notices u/s. 133(6). However, the Assessing Officer failed to make any enquiries with the parties when the assessee is denying any transactions with them. When the assessee denying any transactions with the parties the onus is on the Assessing Officer to verify the transactions with the parties and to establish that the assessee indeed entered into any transactions with the said parties and had received income from them. No such enquiries or effort was made by the Assessing Officer to find out whether the assessee entered into such transaction with the parties. Addition was made solely on the basis of the AIR information completely ignoring the submissions of the assessee. Almost an identical situation arose in the case of DCIT *v.* M/s. Reliance Broadcast Network Ltd., in ITA.No.3531/Mum/13 dated 27.05.2015 wherein the Coordinate Bench observed and held as under: -

"7. Ground Nos.2(i) to 2(iii) relate to the issue of disallowance on account of AIR mismatch of Rs.2,76,302/- The AO noticed that the AIR information showed an income of Rs.2,76,302/- to the assessee from "Ram Silk". The assessee however denied about receipt of any income from the said party. The AO issued notice under section 133(6) of the Income Tax Act to the above party calling for information/evidences from the above party. However, no reply was received from the said party. The assessee contended that in the absence of any evidence that such an amount was received by the assessee, no addition can be made. The AO, however, observed that since the information had been received from the department, hence the addition was to be made.

8. In appeal, the Ld. CIT(A), after considering the submissions of the assessee, deleted the addition observing that the assessee's PAN number might have been entered by the said party by mistake. Since the assessee has categorically denied the receipt of any income from the above party, the Ld. CIT(A), while relying upon the decision of the co-ordinate Bench of this Tribunal in case of Shri S. Ganesh vs. CIT" ITA No.527/M/2010 08.12.10, deleted the addition so made by the AO.

9. Before us, the Ld. A.R. of the assessee has relied upon the another decision of the Tribunal in the case of "M/s. A.F. Ferguson & Co. vs. JCIT" ITA Nos.5037/M/2012 & 437/M/2013 decided on 17.10.2014 wherein the Tribunal while dealing the issue of un-reconciled amount as per the AIR information has held that the addition cannot be made solely on the basis of AIR information, especially, when the assessee denies any such receipt as the burden to prove such receipts is on the AO as the assessee cannot be asked to prove the negative. The relevant findings of the Tribunal for the sake of reference are reproduced as under:

> *"6. We have considered the rival contentions of the ld. representatives of the parties. It is an undisputed fact on the file that the professional fees shown by the assessee in its P&L account far exceeds than the amount shown in the AIR information. Even the assessee has reconciled the major portion of the receipts. It has not been denied by the Revenue Authorities that full and complete details of the parties are not mentioned in the AIR information. The addition in this case has been made by the lower authorities solely on the basis of AIR information. In our view, the addition, made solely on the basis of AIR information, especially in the absence of full details of parties and when the professional receipts declared by the assessee far exceeds than the amount mentioned in the AIR information, is not sustainable in the eyes of law. Our above view is fortified with the decision of the Bangalore Bench of the Tribunal in the case of "DCIT vs. Shree G. Selva Kumar" in ITA No.868/Bang/2009 decided on 22.10.10 and another in the case of "Mrs. Arati Raman vs. DCIT" in ITA No.245/Bang/12 decided on 05.10.12 wherein it has been held that the assessment order based only on the AIR*

> *information would not stand in the eyes of law. If the assessee denies that he is in receipt of income from a particular source, it is for the AO to prove that the assessee has received income as the assessee cannot prove the negative. Reliance can also be placed on the decision of Mumbai Bench of Tribunal in the case of Shri S. Ganesh vs. ACIT" in ITA No.527/M/2010 decided on 08.12.10 wherein the Tribunal has held that in the absence of any material brought by the revenue authorities that the assessee has received amount more than the professional fees which has been declared by him in the P&L account and when the professional income declared by the assessee far exceeds the professional fees shown in the AIR information, then additions solely based on the AIR information are not sustainable. 7. In view of our above observations and in the facts and circumstances of the case, the additions made by the Revenue solely based on the AIR information are not sustainable and the same are hereby ordered to be deleted."*
>
> *10. Respectfully following the above decision of the Tribunal, we uphold the order of the Ld. CIT(A) on this issue."*

8. As could be seen from the above the Coordinate Bench in the case of M/s. A.F. Ferguson & Co. *v.* JCIT held that in the absence of any material brought by the Revenue that the assessee has received amount more than the professional fee which has been declared by him in the Profit and Loss Account additions solely based on AIR information are not sustainable. In the case on hand also addition was made solely based on the AIR information without bringing any cogent evidence on record to suggest that the assessee received income from the said parties especially when the assessee is denying any transactions with those parties. In the circumstances, we reverse the order of the Ld.CIT(A) and direct the Assessing Officer to delete the addition made on account of alleged difference in income. At the same time, we direct the Assessing

Officer to exclude or to withdraw the TDS corresponding to the said income which was claimed by the assessee and recompute the tax liability accordingly. This ground of appeal is allowed.

9. Coming to ground No. 2, the issue is relating to disallowance of expenses u/s. 14A of the Act.

10. The Assessing Officer by applying Rule 8D made disallowance of interest of ₹.6,31,221/- under Rule 8D 2(ii) and administrative expenses under Rule 8D2(iii) at ₹.7,20,899/-. In the course of the Assessment Proceedings it was submitted by the assessee that during the year ended 31.03.2007 investments of ₹.8,32,79,820/- was made in equity shares of subsidiary company M/s. zee Aakash in the Financial Year 2006-07 out of internal accruals and not out of borrowed funds. It was already explained during the Assessment Proceedings of earlier years that interest borrowing funds are identified with nexus and proved that interest borrowing funds were not used for investments made in earlier years which was accepted by the Assessing Officer in Assessment Year 2007-08. It was also contended that additions made by the Assessing Officer u/s. 14A in the Assessment Years 2008-09, 2009-10 and 2010-11 have been deleted by the Ld.CIT(A). Therefore, no disallowance is

required to be made u/s. 14A of the Act on account of interest on investments in M/s. zee Aakash.

11. It was also contended that there are sufficient interest free funds available with the assessee to make investments of ₹.14,41,79,820/- and in view of the decision of the Hon'ble Jurisdictional High Court in the case of CIT *v.* Reliance Utilities and Power Ltd. [313 ITR 340] it was submitted that the Hon'ble Jurisdictional High Court held that, where the assessee has own funds as well as borrowed funds the presumption can be made that the advances for non-business purposes have been made out of own funds and that the borrowed funds have not been used for this purpose. Hence disallowance of interest on borrowed funds is not required. The submissions of the assessee were not accepted and the Assessing Officer computed the disallowance. On appeal the Ld.CIT(A) upheld the disallowance.

12. Before us, the Learned Counsel for the assessee submitted that the issue has been decided in assessee's own case for the Assessment Year 2008-09 to 2010-11 by the Tribunal in ITA.No. 7138 & 7139/Mum/2012 and 5413/Mum/2013 dated 17.12.2014 wherein it was noted that the assessee has sufficient interest free funds, therefore no disallowance is required to be made u/s.14A. While holding so the Tribunal also referred

to the decision of the Hon'ble Jurisdictional High Court in the case of Reliance Utilities and Power Ltd., (supra).

13. Ld. Counsel for the assessee further placed reliance on the Coordinate Bench decision in the case of Allana Cold Storage Private Limited *v.* ACIT in ITA.No. 2366 & 2367/Mum/2015 dated 20.12.2017 wherein it has been held following the decision of the Special Bench of the Delhi Tribunal that the disallowance under Rule 8D2(iii) should be computed by considering only those which yielded exempt income during the year.

14. We have heard the rival submissions, perused the orders of the authorities below. We have also perused the orders of the Coordinate Bench of the Tribunal in Assessee's own case for the Assessment Years 2008-09 to 2010-11. On a perusal of the order we find that the Tribunal recorded finding and submissions of the assessee that no disallowance on account of interest was made in the Assessment Year 2006-07, 2007-08 u/s. 14A, however, Assessing Officer made disallowance on account of administrative and managerial expenses but this was deleted by the Ld.CIT(A). It was also observed by the Coordinate Bench that assessee placed reliance on the decision of the Hon'ble Jurisdictional High Court in the case of CIT *v.* Reliance Utilities and Power Ltd. (supra),

however we find that the Coordinate Bench deleted the disallowance u/s. 14A based on the decision of the Coordinate Bench in the case of Garware Wall Ropes Ltd. *v.* ACIT [65 SOT 86] wherein it has been held that the investments made in subsidiaries is not for the purpose of earning dividend income but was only to hold controlling stakes and it was strategic investments. As far as the proposition that there should not be any disallowance u/s. 14A when the investment was made in subsidiaries as a strategic investment is no more good law in view of the decision of the Hon'ble Supreme Court in the case of Maxopp Investment Ltd. *v.* CIT [91 Taxman.com 154]. Thus, this argument does not hold and liable to be rejected.

15. On a careful reading of the orders of the authorities below, we are of the considered view that this matter has to go back to the Assessing Officer for verification of accounts and for decision, keeping in view the Hon'ble Jurisdictional High Court in the case of CIT *v.* Reliance Utilities and Power Ltd. (supra), HDFC Bank [366 ITR 505] and Special Bench decision in the case of ACIT *v.* Vireet Investments Private Limited [165 ITD 27] thus, we restore this matter to the file of the Assessing Officer and to decide the issue keeping in view the decisions and after verification of the accounts of the assessee. Needless to say that the Assessing Officer shall give adequate opportunity of being heard to the assessee. If

the assessee has sufficient own funds there shall not be any disallowance under Rule 8D2(ii) and in so far as Rule 8D2(iii) is concerned the Assessing Officer may recompute the same in view of the decision of the Special Bench in the case of ACIT *v.* Vireet Investments Private Limited (supra).

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16. Coming to Revenue's appeal, Ground No. (i) and (ii) are in respect of disallowance under Rule 8D r.w.s. 14A of the Act. Since, we have restored this issue to the file of the Assessing Officer while deciding the appeal of the assessee these grounds are also restored to the file of the Assessing Officer for adjudication in the light of the observations made in assessee's appeal.

17. Coming to Ground No. (iii) and (iv) of the ground of appeal of the Revenue, it relates to the deletion of addition made by the Assessing Officer on account of expenditure in respect of programs and film rights by treating the purchase cost of programs and film rights as intangible assets and allowing deprecation @25% on the same.

18. At the outset the Learned Counsel for the assessee submitted before us that this issue has been decided in favour of the assessee by the Coordinate Bench in the assessee's own case for the Assessment

Year 2008-09 in ITA.No.1590/Mum/2015 dated 12.08.2015 wherein addition/disallowance was deleted by the Tribunal.

19. Ld. DR fairly submitted that this issue has been decided in favour of the assessee. However, he strongly placed reliance on the orders of the Authorities below.

20. On a perusal of the Coordinate Bench order, we find that the issue of whether the assessee is entitled for deduction on account of amortization of purchase cost of TV programs, film rights and the claim of the assessee was allowed by the Tribunal observing as under:

> *"25. We have heard both the parties and perused the orders of the Revenue Authorities as well as the cited precedents and paper book filed before us. The case of the assessee on the merits is that the assessee has a method of valuation of the news items/non fictional in nature, TV programs and the film rights. The details are given in the aforementioned "Note No 7" to the financial statements. According to the same, while the news items purchased are debited to the P and L account as they do not have the repeat telecast value, other items like the TV program and the film rights constitutes "current assets", which are amortised over the years and the period of such amortization is given in the said Note. Per contra, the case of the revenue on these issues is that these items constitute "intangible depreciable capital assets" and provisions of section 32 of the Act apply. Considering the same, we shall now undertake to discuss the item wise adjudication as follows.*
>
> *a. On the debits relating to the purchases of the News items: Regarding the nature of the news items purchased by the assessee and debited to the P and L account, we find it is in the common knowledge of every citizen that the news items do not have enduring benefit. Normally, the news items/non fictional items purchased by the assessee lose its value once they are telecast. Therefore, such items do not have repeat telecast value in terms of the revenue generation by way of advertisement from the sponsors. As such, it is a settled issue at the level of Hon'ble Delhi High Court in the case of Television Eighteen India Ltd (supra) that the claims of the assessee relating to news / non-fictional items are allowable. Even otherwise, even if some income*

generated, that is not criterion for describing the items as "intangible assets" for the purpose of invoking the provisions of section 32(ii) of the Act. We rely on the above referred Delhi High Court's Judgment in the case of Television Eighteen India Ltd (supra). Further, we find that the assessee has a declared method of accounting relating to accounting of these transactions. He has been consistently following the same without any change. In fact, the Revenue has consistently allowed the claim in the past. This is for the first time, AO disturbed the claim of the assessee and invoked the provisions of section 32 (ii) of the Act, without any sustainable reasoning. Therefore, considering all the points mentioned above, we are of the firm opinion that the decision of the AO/CIT(A) is unsustainable legally. Hence, the assessee is entitled to claim the purchases of news items/non fictional items as an allowable expenditure. Accordingly, we direct the AO to delete the relevant addition.

b. On the debits relating to the purchases of the TV Programs/Film rights: Assessee amortized the "inventories" as per the method of accounting consistently followed by him over the years. In fact, the Revenue has consistently allowed the claim in the past. This is for the first time, AO disturbed the claim of the assessee and invoked the provisions of section 32 (ii) of the Act without any sustainable reasoning. We have perused he judgment of Hon'ble High Court of Delhi and the order of the Tribunal of Chennai Bench in the case of M/s Sun TV Networks Ltd (supra). We have also extracted the relevant paragraphs and already placed in this order above. We find similar issue of amortization of the TV Programs/Film rights came up before the Chennai Bench of the Tribunal wherein the issue was decided in favour of the assessee and rejected the AO's proposal to invoke the provisions of section 32(ii) of the Act in respect of the above programs/rights. As such, the Ld DR's argument on the applicability of the AS-26 to the TV Programs and Film rights is not supported by any precedents and therefore, the arguments raised by the Revenue are not allowed. Thus, considering the covered nature of the issue as well as the consistent method of accounting followed by the assessee in this regard and also in the absence of any contrary material to support the arguments of the Revenue against the assessee's claim, we are of the opinion that the decision taken by the CIT (A) in the impugned order is required to be reversed. Accordingly, Ground nos. 2 and 3 raised by the assessee are allowed."

21. Respectfully following the Order of the Coordinate Bench, we reject the ground raised by the Revenue and uphold the order the Ld.CIT(A) who followed the order of the Coordinate Bench of the Tribunal in assessee's own case.

22. In the result, both the appeals are partly allowed as indicated above.

Order pronounced in the open court on the 16th April, 2018.

Sd/-	Sd/-
(RAMIT KOCHAR)	**(C.N. PRASAD)**
ACCOUNTANT MEMBER	**JUDICIAL MEMBER**

Mumbai / Dated 16/04/2018
Giridhar, Sr.PS

Copy of the Order forwarded to:

1. The Appellant
2. The Respondent.
3. The CIT(A), Mumbai.
4. CIT
5. DR, ITAT, Mumbai
6. Guard file.

//True Copy//

BY ORDER,

(Asstt. Registrar)
ITAT, Mum