

**IN THE INCOME TAX APPELLATE TRIBUNAL  
KOLKATA BENCH (B), KOLKATA**

**[Before Shri P.M. Jagtap, AM & Shri S.S. Viswanethra Ravi, JM]**

**I.T.A. No. 2204/Kol/2014**

Assessment Year: 2011-12

**DCIT CIR 12(2) Kolkata.....Appellant**  
**Aayakar Bhawan, 3<sup>rd</sup> Floor,**  
**P-7, Chowringhee Square,**  
**Kolkata - 700 069**

**M/s. Vantage Advertising Pvt. Ltd.....Respondent**  
**C-56, First Avenue,**  
**Anna Nagar East,**  
**Chennai - 600 102**  
**[PAN: AABCV 1202 B]**

**Appearances by:**

*Shri S. Dasgupta, Addl. CIT(DR) appearing on behalf of the Revenue.*

*Shri J.P. Khaitan, Sr. Advocate & Shri Pratyush Jhunhunwala, Advocate  
appearing on behalf of the Assessee*

Date of concluding the hearing : April 04, 2018

Date of pronouncing the order : May 18, 2018

**ORDER**

**PER P.M. JAGTAP, AM**

This appeal is preferred by the revenue against the order of Ld. CIT(A) - 12, Kolkata dated 22.09.2014.

2. In ground no 1, the revenue has challenged the action of the Ld. CIT(A) in deleting the disallowance of Rs. 83,91,871/- made by the A.O. on account of depreciation.

3. The assessee in the present case is a company which is engaged in the business of outdoor advertisement. The return of income for the year under consideration was filed by it on 28.09.2011 declaring a total income of Rs. 1,60,75,446/-. In the said return, depreciation on

hoardings and structures constructed for the purpose of advertisement was claimed by the assessee @ 25% by claiming the same as 'license including business or commercial rights of similar nature'. According to the A.O., the said asset was in the nature of plant and machinery and the assessee, therefore, was entitled to claim depreciation thereon @ 15% instead of 25%. He also held that one of these structures constructed by the assessee viz. 'Bang Fob Sophia Skywalk' was in the nature of building and the assessee, therefore, was entitled for depreciation thereon at 10% instead of 25%. He accordingly restricted the claim of the assessee for depreciation on hoardings and structures which resulted in the disallowance of Rs. 83,91,871/-.

4. The disallowance made by the A.O. on account of its claim for depreciation on hoardings and structures to the extent of Rs. 83,91,871/- was challenged by the assessee in the appeal filed before the Ld. CIT(A) and by following his own order in assessee's own case for A.Y. 2006-07 on a similar issue, the Ld. CIT(A) deleted the disallowance made by the A.O. on account of depreciation. He observed that the hoardings and structures constructed by the assessee for the purpose of advertisement were in the nature of intangible asset as held in assessee's own case for A.Y. 2006-07 and the rule of consistency was required to be followed as held by the Hon'ble Supreme Court in the case of **Radhasoami Satsang vs CIT 193 ITR 321**.

5. We have heard the arguments of both the sides and also perused the relevant material available on record. As agreed even by

the learned DR, the decision of the Ld. CIT(A) giving relief to the assessee on a similar issue in assessee's own case for A.Y. 2006-07 has been accepted by the department and there is no appeal filed before the Tribunal challenging the decision of the Ld. CIT(A) in assessee's own case for A.Y. 2006-07 on a similar issue which is in favour of the assessee. We, therefore, find no justifiable reasons to interfere with the impugned order of the Ld. CIT(A) on this issue and upholding the same, we dismiss ground no 1 of revenue's appeal.

6. In ground no 2, the revenue has challenged the action of the Ld. CIT(A) in deleting the disallowance of Rs. 1,08,97,993/- made by the A.O. under section 40(a)(ia) for low deduction of tax at source.

7. As noticed by the A.O. during the course of assessment proceedings, TDS under section 194C was deducted by the assessee from the payments made on account of rent for hoardings during the year under consideration. According to the A.O., the assessee was liable to deduct tax at source from the said payments under section 194I at a higher rate and since there was failure of the assessee to do so, he disallowed amount of Rs. 1,08,97,993/- paid by the assessee on account of rent for hoarding under section 40(a)(ia) of the Act.

8. The disallowance made by the A.O. under section 40(a)(ia) for the lower deduction of tax at source from the payments made on account of rent for hoardings was challenged by the assessee in the appeal filed before the Ld. CIT(A) and by following the order of his predecessor in assessee's own case for A.Y. 2009-10 and 2010-11 on a

similar issue, the Ld. CIT(A) deleted the disallowance made by the A.O. under section 40(a)(ia) on account of short deduction at source.

9. We have heard the arguments of both the sides and also perused the relevant material available on record. As agreed by the learned representatives of both the sides this issue involved in ground no 2 of the revenue's appeal is squarely covered in favour of the assessee by the latest decision of this Tribunal rendered in assessee's own case for A.Y. 2010-11 rendered vide its order dated 03.01.2018 passed in ITA No. 2616/Kol/2013. A copy of the said order is placed on record before us and perusal of the same shows that a similar disallowance made under section 40(a)(ia) for the short deduction of tax at source was deleted by the Tribunal by following the decision of Hon'ble Calcutta High Court in the case of CIT vs S.K. Tekriwal 361 ITR 432 wherein it was held that section 40(a)(ia) of the Act could not be invoked where there was a short deduction of tax and it could be invoked only when there was no deduction of tax at source. Respectfully following the said order of the Tribunal in assessee's own case for A.Y. 2010-11 as well as the decision of the Hon'ble Jurisdictional High Court in the case of S.K. Tekriwal (supra), we uphold the impugned order of the Ld. CIT(A) deleting the disallowance made by the A.O. under section 40(a)(ia) and dismiss ground no 2 of the revenue's appeal.

10. In ground no 3, the revenue has challenged the action of the Ld. CIT(A) in deleting the disallowance of Rs. 48,730/- made by the A.O. on account of depreciation on temporary hoardings.

11. In its return of income, depreciation on hoarding structures of the value of Rs. 57,330/- was claimed by the assessee at 100% by claiming the same to be temporary structures. According to the A.O., the hoarding structures constructed by the assessee however were consisting of cement base as well as fabricated iron structure. He held that the said structures, therefore, were permanent in nature on which assessee was entitled to claim depreciation only @ 15% applicable to plant and machinery. He accordingly allowed depreciation on the said structures only to the extent of Rs. 8600/- and disallowed the balance amount of Rs. 48,730/-.

12. The disallowance made by the A.O. on account of depreciation on hoarding structures was challenged by the assessee in the appeal filed before the Ld. CIT(A) and by following the orders of his predecessors in assessee's own case for A.Y. 2004-05 to 2010-11 as well as the order of the Tribunal in assessee's own case for A.Y. 2005-06 on a similar issue, the Ld. CIT(A) deleted the disallowance made by the A.O. on account of depreciation on hoardings structures.

13. We have heard the arguments of both the sides on this issue and also perused the relevant material available on record. As agreed by the learned representatives of both these sides, this issue involved in ground no 3 of the revenue's appeal is also squarely covered in favour of the assessee by the recent order of the Tribunal dated 03.01.2018 (supra) wherein a similar issue is decided in favour of the assessee vide paragraph no 17 by following the decision rendered on a similar issue in the earlier year. Respectfully following the order of the Tribunal for A.Y. 2010-11, we uphold the impugned order of the

Ld. CIT(A) giving relief to the assessee on this issue and dismiss ground no 3 of the revenue's appeal.

**14. In the result, the appeal of the revenue is dismissed**

Order Pronounced in the Open Court on 18<sup>th</sup> May, 2018.

Sd/-  
(S.S. Viswanethra Ravi)  
JUDICIAL MEMBER

Sd/-  
(P.M. Jagtap)  
ACCOUNTANT MEMBER

**Dated: 18/05/2018**

Biswajit, Sr. PS

Copy of order forwarded to:

1. M/s. Vantage Advertising Pvt. Ltd., C-56, First Avenue, Anna Nagar East, Chennai – 600 102.
2. DCIT CIR 12(2), P-7, Chowringhee Square, 3<sup>rd</sup> Floor, Kolkata – 700 069.
3. The CIT(A)
4. The CIT
5. DR

True Copy,

By order,

Sr. P.S. / H.O.O.  
ITAT, Kolkata