

**IN THE INCOME TAX APPELLATE TRIBUNAL,
MUMBAI BENCH "K", MUMBAI**

**BEFORE SHRI MAHAVIR SINGH, JUDICIAL MEMBER AND
SHRI RAJESH KUMAR, ACCOUNTANT MEMBER**

**ITA No.1475/M/2017
Assessment Year: 2012-13**

M/s. Zee Entertainment Enterprises Limited, 18 th Floor, A-Wing, Marathon Futurex, N.M. Joshi Marg, Lower Parel, Mumbai - 400 013 PAN: AAACZ 0243R	Vs.	Asst. Commissioner of Income Tax, Range-16(1), Aayakar Bhavan, Room No.439, Mumbai - 400 020
(Appellant)		(Respondent)

Present for:

Assessee by : Shri Madhur Agrawal, A.R.
Shri Jay Bhansali, A.R.

Revenue by : Shri Jayant Kumar, D.R.

Date of Hearing : 05.06.2018

Date of Pronouncement : 08.06.2018

ORDER

Per Rajesh Kumar, Accountant Member:

The present appeal has been preferred by the assessee against the order dated 29.11.2016 of the Dispute Resolution Panel [hereinafter referred to as the DRP] relevant to assessment year 2012-13.

2. The facts in brief are that assessee filed the return of income on 23.11.2012 declaring an income of Rs.735,61,83,830/- which was revised to Rs.735,90,74,570/- on 31.03.2014. The case of the assessee was selected for

scrutiny. During the course of assessment proceeding the AO noticed that the assessee has entered into international transactions with its AEs (associated enterprises) and therefore a reference was made under section 92CA(1) of the Act dated 17.12.2014 to Transfer Pricing Officer. The assessee is in the business of broadcasting of satellite television channels, space selling agent for other television channels, sale of television programmes, films, movies etc. The AO finally framed the assessment under section 143(3) read with section 144C (13) of the Act by making two additions i.e. one in respect of transfer pricing adjustment under section 92CA(3) as per TPO order to the tune of Rs.63,45,801/- in respect of corporate guarantee given by the assessee @ 1.5% of the total loan outstanding and 2nd in respect of disallowance under section 14A of Rs.6,58,956/-.

3. The issue raised in ground No.1 is in respect of confirmation of addition of Rs.63,45,801/- by the DRP as made by the AO/TPO in respect of corporate guarantee given by the assessee for availing loan by the associated enterprises. The TPO calculated the total arm length price of the guarantee fee at Rs.1,90,37,404/- and after reducing the guarantee fee received by the assessee @1% from its AEs treated the balance amount of Rs.63,45,801/- as adjustment under section 92CA as transfer pricing adjustment which is also confirmed by the DRP.

4. The Ld. A.R., at the outset, pointed out that the issue is squarely covered in its own case in favour of the assessee by

the decision of Tribunal in ITA No.2035/M/2016 for A.Y. 2011-12 in which it has been held that the guarantee commission should be worked out at 0.50% of the average amount of the loan outstanding and therefore the addition as sustained by DRP should be deleted.

5. The Ld. D.R. fairly agreed to the contention of the assessee that issue is covered in favour of the assessee.

6. We have heard the rival submissions of both the parties and perused the material on record. We find that the identical issue has been decided by the co-ordinate bench of the Tribunal in assessee's own case in ITA No.2035/M/2016 for A.Y. 2011-12 vide order dated 28.05.18 wherein it has been held that guarantee commission should be worked out at 0.50% of the average amount of the loan outstanding. The operative part of the decision is reproduced as under:

"9. We have heard rival contentions and perused the record. We noticed that the Coordinate Bench of the Tribunal has considered the issue relating to giving of corporate guarantee in the assessee's own case and has held that guarantee commission should be worked out at 0.50% of the average amount of loan outstanding. Before us, the assessee has argued that the corporate guarantee given by the assessee should not be considered to be an international transaction. However, since a particular view has already taken by the Coordinate Bench of the Tribunal in assessee's own case in A.Y. 2008- 09, we prefer to follow the same. Accordingly, in respect of corporate guarantee given on overdraft facility, following the order passed by Tribunal in AY 2008- 09, we direct the Assessing Officer to restrict TP adjustment to 0.5% of average amount of loan outstanding during the year. In respect of counter guarantee given by the assessee for the guarantee given by IDBI Bank on behalf of Taj TV, we agree with the contentions of learned AR that non-fund based facility cannot be treated at par with the the fund based facility. We notice that in the M / s . Z e e E n t e r t a i n m e n t E n t e r p r i s e s L i m i t e d case of Asian Paints (India) Ltd (supra), 0.20% has been held to be appropriate by the Tribunal. Accordingly, we direct the Assessing Officer to compute TP adjustment in respect of counter guarantee given at 0.20% of the amount of counter guarantee."

7. We, therefore, following the decision of the co-ordinate Bench and maintaining the consistency with the earlier year, direct the AO to delete the addition of Rs.63,45,801/-. Accordingly, ground No.1 is allowed.

8. The issue raised in second ground of appeal is as regards the confirmation of disallowance of Rs.6,58,956/- by DRP as made by the AO under section 14A read with rule 8D.

9. At the outset, the Ld. A.R. of the assessee prayed before the Bench that the issue involved may kindly be restored to the file of the AO with a direction to decide the same in the light of the decision of the special bench in the case of ACIT vs. Vireet Investment (P.) Ltd. (2017) 82 taxmann.com 415 (Delhi-Trib.) (SB) because there are several investments which yielded no exempt income during the year and the same should be excluded while computing the disallowance under section 14A.

10. The Ld. D.R., on the other hand, relied on the ground raised by the Revenue.

11. Having heard both the parties and perusing the material placed before us, we find that no disallowance is attracted in respect of those investments which yielded no exempt income under the provision of section 14A read with rule 8D as has been held in the case of ACIT vs. Vireet Investment (P.) Ltd. (supra). We, therefore, restore the issue back to the file of the AO with the direction to decide the same in the light of the

ratio laid down by the special bench in the above case. Accordingly, the ground is allowed for statistical purpose.

12. In the result, the appeal of the assessee is partly allowed for statistical purposes.

Order pronounced in the open court on 08.06.2018.

**Sd/-
(Mahavir Singh)
JUDICIAL MEMBER**

**Sd/-
(Rajesh Kumar)
ACCOUNTANT MEMBER**

Mumbai, Dated: 08.06.2018.

* Kishore, Sr. P.S.

Copy to: The Appellant
The Respondent
The CIT, Concerned, Mumbai
The CIT (A) Concerned, Mumbai
The DR Concerned Bench

//True Copy//

By Order

Dy/Asstt. Registrar, ITAT, Mumbai.