

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

**BEFORE SHRI C.N. PRASAD, HON'BLE JUDICIAL MEMBER AND
SHRI N.K. PRADHAN, HON'BLE ACCOUNTANT MEMBER**

**ITA NO.802 & 803/MUM/2016
(A.Ys: 2010-11 & 2011-12)**

M/s. Blue Frog Media P. Ltd.
D-2 Mathuradas Mill compound,
N.M. Joshi Marg, Lower Parel,
Mumbai – 400 013

v. Dy. Commissioner of Income-tax
Circle – 5(3)
Mumbai

PAN: AAKCS 0462 R

(Appellant)

(Respondent)

Assessee by : Shri Jay Shah
Department by : Shri T.A. Khan

Date of Hearing : 04.06.2018
Date of Pronouncement : 27.08.2018

ORDER

PER C.N. PRASAD (JM)

1. These two appeals are filed by the assessee against the order of the Learned Commissioner of Income Tax (Appeals) – 10 Mumbai dated 20.11.2015 for the Assessment Years 2010-11 & 2011-12.

2. Since the issue is common in both the appeals they are heard together and disposed off by this common order for the sake of convenience.

3. The following common ground has been raised by the assessee except for the figures: -

“1. On the facts and circumstances of the case as well as in Law, the Learned CIT(A) has erred in restricting the action of Learned Assessing Officer in disallowing the claim of expenses of ₹.55,12,887/- u/s. 40(a)(ia) of the Income-tax Act, 1961 on the alleged plea that the TDS has not been deducted, without considering the facts and circumstances of the case.”

4. Briefly stated the facts are that, the Assessing Officer while completing these two assessments noticed that assessee company made payments to various artists without deducting TDS. Assessee was asked to show cause as to why the said payments should not be disallowed invoking the provisions of section 40(a)(ia) of the Act. Assessee in the course of Assessment Proceedings submitted a note in respect of commission paid on credit cards and the applicability of the provisions of TDS. It was contended that the provisions of section 194J and 194C are not applicable on the payments by way of Professional Fees or Sub contractor's payments. Not convinced with the submissions of the assessee the Assessing Officer held that the assessee is in default u/s.194H in so far as the commission paid on credit cards are concerned. He also held that the assessee is in default within the provisions of section 195 in respect of the payments made to Foreign Artists and thus invoked the provisions of section 40(a)(ia) on the payments made to Foreign Artists as well as the commission paid on credit cards was disallowed.

5. On appeal the Ld.CIT(A) taking note of the various decisions held that commission paid to the banks on credit / debit cards will not attract TDS. Coming to the charges paid to Non-resident Artists the Ld.CIT(A) taking note of the amendment to Section 194E which came w.e.f. 01.07.2012 wherein the payments made to an “entertainer” is made liable for TDS, held that since the amendment is w.e.f. 01.07.2012 the assessee is not required to deduct TDS during the Assessment Years 2010-11 & 2011-12 on the payment made to Artists. However, the Ld.CIT(A) held that since the assessee has not filed any details to prove that the entire payment under the sub-head is only to the non-residents and in the absence of any bifurcation the Ld.CIT(A) confirmed the disallowance.

6. Before us, in the course of hearing the Ld. Counsel for the assessee agreed that the provisions of TDS attract for the payments made only to Resident Artists and no TDS is required to be made on the payments made to Foreign Artists. Learned Counsel for the assessee submitted that a direction may be given to the Assessing Officer to examine this aspect and pass appropriate order accordingly. No other arguments on any other issue have been advanced before us by the counsel.

7. Ld. DR submitted that Assessing Officer and Ld.CIT(A) is justified in sustaining the disallowance as the assessee has not deducted the TDS even on resident artist's payments.

8. We have heard the rival submissions, perused the orders of the authorities below. In principle we agree with the order of the Ld.CIT(A) in holding that provisions of section 194E are not applicable for the Assessment Years 2010-11 & 2011-12 and assessee is not required to made TDS on the payments made to Foreign Artists. However, since the assessee has not filed the bifurcation before the lower authorities, we restore the matter for limited purpose of verification of the payments made to Foreign Artists and Indian Artists and the Assessing Officer is directed to exclude only the payments made to Foreign Artists from disallowance and recompute accordingly. Needless to say that the Assessing Officer shall provide adequate opportunity of being heard to the assessee.

9. In the result, appeals of the assessee are partly allowed for statistical purposes.

Order pronounced in the open court on the 27th August, 2018

Sd/-
(N.K. PRADHAN)
ACCOUNTANT MEMBER
Mumbai / Dated 27/08/2018
Giridhar, SPS

Sd/-
(C.N. PRASAD)
JUDICIAL MEMBER

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