

आयकर अपीलिय अधिकरण “B” न्यायपीठ मुंबई मे ।

IN THE INCOME TAX APPELLATE TRIBUNAL “B” BENCH, MUMBAI

श्री महावीर सिंह, न्यायिक सदस्य एवं श्री मनोज कुमार अग्रवाल लेखा सदस्य के समक्ष ।

BEFORE SRI MAHAVIR SINGH, JM AND SRI MANOJ KUMAR AGGARWAL, AM

आयकर अपील सं./ ITA No. 3689/Mum/2017

(निर्धारण वर्ष / Assessment Year 2011-12)

आयकर अपील सं./ ITA No. 3690/Mum/2017

(निर्धारण वर्ष / Assessment Year 2012-13)

The Asst. Commissioner of Income Tax, Circle 16(1), Room No. 439, Aayakar Bhavan, M.K. Marg, Mumbai-20	Vs.	Business Broadcast News P. Ltd. (Formerly known as UTV News Limited) Parijat House, 1076, Dr. E. Moses Road, Worli naka, Worli, Mumbai-400 018
(अपीलार्थी / Appellant)	..	(प्रत्यर्थी / Respondent)
स्थायी लेखा सं./PAN No. AAACU8997R		

अपीलार्थी की ओर से / Appellant by : Shri Purushottam Tripuri, DR

प्रत्यर्थी की ओर से / Respondent by : Shri Jitendra Sanghvi, AR

सुनवाई की तारीख / Date of hearing:	15.10.2018
घोषणा की तारीख / Date of pronouncement :	15.10.2018

आदेश / ORDER

PER MAHAVIR SINGH, JM:

These appeals by the Revenue are arising out of the order of Commissioner of Income Tax (Appeals)-4, Mumbai [in short CIT(A)], in appeal Nos. CIT(A)-4/Tr.273/Appeal-3/ACIT-11(1)/2014-15, CIT(A)-4/IT-74/JCIT-16(1)/2015-16 vide order dated 16.02.2017 & 15.02.2017. The



Assessments were framed by the Asst. Commissioner of Income Tax & Jt. Commissioner of Income Tax, Circle 11(1) & 16(1), Mumbai (in short 'ACIT'/'JCIT'/ AO') for the A.Y. 2010-11 & 2012-13 vide order dated 10.01.2014 & 23.03.2015 under section 143(3) of the Income Tax Act, 1961 (hereinafter 'the Act').

2. The only issue in these two appeals of Revenue is as regards to the order of CIT(A) in deleting the disallowance made by AO on account of short deduction of TDS under section 194C instead of actual deduction to be made under section 194J of the Act in respect Carriage Fees/ Channel Placement Fees'. As these payments are made for use/ right to use of process and are royalty as per explanation 6 under section 9(1)(vi) of the Act and therefore covered under section 194J of the Act. For this Revenue has raised identically worded grounds in both the years and facts are exactly identical in both the years. Hence, we will take the facts from ITA No. 3689/Mum/2017 for AY 2011-12 and decide the issue. The grounds raised by Revenue reads as under: -

"A) Whether on the facts and circumstances of the case and as per law, the Id. CIT(A) was justified in directing to delete the disallowance u/s. 40(a)(ia) rws 194J in respect of Carriage Fees/ Channel Placement Fees' and failing to appreciate that the same are payments made for use/right to use of 'process' are royalty' as per Explanation 6 to section 9(1)(vi) and /therefore covered u/s. 194J of the Income-tax Act, 1961?

B) Whether on the facts, in the circumstances of the case and as per law, the Id. CIT(A) has erred in directing to delete the disallowance u/s. 40(a)(ia) rws 194J of 'Carriage Fees/Channel



Placement Fees', whereas the jurisdictional ITAT, Mumbai q.' Bench, in its order dated 28.03.20 14 in the case of ADIT-(IT)-2(2), Mumbai Vs. Viacom 18 Media Pvt. Ltd. has confirmed that the payments made for use/right to use of 'process' are 'royalty' in terms of the Income Tax Act, 1961."

3. Briefly stated facts are that during the year under consideration, the assessee paid carriage fee of ₹ 39,61,12,085/- and when the AO perused the details he noticed that the assessee had deducted TDS under section 194C of the Act on payment of such fee at the rate of 2%. But, according to him, it should have deducted tax under section 194J of the Act at the rate of 10% because these payments are in the nature of royalty as per explanation 6 to section 9(1)(vi) of the Act and therefore, covered by section 194J of the Act. Accordingly, the AO disallowed these carriage / channel placement fee by invoking the provisions of section 40(a)(ia) of the Act. Aggrieved, assessee preferred the appeal before CIT(A). The CIT(A) deleted the disallowance relying on the Tribunal's decision in assessee's own case by observing in para 4.4 as under: -

"4.4 I have considered the submissions of the appellant and perused the material available on records. The said issue is directly covered by the appellant's own case in ITA No 2697, 2698, 4206 and 4207/Mum/2012, order dated 16.10.2015. The Hon'ble Mumbai Tribunal has held that provisions of section 194J of the Act are not applied on payment of carriage fees to cable operations hence, the disallowance carriage/ channel placement fees amounting to ₹



39,61,12,085/- under section 40(a)(ia) of the Act is deleted.”

4. The learned Counsel for the assessee stated that the Tribunal in assessee's own case in ITA No. 2697,2698,4206 & 4207/Mum/2012 vide order dated 16.10.2015 for AY 2008-09 to 2011-12 has deleted the addition vide Para 3 to 10 as under: -

“3. Subsequently, the assessee came in appeal before the learned CIT(A) and the learned CIT(A) arrived at the conclusion that the case of the assessee falls within the purview of Section 194C of the Act instead of Section 194J. Hence, he set aside the order of the AO in this regard. Being aggrieved, the Revenue is in appeal before the Tribunal.

4. The learned Departmental Representative [hereinafter referred to as “the DR”] has argued that the assessee made payment in lieu of technical services provided to it by the MSO/Cable Operators; hence the case of the assessee comes within the ambit of “fees” for technical services which comes within the ambit of the provisions contained in Section 194J of the Act and accordingly, TDS was required to be deducted, but the assessee deducted TDS as per the provisions of Section 194C of the Act wrongly, therefore, the order of the AO passed u/s 201/201(A) of the Act dated 18-03-2011 is quite legal and in accordance with law. But, the learned CIT(A) has wrongly arrived at his conclusion that the case of the assessee falls within the ambit of the provisions of Section 194C of the Act. Hence, the order of the learned CIT(A) dated 31- 12-2012 is not liable to be sustainable in the eyes of law and submitted that the



order of the AO may be restored by setting the order in question.

5. On the other hand, the learned Representative of the assessee [hereinafter referred to "the AR"] argued that the assessee company is engaged in the business of broadcasting business news through TV Channels and submitted that the payment is covered specifically under the provisions of section 194C. He has referred to the Explanation to section 194C and submitted that as per clause (iv) of the Explanation, "the work" shall include inter alia Broadcasting and Telecasting including production of programme for such Broadcasting and Telecasting. Therefore, he has submitted that when the payment is in relation to broadcasting work which is specifically provided u/s 194C, then the general provisions u/s 194J cannot be applied. He has further referred to the CBDT Circular No. 720 dated 30.08.1995, wherein it was clarified that each section under chapter XVII, deals with a particular kind of payment to the exclusion of all other sections in this chapter. The payment of any sum shall be liable for tax deduction only under one section. In support of his contention he has relied upon the decision of Hon'ble Punjab & Haryana High Court in the case of Kurukshetra Darpans (P) Ltd. Vs. CIT (supra) and submitted that the Hon'ble High Court has held that the receipt of telecasting signals from the licensor is essentially under the contract to obtain broadcasting and telecasting facility of TV channels. Therefore, section 194C is attracted to the payments made to the licensor for obtaining TV signals and the assessee was required to deduct tax at source on such payments. He has also relied upon



the decision of Hon'ble Delhi High Court in the case of CIT Vs. Prasar Bharati (Broadcasting Corporation of India) (292 ITR 580) and submitted that the Hon'ble High Court has held that Explanation 3 to section 194C is very specific in its application not only to broadcasting and telecasting but also includes production of programmes for such broadcasting and telecasting. If on the same date two provisions are introduced in the Act, one specific to the activity sought to be taxed and the other (194J) in more general terms, resort must be had to the specific provisions which manifests the intention of the legislature. The learned AR has also relied upon the decision of this Tribunal dated 9-7-2014 in the case of CIT Vs. NGC network in ITA no. 1382/Mum/2014 and in the case of UTV Entertainment Television Ltd. In ITA No.2699, 4202, 4205 and 2700/Mum/2012 order dated 29-10-2014.

6. We have considered the rival submissions and relevant material on record. There is no dispute that the payment in question was made by the assessee to the cable operators/ MSOs for placing the TV channels in the prime band in order to enhance the viewership and better advertisement revenue. In the case of Kurukshetra Darpans (P) Ltd. Vs. CIT (supra), the Hon'ble High Court of Punjab & Haryana while dealing with an identical question has held in Para 13 to 18 as under:-

"13. After hearing learned counsel for the parties, we are of the view that the contentions of the counsel for the appellant are liable to be rejected. Sec. 194C of the Act creates an



obligation on a person responsible for paying any sum specified therein to a person for carrying out any work, to deduct the tax at source.' Presently, we are concerned with the „work' as referred to in cl(b) of Expln. III below s. 194C(2) of the Act.

14. In terms of the said Explanation. it is provided that expression 'work' shall include inter alia broadcasting and telecasting including production of programmes for such broadcasting and telecasting. By way of such Explanation, it is evident that where the payment is for a work involving broadcasting and telecasting, the same shall be subject to deduction of. tax at source in terms of section 194 of the Act, the assessee is a cable network operator through which it provides telecasting of programmes to the ultimate consumers/subscribers. The assessee in turn enters into a contract with the licensor of various TV channels. On the payment so made, s. 194C of the Act" is attracted. This is for the reason that the licensor, is a person who is performing the work which is covered within the meaning of c1. (b) of Expln. III to s. 194C(2) of the Act.

15. It is also relevant to mention here that in the agreement between the assessee and the licensor, the licensor is referred to as 'company engaged in the business of distribution of satellite based television channel(s) services including the service and



has exclusive rights to market and distribute the services in India to various customers and users of the service'. Further, the agreement refers to the assessee subscriber as a party, which is desirous to subscribe for and receive the telecast signals of the service from the company in order to further distribute the same to the customers).

16. From the recital of the agreement "Itself, it is clear that the service that the assessee subscriber is availing is the receipt of 'telecasting signals' from the licensor or the company. The expression 'service' has also been referred to mean the TV channel which is dealt with by the licensor or the company. Therefore, what the assessee has transacted for with the licensor or company certainly includes within its ambit broadcasting and telecasting facility. The essence of the contract is to obtain broadcasting and telecasting of TV channels and thereafter its distribution amongst ultimate customers through the cable network of the assessee.

17. Another plea of the assessee/subscriber was that the licensor or the person to whom the assessee is making payment by itself does not do the work of broadcasting' and telecasting and is therefore outside the purview of s. 194C of the Act. This argument deserves to be negated at the threshold. As we have pointed out earlier what the assessee subscriber is looking for is to obtain the



telecast signals from the licensor, which is enough, to deduce that the impugned contract involves broadcasting and telecasting of TV signals. Moreover, the licensor or the company, as is evident from the specimen agreement on record, in the business of distribution of satellite based TV channels and has exclusive rights to market and distribute said services in India, the service that is referred to in the agreement is the broadcasting and telecasting of TV signals.

18. For the reasons recorded above, we have no hesitation in concluding that the Tribunal was correct in holding that the assessee was required to deduct tax at source in terms of s. 194C of the Act on payments made to the licensor for obtaining TV signals, Cable TV network owned by the assessee.

7. Thus after examination of the Explanation III to the then section 194C, the Hon'ble High Court held that the payment for obtaining the telecast licenses from the licensor falls under the provisions of section 194C. We find that the work of broadcasting/telecasting including production of programme or such broadcasting or telecasting falls under the definition of "work" as provided under clause (iv) of the Explanation to section 194C which reads as under:-"

Explanation - For the purpose of this section -

****** (iv) "work" shall include- (a) Advertising; (b) Broadcasting and*



telecasting including production of programmes for such broadcasting or telecasting (c) Carriage of goods or passengers by any mode of transport other than by railways; (d) Catering;

(e) Manufacturing or supplying a product according to the requirement or specification of a customer by using material purchased from such customer,

But does not include manufacturing or supplying a product according to the requirement of specification of a customer by using material purchased from a person, other than such customer.]

8. *The Hon^{ble} Delhi High Court in the case of CIT Vs. Prasar Bharati (Broadcasting Corporation of India) (supra), has observed in Para 11 as under:-*

"We are unable to agree with this submission. We observe that Explanation III, which was introduced simultaneously with section 194J, is very specific in its application to not only broadcasting and telecasting but also include "production of programmes for such broadcasting and telecasting". If, on the same date, two provisions are introduced in the Act, one specific to the activity sought to be taxed and the other in more general terms, resort must be had to the specific provision which manifests the intention of the Legislature. It is not, therefore, possible to accept the contention of the Revenue that programmes



produced for television, including "commissioned programmes", will fall outside the realm of section 194C, Explanation III of the Act. We find no infirmity in the view taken by the Income-tax Appellate Tribunal which we hereby affirm.

9. The Hon^{ble} Delhi High Court has made it clear that when two provisions are simultaneously introduced in the Act, one is specific and another is more general in terms then the resort must be to the specific provision. Therefore, when the work of broadcasting and telecasting of the programmes specifically falls under the ambit of provisions of section 194C, then in view of the decision of Hon^{ble} Delhi High Court (supra), the provisions of section 194J cannot be applied on such payments. The CBDT Circular No. 720 dated 30.08.1995, also supports this view as it was clarified in the said circular as under:-

1261. Payment of any sum shall be liable for deduction of tax only under one section.

It has been brought to the notice of the Board that in some cases persons responsible for deducting tax at source are deducting such tax by applying more than one provision for the same payment. In particular, it has been pointed out that the sums paid for carrying out work of advertising are being subjected to deduction of tax at source under section 194C as payment for work contract as also under section 1941 as payments of fees for professional services.



2. It is hereby clarified that each section, regarding TDS under Chapter XVII, deals with a particular kind of payment to the exclusion of all other sections in this Chapter. Thus, payment of any sum shall be liable for deduction of tax only under one section. Therefore, a payment is liable for tax deduction only under one section.

10. In view of the above discussion as well as the decisions of Hon^{ble} Punjab & Haryana High Court, Hon^{ble} Delhi High Court and the decisions of the Co-ordinate Benches of the Tribunal deciding the issue in controversy i.e. order dated 09-07-2014 in the case of CIT Vs. NGC Network in ITA No.1382/Mum/2014 and in the case of UTV Entertainment Television Ltd. in ITA No.2699, 4202, 4205 and 2700/Mum/2012 order dated 29-10-2014, we do not find any error or illegality in the impugned order of CIT(A) qua this issue. Furthermore, no contrary decision on the issue has been referred to or produced before us by the learned DR. Therefore, following the decisions of the Hon^{ble} Punjab & Haryana High Court, Hon^{ble} Delhi High Court and the decisions of the Co-ordinate Benches of the Tribunal, we do not find any reason to interfere in the order of the learned CIT(A). Accordingly, we uphold the action of the learned CIT(A) and dismiss all the appeals preferred by the Revenue”

5. As the facts are exactly identical in both the years and nature of payment is same and the facts in AY 2012-13 in ITA No. 3690/Mum/2017 are also exactly identical, respectfully following the Tribunal's decision in



ITA Nos. 3689 & 3690/Mum/2017

assessee's own case and taking a consistent view, we confirm the order of CIT(A) deleting the disallowance.

6. In the result, both, the appeals of Revenue are dismissed.

Order pronounced in the open court on 15-10-2018.

आदेश की घोषणा खुले मे दिनांक 15-10-2018 को की गई ।

Sd/-

(मनोज कुमार अग्रवाल / MANOJ KUMAR AGGARWAL)
(लेखा सदस्य / ACCOUNTANT MEMBER)

Sd/-

(महावीर सिंह /MAHAVIR SINGH)
(न्यायिक सदस्य/ JUDICIAL MEMBER)

Mumbai, Dated: 15-10-2018

Sudip Sarkar /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,

Assistant Registrar
ITAT, MUMBAI