IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCHES 'CAMP AT MEERUT'

BEFORE SHRI N. S. SAINI, ACCOUNTANT MEMBER AND
SHRI KULDIP SINGH, JUDICIAL MEMBER

ITA No.4503/DEL/2018
Assessment Year 2009-10

DCIT, Circle-1, Meerut.	Vs	Meerut Cable Network Pvt. Ltd., 56-57A, Niranjan Vatika, Chhipi Tank, Meerut. PAN: AADCM 9883F
(Appellant)		(Respondent)

Appellant by :	Shri Yogesh Sharma, Sr.D.R.
Respondent by :	Shri V.K. Goel, Adv.

सुनवाई की तारीख/**Date of Hearing : 09/01/2019**
घोषणा की तारीख /**Date of Pronouncement: /01/2019**

ORDER

PER N.S. SAINI, A. M.

This is an appeal filed by the Revenue against the impugned order of learned CIT(A), Meerut dated 12.03.2018 for the Assessment Year 2009-10.

2. In ground no.1 of the appeal, the grievance of the Revenue is that Ld. CIT(A) has erred in deleting the addition of Rs.2 lac made by the AO under the head 'copyright charges'.

3. The brief facts of the case are that from perusal of Profit and Loss account of the assessee, the Assessing Officer observed that the assessee had debited copyright charges of Rs.2 lac. In his opinion, this was a capital expenditure, and therefore, he show cause the assessee why this expenditure should not be disallowed. The Assessee submitted that as per agreement with Shiv International, they are providing services to produce and display electronic copies or production of any work, to perform or display any work publicly which fall under the head 'copyrights', to sale or assign these rights to other, to transmit or display by radio or video including the cable, news films, songs, messages, advertisement, reality shows or journalism. From these the AO concluded that the nature of work shows that it was giving long term enduring benefits to the assessee company and that the company was renewing it each year, therefore, he disallowed Rs.2 lac holding it to be a capital expenditure.

4. On appeal, the Ld. CIT(A) vacated the disallowance by observing that on going through the agreement with M/s. Shiv Entertainment, he was of the view that the expenditure is not capital in nature. He observed that expenditure of similar nature of Rs.3 lac

was incurred to the concern authority in the Assessment Year 2008-09. The Assessing Officer in assessment order passed u/s.143(3) allowed the same, it was evident from copy of assessment order filed by the assessee. The Assessing Officer has not brought any material to show that any distinction between the nature of expense incurred in the immediately preceding year viz-a-viz, in this year, therefore, by following the decision of Hon'ble Supreme Court in the case of Radhasoamy Satsang Vs CIT, (1992) 193 ITR 321 (SC) he held that the expenditure being of revenue in nature and allowed the ground of appeal of the assessee.

5. Ld. DR relied upon the order of the Assessing whereas Ld. AR of the assessee supported the order of the Ld. CIT(A).

6. After considering the rival submissions and perusing the material available on record, we find that the Ld. DR besides supporting the order of the Assessing Officer could not point out any mistake in the order of the Ld. CIT(A). He also could not show any good reason as to why similar expenditure allowed to the assessee in the immediately preceding Assessment Year 2008-09 paid to the very

same party was not allowable in the year under consideration. Hence, we find no good reason to interfere with the order of the Ld. CIT(A), which is hereby confirmed and the ground of appeal of the Revenue is dismissed.

7. In ground no.2 of the appeal of the Revenue, the grievance of the Revenue is that the ld. CIT(A) has erred in deleting the addition of Rs.42,97,500/- made by the AO on account of excess payment to DEN for additional services.

8. The brief facts of the case are that the Assessing Officer observed that from the letter of DEN dated 9.2.2009, it is clear that it was already providing these services which are mentioned in the said letter when no new services are being provided the amount given in excess payment of Rs.42,97,500/- is not allowable. Hence, he added the same in the income of the assessee.

9. On appeal, the Ld. CIT(A) deleted the addition. He observed that the claim of assessee is that the extra payment relates to additional services as per agreement dated 30.04.2009 which are undisputedly not included in Annexure-A of main agreement dated

01.04.2008. The reasoning of the Assessing Officer for disallowance of Rs.42,97,500/- does not rest on sound footings.

10. Ld. DR has relied upon the order of the Assessing Officer whereas the Ld. AR supported the order of the Ld. CIT(A).

11. After considering the rival submissions and perusing the material on record, we find that although the Ld. DR has relied upon the order of the AO, he could not point out any specific error in the order of the Ld. CIT(A). He could not bring any material on record to show that the amount paid of Rs.42,97,500/- was in fact not for additional services but was paid for the existing services rendered by DEN to the assessee. In absence of any material brought on record, we do not find any reason to interfere with the order of the Ld. CIT(A) which is hereby confirmed and the ground of the Revenue is dismissed.

12. In ground no.3 of the appeal of the Revenue, the grievance of the Revenue is that the Ld. CIT(A) has erred in deleting the addition of Rs.40 lac made by the AO under the head 'placement expenses'.

13. The brief facts of the case are that the AO observed from the P&L account of the assessee, company that it had debited Rs.40 lac as placement expenses, which was 'Nil' last year. He called for the details of services rendered.

14. The AO observed that the services were being rendered by Shri Manoj Mishra and Smt. Neeta Mishra for which the assessee-company has made agreement with both the above mentioned persons. The Assessing Officer observed that from perusal of the details given, it was found that Shri Manoj Mishra and Smt. Neeta Mishra are not rendering the services themselves. They are taking services from Shiv International which is an AOP in which Mr. Romi Shiva is a member and also working as a Director in Meerut Cable Networks. Shri Manoj Mishra and Smt. Neeta Mishra are close relatives of Shri Romi Shiva which was clear from the statement given by Smt. Neeta Mishra, therefore, the Assessing Officer held that as all the work was being done by Shiv International and all the payments are actually going to Shiv International, in which Director, Meerut Cable Network, Mr. Romi Shiva is a member. He disallowed Rs.40 lac and added to the income of the assessee.

15. On appeal, the Ld. CIT(A) deleted the disallowance on the ground that the expenditure was in pursuance to an agreement dated 1.11.2008 executed separately by the assessee with Shri Manoj Mishra and Smt. Neeta Mishra. The Assessing Officer has not doubted the services provided to the assessee. In the assessment order, he has stated that the services are actually being rendered by Shiv International. The objection of the Assessing Officer is that Shri Manoj Mishra and Smt. Neeta Mishra have not provided the services personally but through Shiv International an AOP in which Shri Romi Shiv is a member and also a Director in the assessee-company. The AO has stated that Shri Manoj Mishra and Smt. Neeta Mishra are close relatives of Shri Romi Shiv. Thus, although admitting the services have been rendered, but the expenses have been disallowed. He observed that there is no prohibition or bar at all in the agreement or in the statute that this kind of work cannot be outsourced. In case, the service provider and service receiver are satisfied there is no embargo for getting the service provided by outsourcing the same. He was of the view that it was not fatal for allowing such expenditure under the Income Tax Act. The close

relationship between Shri Manoj Mishra and Smt. Neeta Mishra and Shri Romi Shiv, who is also a Director in the assessee-company, cannot be a valid reason for disallowing the expenditure incurred for business purposes. The Assessing Officer should have examined the quantum of expenditure with respect to Section 40A(2) (b). He has not done so, therefore, he deleted the addition.

16. Ld. DR has relied upon the order of the AO whereas the Ld. AR has relied upon the order of the Ld. CIT(A).

17. After considering the rival submissions and perusing the material on record, we find that the assessee has filed the copy of agreement between the assessee and Shri Manoj Mishra and Smt. Neeta Mishra at pages 67 to 78 of the paper book. A bare perusal of the said agreement shows that the recipient of the amount had rendered following services.

> *(a) the Service Provider shall conduct random checks at the premises of the Subscribers and LCOs;*
>
> *(b) the Service Provider shall forthwith intimate MCN if the Channels are not being received by the Subscribers on the Dedicated Frequencies;*

(c) the Service Provider shall facilitate MCN to resolve any problems relating to placement of the Channels on the Dedicated Frequencies in the Territory.

(d) the Service Provider shall co-operate with MCN while pursuing any legal action against any infringer.

18. A reading of the above shows that the above services are vague and general in nature and does not show as to what the actual services were to be rendered by the said persons to the assessee company and what benefit the assessee company derived out of their services. No correspondence or reports of the said persons were also filed to show the nature of services rendered by them. Therefore, we set aside the order of the CIT(A) and allow the ground of appeal of the Revenue.

19. In the result, the appeal of the Revenue is partly allowed.

Order pronounced in the Court on this day, the 16/01/2019.

Sd/-
(KULDIP SINGH)
JUDICIAL MEMBER

Sd/-
(N. S. SAINI)
ACCOUNTANT MEMBER

Dated: 16/01/2019
Prabhat Kumar Kesarwani, Sr.P.S.