

आयकर अपीलीय अधिकरण, दिल्ली न्यायपीठ “ई”, नई दिल्ली में

**IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH ‘E’, NEW DELHI**

सुश्री सुषमा चावला, न्यायिक सदस्य एवं श्री अनादि नाथ मिश्रा, लेखा सदस्य के समक्ष

**BEFORE MS. SUSHMA CHOWLA, JUDICIAL MEMBER &
SHRI ANADEE NATH MISSHRA, ACCOUNTANT MEMBER**

आयकर अपील सं. / ITA No.5511 & 5512/Del/2016
निर्धारण वर्ष / Assessment Year: 2012-13 & 2013-14

The ITO,
Ward-19(1), New Delhi.

.....अपीलार्थी / Appellant

vs

M/s. Ogaan Media Pvt.ltd.,
H-2, Hauz Khas Village,
New Delhi-110016.
PAN-AAACO1078K

..... प्रत्यर्थी / Respondent

अपीलार्थी की ओर से / Appellant by : Ms. Rakhi Bimal, Sr.DR

प्रत्यर्थी की ओर से / Respondent by : Ms. Ragini Handa, CA

सुनवाई की तारीख / Date of Hearing : 17.10.2019	घोषणा की तारीख / Date of Pronouncement: 18.10.2019
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आदेश / ORDER

PER SUSHMA CHOWLA, JM:

Both appeals filed by Revenue are against order of CIT(A)-36, New Delhi, dated 30.08.2016 relating to assessment years 2012-13 & 2013-14 passed under section 143(3) of the Income-tax Act, 1961.

2. Both these appeals relating to the same assessee on similar issue were heard together and are being disposed of by this consolidated order for the sake of convenience. However, in order to adjudicate the issue, we make reference to the facts in Assessment Year 2012-13.

3. The only issue arising in the appeal filed by the Revenue is against the deletion of addition made on account of disallowance u/s 40(a)(ia) of the Act at Rs.2,32,72,757/- by ignoring the express provision of law u/s 194H and the CBDT circular No.715 dated 08.08.2015.

4. The Ld.AR for the assessee at the outset pointed out that the issue raised in the present appeal stand squarely covered by the orders of the Tribunal in assessee's own case. It was also pointed out that the CIT(A) had relied on the order of the Tribunal in the earlier years. The Ld. DR for the Revenue fairly stated that the issue has been considered by the Tribunal in earlier years.

5. Briefly in the facts of the case, the assessee company was engaged in the business of publication of fashion magazines. The Assessing Officer during the assessment proceedings noted that the assessee had debited expenditure on account of discount. The Assessing Officer was of the view that against the said expenditure, there was liability to deduct tax at source, which was not fulfilled by the assessee. The Assessing Officer thus, invoked the provisions of section 40(a)(ia) of the Act for non-deduction of TDS u/s 194H of the Act. Hence, the disallowance of

Rs.2.32 crore for Assessment Year 2012-13 and Rs.2.84 crore for Assessment Year 2013-14.

6. The CIT(A) in turn relying on the orders of the Tribunal in assessee's own case starting from Assessment Years 2006-07 to 2010-11 and also Assessment Year 2011-12 deleted the aforesaid addition. The CIT(A) also noted that the appeal of the Department against the order of the Tribunal has been dismissed in ITA No.181 & 182/2012, dated 16.03.2012.

7. We have heard rival contentions and perused the record. The issue which arises in the present appeal is against the liability of the assessee to deduct or not to deduct TDS u/s 194H of the Act on the amount of discounts paid by it. The assessee had booked the expenditure on account of volume discount as well as agency commission. The case of the Assessing Officer was that there was requirement to deduct tax at source and since the assessee had failed to do so, the disallowance was made u/s 40(a)(ia) of the Act. Similar issue has arisen in the case of the assessee starting from Assessment Year 2006-07 onwards. The Tribunal in ITA No.1990/Del/2010 relating to Assessment Year 2006-07 & ITA No.3741/Del/2011 relating to Assessment Year 2007-08 vide consolidated order dated 31.05.2011 have held that the expenditure booked by the assessee both on account of discount and/or agency commission was discount and there was no requirement to deduct tax at source. The relevant finding of the order of the Tribunal are reproduced

at para 6 at page 3 of the appellate order. We are referring to the same but not reproducing the same for the sake of convenience.

8. Even Hon'ble Delhi High Court (supra) vide its decision dated 16.03.2012 has dismissed the appeal filed by the Revenue against the order of the Tribunal, holding that no substantial question of law arises in the case. Admittedly, there is no difference in the factual aspects of the case when compared to the earlier years. Hence, following parity of reasoning, we uphold the order of CIT(A) and dismiss the grounds of appeal raised by the Revenue.

9. The facts and issue in ITA No.5511/Del/2016 are similar to the facts and issue in ITA No.5512/Del/2016 and our decision in ITA No.5511/Del/2016 shall apply *mutatis mutandis* to ITA No.5512/Del/2016. Hence, grounds raised by the Revenue in this appeal are dismissed.

10. In the result, both appeals filed by the Revenue are dismissed.

Order pronounced in the open court on 18th day of October, 2019.

Sd/-

(ANADEE NATH MISSHRA)
लेखा सदस्य/ACCOUNTANT MEMBER

Sd/-

(SUSHMA CHOWLA)
न्यायिक सदस्य/JUDICIAL MEMBER

दिल्ली / दिनांक Dated : 18th October, 2019.

* Amit Kumar *

आदेश की प्रतिलिपि अग्रेषित/Copy of the Order is forwarded to :

1. अपीलार्थी / The Appellant;
2. प्रत्यर्थी / The Respondent;
3. आयकर आयुक्त(अपील) / The CIT(A)
4. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, दिल्ली / DR, ITAT, Delhi
5. गार्ड फाईल / Guard file.

आदेशानुसार/ BY ORDER,

सत्यापित प्रति //True Copy//

सहायक रजिस्ट्रार,
आयकर अपीलीय अधिकरण ,दिल्ली
Assistant Registrar, ITAT, Delhi