



**IN THE INCOME TAX APPELLATE TRIBUNAL**

**"J" BENCH, MUMBAI**

**BEFORE SHRI SAKTIJIT DEY, JUDICIAL MEMBER AND**  
**SHRI MANOJ KUMAR AGGARWAL, ACCOUNTANT MEMBER**

ITA no.1817/Mum./2014  
(Assessment Year : 2009-10)

Star International Movies Ltd.  
C/o STAR India Pvt. Ltd.  
Star House, Off. Dr. E. Moses Road  
Mahalaxmi, Mumbai 400 011  
PAN – AAICS3256P

..... Appellant

v/s

Dy. Director of Income Tax (I.T)  
Circle-2(1), Mumbai

..... Respondent

Assessee by : Shri Porus Kaka  
Revenue by : Dr. Rajeev Harit

Date of Hearing – 23.07.2019

Date of Order – 18.10.2019

**ORDER**

**PER SAKTIJIT DEY, J.M.**

The aforesaid appeal by the assessee arises out of final assessment order dated 28<sup>th</sup> January 2014, passed under section 143(3) r/w section 144C(13) of the Income Tax Act, 1961 (for short "*the Act*") in pursuance to the directions of the Dispute Resolution Panel-II, Mumbai, ("*the DRP*"), for the assessment year 2009-10.

2. The facts and issues involved in the present appeal are identical to the facts and issues involved in ITA no.1815/Mum./2014. The only factual difference in the present case is, the assessee is a channel owning company belonging to the News Corp Group of Hong Kong.

3. Grounds no.1 and 2 being general in nature do not require adjudication, hence, dismissed.

4. In grounds no.3 to 5, the assessee has challenged the addition made on account of transfer pricing adjustment, basically, on the issue of rejection of three comparables. The issue raised in these grounds are identical to the issue raised in grounds no.1 to 4 of ITA no.1815/Mum./2014, disposed off vide our order dated 18<sup>th</sup> October 2019, passed in the said appeal. The issue has been decided in the following manner:-

*"9. We have considered rival submissions and perused material on record. We have also applied our mind to the decision relied upon. As could be seen from the factual matrix of the issue, both the Transfer Pricing Officer and the DRP have not disputed applicability of PSM as the most appropriate method to benchmark the transaction with the AEs. The dispute is only confined to the comparability of three comparables as noted above. The Transfer Pricing Officer has rejected Jain Studios Ltd. and Television 18 India Ltd., primarily on account of abnormal fall in rate of profit. Likewise, he has rejected Raj Television Network Ltd. due to sharp fall in margin by attributing to high amount of bad debt written-off during the year. From the facts on record, it is clear that none of these companies can be classified as persistent loss making companies. In various decisions it has been held that unless the company declares loss*

*consistently for three consecutive assessment years, it cannot be considered as a persistent loss making company. In this context, we may refer to the decision of the Tribunal in Goldman Sachs India Securities Pvt. Ltd. (supra). The other decisions cited by the learned Sr. Counsel for the assessee also support this view. It is further relevant to observe, in assessee's own case for the assessment year 2008-09, the Tribunal has accepted Jain Studios Ltd. as a comparable. Further, the Transfer Pricing Officer himself has accepted Television 18 India Ltd., as a comparable in assessment years 2007-08 and 2008-09. That being the case, both, Jain Studios Ltd. and Television 18 India Ltd., should not be rejected as a comparable. Insofar as Raj Television Network Ltd. is concerned, undisputedly, the profit margin shown by the company in the assessment year 2007-08 and 2008-09 is substantially high. Though, in the impugned assessment year, the profit margin has fallen drastically, the company has still shown profit of 1.04%. Even if the fall in profit rate is due to write-off of bad debt, still this company cannot be excluded as a comparable since bad debts are operating in nature. In view of the aforesaid, we direct the Assessing Officer / Transfer Pricing Officer to include the aforesaid three companies as comparable and determine the arm's length price accordingly. These grounds are allowed."*

5. Facts being identical, the aforesaid decision of the Tribunal would apply mutatis mutandis to the facts of the present case also. Accordingly, these grounds are allowed.

6. In grounds no.6 and 10, the assessee has challenged non-application of Profit Split Method (PSM) to non-AE transactions and ad-hoc addition made by the Assessing Officer on such transaction.

7. The issue raised in these grounds are identical to the issue raised in grounds no.5 and 6 in ITA no.1815/Mum./2014, dated 18.10.2019, wherein, the Tribunal has decided the issue in the following manner:-

*"14. We have considered rival submissions and perused material on record. Admittedly, the Assessing Officer simply relying upon the direction of learned DRP in assessment year 2007-08 has estimated the profit on non-AE transactions. However, as could be seen, the Tribunal while deciding the issue relating to identical addition made in assessment year 2007-08 in ITA no.8683/Mum./2011, dated 2<sup>nd</sup> February 2016, has observed that once the combined net profit has been arrived at by taking into account the transactions of both AEs/non-AEs, which is factored into all the costs and revenue, then, to segregate a non-AE transaction over and above such profit determined is not proper. Thus, ultimately, the Bench held that the income from non-AE transaction cannot be taxed separately by applying net profit rate of 28%. It is relevant to observe, the aforesaid decision of the Tribunal was not contested by the Revenue in the appeal preferred before the Hon'ble Jurisdictional High Court. Notably, the same view was again expressed by the Tribunal while deciding assessee's appeal for the assessment year 2008-09 in ITA no. 7680/Mum./2012 & Ors., dated 16<sup>th</sup> September 2016. In view of the aforesaid, we delete the addition made by the Assessing Officer. Grounds are allowed."*

8. Facts being identical, the aforesaid decision of the Tribunal would apply mutatis mutandis to the facts of the present case also. Accordingly, these grounds are allowed.

9. In view of our decision in grounds no.3, 4, 5, 6 and 10, grounds no.7, 8, 9, 11, 12 and 13, have become academic, hence, do not require adjudication.

10. In grounds no.14, 15 and 16, the assessee has challenged initiation of penalty proceeding under various provisions of the Act.

11. These grounds being pre-mature at this stage, do not require adjudication, hence, dismissed.

12. In the result, appeal is partly allowed.  
Order pronounced in the open Court on

**MANOJ KUMAR AGGARWAL**  
**ACCOUNTANT MEMBER**

**SAKTIJIT DEY**  
**JUDICIAL MEMBER**

**MUMBAI, DATED: 18.10.2019**

Copy of the order forwarded to:

- (1) *The Assessee;*
- (2) *The Revenue;*
- (3) *The CIT(A);*
- (4) *The CIT, Mumbai City concerned;*
- (5) *The DR, ITAT, Mumbai;*
- (6) *Guard file.*

*Pradeep J. Chowdhury*  
*Sr. Private Secretary*

True Copy  
By Order

Assistant Registrar  
ITAT, Mumbai