

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

**BEFORE SHRI C.N. PRASAD, HON'BLE JUDICIAL MEMBER AND
SHRI MANOJ KUMAR AGGARWAL, HON'BLE ACCOUNTANT MEMBER**

ITA NO.3954/MUM/2018 (A.Y: 2008-09)

Dy. CIT - (TDS) – 2(2) 7 th Floor Kamladevi Mittal Ayyurvedic Hospital Charni Road (W), Mumbai – 400 002	v.	Standard Chartered Bank-India Crescenzo, 7 th Floor C-38/39, G-Block Behind MCA Club Bandra Kurla Complex Bandra (E), Mumbai – 400 051 PAN: AABCS4681D
(Appellant)		(Respondent)

Assessee by : **Shri Madhur Agarwal**
Department by : **Shri Chaudhary Arunkumar Singh**

Date of Hearing : **22.08.2019**
Date of Pronouncement : **29.10.2019**

ORDER

PER C.N. PRASAD (JM)

1. This appeal is filed by the Revenue against the order of the Learned Commissioner of Income Tax (Appeals)– 60, Mumbai [hereinafter in short "Ld.CIT(A)"] dated 06.03.2018 for the A.Y. 2008-09.

2. Revenue in its appeal has raised the following grounds: -

"A: 1. "On the facts and circumstances of the case and in law, the CIT(A) erred in relying on the decision of the ITAT in assessee's own case for A.Y's. 2010-11 & 2011-12, and not considering the fact

that the services were being provided by the qualified/professional persons of these parties i.e. M/s. Bloomberg Data Services P. Ltd and M/s. Reuters India P. Ltd and therefore, the TDS should have been deducted u/s. 194J and not u/s.194C?"

2. *"On the facts and circumstances of the case and in law, the CIT (A) erred in relying on the decision of the ITAT in assessee's own case for A.Y's. 2010-11 & 2011-12 and not considering the fact, that the core issue as to whether the deduction should be u/s. 194J or u/s. 194C has not decided by ITAT?"*

3. *"On the facts and circumstances of the case and in law, the CIT (A) erred in relying on the decision of the ITAT in assessee's own case for A.Y's. 2010-11 & 2011-12 and not considering the fact, that the AO has levied only the interest u/s. 201(1A) of Rs. 65,01,175/- after applying the decision of M/s. Hindustan Coca-cola Beverages P. Ltd?"*

B: The appellant craves leave to amend or alter any ground or add a new ground which may be necessary at the time of hearing of the case or thereafter.

C: The order of the CIT (A) being erroneous be set aside and Ld. A.O's order be restored."

3. At the outset, Ld. Counsel for the assessee submitted that identical issue has been decided by the Tribunal in assessee's own case for the A.Ys. 2010-11 & 2011-12 in ITA.Nos. 3339 & 3340/MUM/2014 and ITA.No. 6052/MUM/2014 dated 08.11.2017 wherein the Tribunal following the decision of the Hon'ble Supreme Court in the case of Hindustan Coca Cola Beverages Pvt. Ltd., [293 ITR 226] held that the assessee was not in-default u/s. 201(1) of the Act. Copy of the order is placed on record. He further submitted that the Ld.CIT(A) followed the order of the Tribunal and deleted the interest levied u/s. 201(1A) of the Act by the Assessing

Officer. Ld. Counsel for the assessee submits that facts are identical as the payments made by the assessee were to the very same parties namely M/s. Bloomberg Data Services Pvt. Ltd., and M/s. Reuters India Pvt. Ltd., and the assessee has deducted TDS u/s. 194C of the Act on the payments made to the said parties. However, the Assessing Officer held that the TDS should have been made u/s. 194J of the Act. Therefore, since facts being identical the same may be followed.

4. Ld. DR vehemently supported the order of the Assessing Officer.

5. We have heard the rival submissions, perused the orders of the authorities below. On a perusal of the order of the Tribunal, we find that identical issue has been decided by the Tribunal for the A.Y. 2010-11 and A.Y. 2011-12 wherein the Tribunal held as under: -

“5. We have the perused the material on record. We find that assessee had made payment to three parties under the head subscription charges, that it had deducted tax at source as per the provisions of section 194C of the Act, that the AO and the FAA had held that tax should have been deducted as per provisions of section 194J, that Bloomberg, Reuter and CRISIL had shown the income received from the assessee, in their returns of income filed for the year under appeal. We find that basically it is a case of short deduction of tax and not a matter of non deduction of tax at source. Secondly, the AO has also taken a notice of filing of returns by the recipients of the amounts in question. Respectfully, following the judgment of Hindustan Coca Cola Beverages Pvt.(supra)of the Hon’ble Supreme Court, we hold that there was no justification to hold the assessee an assessee-in -default. So, reversing the order of the FAA, we decide the effective ground of appeal in favour of the assessee.”

6. Facts being identical, respectfully following the said decision, we uphold the order of the Ld.CIT(A) and reject the grounds raised by the Revenue.

7. In the result, appeal of the Revenue is dismissed.

Order pronounced in the open court on the 29th October, 2019

Sd/-
(MANOJ KUMAR AGGARWAL)
ACCOUNTANT MEMBER

Mumbai / Dated 29/10/2019
Giridhar, Sr.PS

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