



ITA No.6166/Mum/2018
Assessment Year :2014-15
M/s. T.V. Vision Ltd.

आयकर अपीलीय अधिकरण “ई” न्यायपीठ मुंबई में।
IN THE INCOME TAX APPELLATE TRIBUNAL
“E” BENCH, MUMBAI

माननीय श्री सी. एन. प्रसाद, न्यायिक सदस्य एवं
माननीय श्री मनोज कुमार अग्रवाल, लेखा सदस्य के समक्ष।
BEFORE HON’BLE SHRI C.N. PRASAD, JM AND
HON’BLE SHRI MANOJ KUMAR AGGARWAL, AM

आयकर अपील सं./ I.T.A. No.6166/Mum/2018
(निर्धारण वर्ष / Assessment Year:2014-15)

ACIT-16(1) Room No.439 Aaykar Bhavan M.K. Marg, Mumbai-400 020.	बनाम/ Vs.	M/s. T.V. Vision Ltd. 4 th Floor, Adhiraj Chambers Oberoi Complex, New Link Road, Andheri West, Mumbai-400 053.
स्थायी लेखा सं./जीआइआर सं./PAN/GIR No. AACCT-7276-Q		
(पीलार्थी/ Appellant)	:	(प्रत्यर्थी / Respondent)

Assessee by	:	Shri Nikunj Gada – Ld. AR
Revenue by	:	Shri R. Manjunatha Swamy-Ld. CIT-DR

सुनवाई की तारीख/ Date of Hearing	:	03/12/2019
घोषणा की तारीख / Date of Pronouncement	:	03/12/2019

आदेश / ORDER

Manoj Kumar Aggarwal (Accountant Member)

1. Aforesaid appeal by revenue for Assessment Year [in short referred to as ‘AY’] 2014-15 contest the order of Ld. Commissioner of Income-Tax (Appeals)-4, Mumbai, [in short referred to as ‘CIT(A)’], *Appeal No.CIT(A)-4/e-file-184A/ACIT-16(1)/2016-17* dated 07/08/2018 on following grounds of appeal: -



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1. Whether on the facts, in the circumstances of the case and as per law, the Ld. CIT(A) has erred 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 payments made for use/right to use of 'process' are 'royalty' as per Explanation 6 to section 9(1)(vi) hence such payments are covered u/s, 194J of the Income Tax Act, 1961 ?.
2. Whether on the facts and circumstances of the case and as per law, the Ld. CIT(A) has erred in directing to delete the disallowance u/s. 40(a)(ia) rws 194 J of 'Carriage Fees/Channel Placement fees', whereas the jurisdictional 1TAT, Mumbai 'L' Bench, in its order dated 28.03.2014 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. Whether on the facts, in the circumstances of the case and as per law, the Ld.CIT(A) has erred in directing to delete the disallowance u/s. 40(a)(ia) and thereby holding that the short deduction of tax will not result into disallowance u/s. 40(a)(ia) of the Act, without appreciating that the Hon'ble Kerala High Court in its judgment dated 20.07.2015 in the case of **CIT-1, Kochi Vs PVS Memorial Hospital Ltd. [2015] 60 taxmann.com 69 (Kerala)** has clearly laid down that the disallowance u/s. 40(a)(ia) would be made even in the cases of short deduction of tax?.
4. Whether on the facts, in the circumstances of the case and as per law, the Ld. CIT(A) has erred in directing to delete the disallowance u/s. 40(a)(ia), without appreciating that Section 40(a)(ia) is not a charging Section but is a machinery Section and thus the expression "tax deductible at source under Chapter XVII-B" occurring in the said Section has to be understood as tax deductible at source under the appropriate provision of Chapter XVII-B and hence, tax deductible under wrong section of Chapter XVII-B would result into invoking of Section 40(a)(ia) of the Act?
5. The appellant prays that the order of CIT(A) on the above grounds be set aside and that of the Assessing Officer restored.

2. The learned Authorized Representative for Assessee (AR), at the outset, submitted that the issue is covered by the orders of this Tribunal for AY 2011-12 vide ITA No. 3386/Mum/2016 order dated 28/02/2018, AY 2012-13 vide ITA No. 3387/Mum/2016 order dated 28/02/2018 which has been followed in AY 2013-14 vide ITA No.5862/Mum/2017 order dated 23/10/2019. The copies of the orders have been placed on record. It has also been submitted that learned first appellate authority has followed the aforesaid decisions. The Ld. CIT-DR could not controvert the same but supported the stand taken by Ld. AO in the assessment order.



3. Facts on record would reveal that the assessee being resident corporate assessee stated to be engaged in the business of broadcasting television channels, was saddled with additions u/s 40(a)(ia) for Rs.21.66 Crores in an assessment framed u/s 143(3) on 27/12/2016. The said amount represents carriage fees paid to cable operators as per contractual terms, on which tax was deducted at source @2% u/s 194C. However, Ld. AO opined that tax was required to be deducted at higher rates of 10% u/s 194J / 194H. The assessee defended the same, *inter-alia*, by submitting that the services provided by the cable operators was a standard service of placing the channels on desired frequency and not for providing any technical services. Reliance was placed on the decision of Hon'ble Delhi High Court rendered in **CIT V/s Prasar Bharti Broadcasting Corporation of India (292 ITR 580)** which was followed by Tribunal in various subsequent decisions. However, disregarding the same, Ld. AO formed an opinion that the payment was made towards *right to use the process* which was embedded in the definition of royalty as defined in explanation 2 to Section 9(1)(vi) read together with clarification inserted in explanation 6 to Section 9(1)(vi). Therefore, wrong deduction of tax would attract disallowance u/s 40(a)(ia). Accordingly, the said amount was disallowed and added to the income of the assessee.

4. The learned first appellate authority deleted the disallowance in view of the fact the similar issue was decided in assessee's favor by its predecessor for AYs 2011-12 & 2012-13 which was upheld by the Tribunal. The learned first appellate authority also concurred with assessee's submissions that short deduction of tax at source would not



attract the rigors of Section 40(a)(ia) in view of ratio of various decisions of Hon'ble High courts. Aggrieved, the revenue is in further appeal before us.

5. Upon careful consideration, we find that identical issue arose in assessee's case for AY 2011-12, 2012-13 & 2013-14 (cited supra). The Tribunal in its latest decision for AY 2013-14 order dated 23/10/2019 held as under: -

7. We have heard the authorised representatives for both the parties, perused the orders of the lower authorities and the material available on record, as well as the judicial pronouncements relied upon by them. Our indulgence in the present appeal has been sought by the revenue to adjudicate as to whether the CIT(A) is right in law and the facts of the case in concluding that no disallowance under Sec. 40(a)(ia) was called for in respect of the payments made by the assessee towards "carriage fees" to the cable operators, which had been subjected to deduction of tax at source under Sec.194C of the Act. As observed by us hereinabove, the A.O held a conviction that the "carriage fees" paid by the assessee to the cable operators was liable to be subjected to deduction of tax at source under Sec.194J of the Act. Observing, that the assessee had subjected the aforesaid payment of carriage fees amounting to Rs.25,32,42,535/- to deduction of tax at source under Sec.194C of the Act, the A.O had disallowed the entire amount by invoking the provisions of Sec.40(a)(ia) of the Act.

8. The core issue involved in the present appeal is as to whether any obligation was cast upon the assessee to subject the "carriage fees" paid to the cable operators for deduction of tax at source under Sec.194J, or not. We find that the aforesaid issue had been permeating in the assessee's own case for the immediately preceding year i.e A.Y. 2011-12 and A.Y. 2012-13. As is discernible from the order of the ITAT "D" bench, Mumbai in the assessee's own case for A.Y. 2012-13, the Tribunal had observed that as "carriage fees" paid by the assessee to the cable operators did not fall within the realm of the definition of "Royalty", therefore, no obligation was cast upon the assessee to deduct tax at source under Sec.194J of the Act. Apart there from, the Tribunal had also approved the alternative view taken by the CIT(A), that in case of shortfall due to any difference of opinion as to the taxability of any item or the nature of payment falling under the various TDS provisions, no disallowance could be made by invoking the provisions of Sec.40(a)(ia) of the Act. In fact, the Tribunal while concluding as hereinabove had observed as under:

"6. We have heard the rival contentions of the parties and carefully gone through the material on record including the decisions relied upon by the parties. The only grievance of the revenue is that the Ld. CIT(A) has wrongly deleted the disallowance made by the AO u/s 40(a)(ia) of the Act. The operative part of the order of the Ld. CIT(A) reads as under:

"3.3. I have considered the issue under appeal carefully. I find that carriage fees is not at all royalty as defined in Explanation 2 to section 9(1)(vi) of the



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Act. The AO has not properly appreciated the fact and nature of payment. Further, such carriage fees is subject to TDS u/s 194C paid to cable operators and such fees do not qualify as fees for technical services or royalty, hence section 194J of the Act is not applicable. Further, it is pertinent to mention that this case is not of "no TDS" but it is a case of "less TDS" u/s 194C, hence no such disallowance can be made/s 40(a)(ia) as has been held by Hon'ble Calcutta High Court in the case of the CIT vs S. K. Tekriwal 48 SOT 515. Recently in the case of the DCIT vs Zee Entertainment Ltd. ITA No. 3931 to 3935/MUM/2013, it has been held that such payment to cable operators should be subject to TDS @2% u/s 194C. Further appellant gets support from the jurisdictional ITAT, decision in the case of a CIT vs M/s Star Den Media Services pvt .Ltd(ITA No 1413/MUM/2014) and Chandabhoy & Jassobhoy vs DCIT 49 SOT 448 (Mumbai ITAT). Respectfully following the decision over the issue, the AO is directed to of genuine expenditure of Rs.30,42,13,444/-."

7. We notice that the Ld. CIT(A) has deleted the disallowance in question holding that carriage fees does not come within the ambit of the definition of Royalty. Therefore, the assessee was not required to deduct the tax at source u/s 194J. Further the Ld. CIT(A) has held that it is not the case of „no TDS" but the case of „less TDS" therefore, the disallowance made by the AO is bad in law. The Ld. CIT(A) has relied on the decision of the Hon'ble Calcutta High Court rendered in CIT vs S. K. Tekriwal 48 SOT 515 and the decisions of coordinate Bench of the Tribunal in the cases of CIT vs M/s Star Den Media Services pvt .Ltd(ITA No 1413/MUM/2014) and Chandabhoy & Jassobhoy vs DCIT 49 SOT 448 (Mumbai ITAT). As pointed out by the Ld. counsel for the assessee this issue is covered by the judgment of the Hon'ble Bombay High Court delivered in CIT vs. M/s UTV Entertainment Television Ltd. in Income Tax Appeal (supra) in favour of the assessee. Similarly, the Hon,ble Gujarat High Court in CIT vs. Prayas Engineering Ltd., (supra) and the Karnataka High Court in CIT vs. Kishore Rao & others (HUF) (supra) have held that in case of shortfall due to any difference of opinion as to the taxability of any item or the nature of payments falling under various TDS provisions, no disallowance can be made by invoking provisions of 40(a)(ia) of the Act.

8. Hence, in our considered opinion, the findings of the Ld CIT(A) are based on the evidence on record and in accordance with the principles of law laid down by the High courts including the jurisdictional High Court discussed above. We therefore do not find any reason to interfere with the same. Accordingly, we uphold the decision of the Ld. CIT(A) and dismiss the sole ground of issue of the revenue.

Also, we find, that the Hon'ble High Court of Bombay in the case of CIT, TDS-2, Mumbai Vs. UTV Entertainment Television Ltd. (2017) 399 ITR 443 (Bom), had observed, that in case of an assessee carrying on the business of broadcasting television channels, the payments made towards placement charges would fall within the meaning of "work" covered in Clause (iv) of Explanation to Sec.194C of the Act. On the basis of our aforesaid observations, we are of the considered view, that the CIT(A) had rightly vacated the disallowance of Rs.25,24,75,535/- that was



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made by the A.O under Sec. 40(a)(ia) of the Act. Accordingly, finding no infirmity in the order of the CIT(A), we uphold the same.

9. Resultantly, the appeal filed by the revenue is dismissed.

We find the facts to be *pari-materia* the same in the year under consideration. Nothing has been placed before us which would warrant us to take a different view in the matter. Therefore, respectfully following the earlier decisions rendered by the Tribunal in assessee's own case, we confirm the adjudication of learned first appellate authority.

6. In the result, the appeal stands dismissed.

Order pronounced in the open court on 03rd December, 2019.

Sd/-

(C.N. Prasad)

न्यायिक सदस्य / **Judicial Member**

Sd/-

(Manoj Kumar Aggarwal)

लेखा सदस्य / **Accountant Member**

मुंबई Mumbai; दिनांक Dated : 03/12/2019
Sr.PS, Jaisy Varghese

आदेशकीप्रतिलिपिअग्रेषित/Copy of the Order forwarded to :

1. अपीलार्थी/ The Appellant
2. प्रत्यर्थी/ The Respondent
3. आयकरआयुक्त(अपील) / The CIT(A)
4. आयकरआयुक्त/ CIT– concerned
5. विभागीयप्रतिनिधि, आयकरअपीलीयअधिकरण, मुंबई/ DR, ITAT, Mumbai
6. गार्डफाईल / Guard File

आदेशानुसार/ BY ORDER,

**उप/सहायक पंजीकार (Dy./Asstt.Registrar)
आयकरअपीलीयअधिकरण, मुंबई / ITAT, Mumbai.**