



ITA No.2411 to 2413/Mum/2019
M/s. Excel Productions Audio Visuals Pvt. Ltd.
Assessment Years :2006-07,2008-09 & 2009-10

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

माननीय श्री महावीर सिंह, उपाध्यक्ष एवं
माननीय श्री मनोज कुमार अग्रवाल, लेखा सदस्य के समक्ष।
BEFORE HON’BLE SHRI MAHAVIR SINGH, VP AND
HON’BLE SHRI MANOJ KUMAR AGGARWAL, AM
(Hearing through Video Conferencing Mode)

आयकर अपील सं./ I.T.A. No.2411/Mum/2019
(निर्धारण वर्ष / Assessment Year: 2006-07)

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आयकर अपील सं./ I.T.A. No.2412/Mum/2019
(निर्धारण वर्ष / Assessment Year: 2008-09)

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आयकर अपील सं./ I.T.A. No.2413/Mum/2019
(निर्धारण वर्ष / Assessment Year: 2009-10)

M/s. Excel Productions Audio Visuals Pvt. Ltd. Powai Plaza, 4 th Floor Hiranandani, Powai Mumbai-400 076.	बनाम/ Vs.	CIT(Appeals)-59 Room No. 1000B Smt. K.G. Mittal Ayurvedic Hospital, Charni Road Mumbai-400 002.
PAN / TAN: AAACE-7194-G / MUME-03715-F		
(अपीलार्थी/Appellant)	:	(प्रत्यर्थी / Respondent)

Assessee by	:	Shri Vijay Mehta -Ld.AR
Revenue by	:	Shri Amit Pratap Singh -Ld. Sr. DR

सुनवाई की तारीख/ Date of Hearing	:	17/09/2020
घोषणा की तारीख / Date of Pronouncement	:	17/09/2020

आदेश / ORDER

Per Bench

1.1 Aforesaid appeals by assessee for Assessment Years [in short referred to as ‘AY’] 2006-07, 2008-09 & 2009-10 arises out of common



ITA No.2411 to 2413/Mum/2019
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order of Ld. Commissioner of Income-Tax (Appeals)-59, Mumbai, [in short referred to as 'CIT(A)'], Appeal Nos. CIT(A)-59/IT-3(1)/IT-455 to 457/2017-18 dated 07/02/2019. The facts as well as dispute is stated to be pari-materia the same in all the 3 years.

1.2 We have heard the rival submissions and perused relevant material on record including documents placed in the paper-book. Our adjudication to the subject matter of appeals would be as given in succeeding paragraphs. First, we take up appeal for AY 2006-07.

ITA No. 2411/Mum/2019, AY 2006-07

2.1 The grounds raised by assessee are as follows: -

The Learned Commissioner of Income Tax Appeals-59 disallowed ground no.4 of Appeals without considering the explanation submitted for determination of correct nature of expense to determine the rate of TDS. The learned Commissioner Appeals treated the explanation and clarifications as additional evidence and has refused to allow it under Rule 46A of the Act and also the learned Commissioner has failed to take into consideration the Remand Report of the Assessing Officer. The learned CIT has over ridden the Remand Report and confirmed the Addition of Original Assessment Order. The CIT has also not considered the Order passed for A.Y. 2007-08 where the similar ground was accepted and was allowed and the addition was deleted.

2.2 The material facts are that consequent to survey action u/s 133A, a common order for AYs 2005-06 to 2009-10 was passed against the assessee u/s 201(1) & 201(1A) by Ld. Assessing Officer (AO) on 30/03/2011. The assessee being resident corporate assessee is stated to be engaged in the marketing and distribution of home video VCDs & DVDs etc.

2.3 Upon perusal of various TDS returns filed by the assessee for AY 2006-07, it was alleged that on certain transactions, though higher rate of tax was required to be deducted u/s 194J, tax was deducted at lower rates u/s 194C. Therefore, the assessee committed a default for not



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deducting TDS at proper and applicable rates and hence to be treated as assessee-in-default u/s 201(1) / 201(1A) of the Act.

2.4 In the absence of any satisfactory details / explanation forthcoming from assessee, the details of alleged default transactions were tabulated by Ld.AO in para-4 of the order. The parties against which short-TDS was stated to be deducted were - (i) Visual Realty; (ii) Web Synergy; (iii) Shrinagar Films Pvt. Ltd.; (iv) Shyam Film Transfer Services & (v) Sagarika Acoustronics Pvt. Ltd.

2.5 The workings of short-deduction of TDS as worked out by Ld. AO aggregated to Rs.61,317/- which would attract consequential interest of Rs.49,317/- u/s 201(1A). Thus, a demand of Rs.1,10,634/- was raised against the assessee.

3. Before Ld. CIT(A), the assessee submitted party-wise details and pleaded no default. However, Ld.CIT(A) refused to admit the additional evidences filed u/r 46A since the assessee, in the opinion of Ld. CIT(A), failed to demonstrate sufficient cause for admission of the same. Consequently, the demand raised against the assessee was upheld. Aggrieved, the assessee is in further appeal before us.

4. Upon careful consideration of impugned order and material on record, we find that as per the directions of Ld.CIT(A), remand proceedings were initiated against the assessee which were duly responded to by Ld. AO vide remand report dated 25/09/2017, a copy of which is on record. In para-6 of the remand report, a finding has been rendered by Ld. AO that the charges paid to the aforesaid parties would rightly fall u/s 194C and therefore, the TDS was correctly deducted.



ITA No.2411 to 2413/Mum/2019
M/s. Excel Productions Audio Visuals Pvt. Ltd.
Assessment Years :2006-07,2008-09 & 2009-10

Further, the fact of remand proceedings was well elaborated by the assessee before Ld. CIT(A) in its submissions dated 24/01/2018 wherein the attention was brought to the fact that assessee's submissions during remand proceedings were considered, deliberated and verified by Ld. AO and a finding was rendered that TDS was deducted at correct rates u/s 194C. Lastly, the fact of remand proceedings was noted by Ld. CIT(A) also at para 2.3 of the impugned order. Therefore, Ld. CIT(A), in our opinion, has erred in not considering the findings rendered by Ld. AO in the remand proceedings wherein it has been clearly stated that tax was correctly deducted u/s 194C. In that case, nothing survives against the assessee. Therefore, by deleting the impugned demand, we allow the appeal.

ITA No. 2413/Mum/2019, AY 2009-10

5.1 Facts are pari-materia the same in this AY. An aggregate demand of Rs.4,10,113/- was raised against the assessee in similar manner. The Ld. CIT(A), following AY 2006-07, dismissed the grounds raised by the assessee. Aggrieved, the assessee is in further appeal before us with similar grounds of appeal.

5.2 We find that in para-2 of remand report for this Assessment Year, Ld. AO has rendered similar findings that considering the nature of services rendered by various payees, TDS was correctly deducted u/s 194C. Therefore, nothing would survive against the assessee and therefore, we are inclined to delete the demand raised against the assessee. The appeal stands allowed.



ITA No.2411 to 2413/Mum/2019
M/s. Excel Productions Audio Visuals Pvt. Ltd.
Assessment Years :2006-07,2008-09 & 2009-10

ITA No. 2412/Mum/2019, AY 2008-09

6.1 Facts are pari-materia the same in this Assessment Year also. An aggregate demand of Rs.13,19,491/- has been raised against the assessee in similar manner. The Ld. CIT(A), following AY 2006-07, dismissed the grounds raised by the assessee. Aggrieved, the assessee is in further appeal before us with similar grounds of appeal.

6.2 We find that although there is no remand report for this year by Ld. AO but the payees are more or less the same as in AY 2006-07 & 2009-10. Therefore, the nature of services remaining the same, we hold that TDS was rightly deducted u/s 194C and therefore, the impugned demand would not survive. The appeal stands allowed.

Conclusion

7. All the appeal stands allowed in terms of our above order.

Order pronounced on 17th September, 2020.

Sd/-
(Mahavir Singh)
उपाध्यक्ष / **Vice President**

Sd/-
(Manoj Kumar Aggarwal)
लेखा सदस्य / **Accountant Member**

मुंबई Mumbai; दिनांक Dated : 17/09/2020
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.