

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

**BEFORE SHRI C.N. PRASAD, HON'BLE JUDICIAL MEMBER AND
SHRI S. RIFAUR RAHMAN, HON'BLE ACCOUNTANT MEMBER**

ITA NO.6784/MUM/2016 (A.Y: 2011-12)

ACIT – 16(1) Room No. 439, Aayakar Bhavan M.K. Road, Mumbai – 400 020	v.	M/s. UTV Entertainment Television Ltd., 1 st Floor, Building No. 14 Solitaire Corporate Park Guru Hargovind Marg, Chakala Andheri(E), Mumbai – 400 053 PAN: AACCV4782D
(Appellant)		(Respondent)

Assessee by	:	Shri Ajit Kumar Jain
Department by	:	M. Samatha
Date of Hearing	:	22.10.2020
Date of Pronouncement	:	11.12.2020

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) – 4, Mumbai [hereinafter in short "Ld.CIT(A)"] dated 22.08.2016 for the A.Y. 2011-12.
2. Revenue has raised the following grounds in its appeal: -

"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 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, 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 of 'Carriage Fees/ Channel Placement fees', whereas the jurisdictional ITAT, 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) rws 194J in respect of 'editing expenses' and failing to appreciate that the film editor has been notified under the category of professionals as per Section 44AA of the Act vide Notification dated 12.1.1977. As such, the payment made to them has to be characterized as fees for professional services and hence such payments are covered u/s. 194J of the Income-tax Act, 1961.

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) placing reliance on the decision of Calcutta High Court dated 10.12.2012 in CIT Vs S.K.Tekriwal [2014] without appreciating that the Honfale 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 decided the issue in favour of the Department after discussing in detail the judgment in the case of CIT Vs S.K.Tekriwal (supra).

5. 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 of commission payments without appreciating that the assessee has failed to submit any supporting details at the time of assessment proceedings and the purpose of such payments and its business exigencies were never proved by the assessee.

6. The appellant prays that the order of the Ld.CIT(A) on the above grounds be set-aside and that of the Assessing Officer be restored."

- 3.** Ground Nos. 1, 2 and 4 relates to disallowance made u/s. 40(a)(ia) of the Act for non-deduction of TDS under the provisions of section 194J of the Act in respect of 'Carriage Fees/Channel Placement fees'.
- 4.** Briefly stated the facts are that, during the assessment year under consideration assessee paid 'Carriage Fees/Channel Placement fees' by deducting TDS @2% u/s. 194C of the Act. However, Assessing Officer was of the view that 'Carriage Fees/Channel Placement fees' paid by the assessee is in the nature of royalty and therefore assessee should have deducted TDS under the provisions of section 194J of the Act. Accordingly, the Assessing Officer invoking provisions of section 40(a)(ia) r.w.s. 194J of the Act and disallowed 'Carriage Fees/Channel Placement fees' while computing the income of the assessee. Assessee carried the matter before the Ld.CIT(A) and the Ld.CIT(A) following the order of the Tribunal in assessee's own case in ITA.Nos. 2699, 4204, 4205 & 2700/MUM/2012 dated 29.10.2014 wherein the Tribunal held that 'Carriage Fees/Channel Placement fees' comes under the ambit of provisions of section 194C of the Act and not u/s. 194H of the Act, deleted the disallowance made u/s. 40(a)(ia) of the Act.

5. Ld. DR vehemently supported the orders of the Assessing Officer and the Ld. Counsel for the assessee placed reliance on the order of the Tribunal in assessee's own case and supports the order of the Ld.CIT(A).

6. We have heard the rival submissions, perused the orders of the authorities below. The Assessing Officer while completing the assessment disallowed 'Carriage Fees/Channel Placement fees' paid by the assessee for not deducting TDS u/s. 194J and invoking provisions of section u/s.40(a)(ia) of the Act by treating such 'Carriage Fees/Channel Placement fees' as royalty as process/royalty as per Explanation 6 to section 9(1)(vi) of the I.T. Act. Ld.CIT(A) following the order of the Tribunal deleted the disallowance observing as under: -

"4.1. In appeal, it is contended by the Appellant that the Ld. Assessing Officer has wrongly made disallowance of expenditure without appreciating the fact that such expenditure is not a Royalty. Such Carriage Fees is charged by the Broadcaster to carry the channel. Placing of a channel on a particular presumption or carrying a channel is integral part of transmission and broadcasting process, hence, it again presumed to be 'Royalty' in nature. Further, it is submitted that this issue has been decided by the Hon'ble ITAT in the Appellant's own case vide ITA No.2699, 4204, 205 & 2700/Mum/2012 order dated 29.10.2014. In Appellant's own case Hon'ble, ITAT has held that such Carriage Fees/Placement Fees comes under the ambit of provisions of section 194C of the Income-tax Act, 1961 and not u/s. 194H of the Income-tax Act, 1961. The decision is as under: -

"6. We have considered the rival submissions and relevant material on record. There is no dispute that the payment in question was made by the assessee to the cable operators/ MSOs for placing the TV channels in the prime band in order to enhance the viewership and better advertisement revenue. In the case of Kurukshetra Darpan (P) Ltd. Vs. CIT (supra), the Hon'ble High Court of Punjab

& Haryana while dealing with an identical question has held in para 13 to 18 as under: -

"13. After hearing learned counsel for the parties, we are of the view that the contentions of the counsel for the appellant are liable to be rejected. Sec. 194C of the Act creates an obligation on a person responsible for paying any sum specified therein to a person for carrying out any work, to deduct the tax at source.' Presently, we are concerned with the work' as referred to in cl(b) of Expln. III below s.194C(2)of the Act.

14.In terms of the said Explanation. it is provided that expression 'work' shall include inter alia broadcasting and telecasting including production of programmes for such broadcasting and telecasting. By way of such Explanation, it is evident that where the payment is for a work involving broadcasting and telecasting. the same shall be subject to deduction of. tax at source in tems of section 194 of the Act. the assessee is a cable network operator through which it provides telecasting of programmes to the ultimate consumers/subscribers. The assessee in turn enters into a contract with the licensor of various TV channels. On the payment so made, s. 194C of the Act" is attracted. This is for the reason that the licensor. is a person who is performing the work which is covered within the meaning of c1. (b) of Expln. III to s. 194C(2) of the Act.

15.It is also relevant to mention here that in the agreement between the assessee and the licensor, the licensor is referred to as 'company engaged in the business of distribution of satellite based television channel(s) services including the service and has exclusive rights to market and distribute the services in India to various customers and users of the service'. Further, the agreement refers to the assessee subscriber as a party, which is desirous to subscribe for and receive the telecast signals of the service from the company in order to further distribute the same to the customers).

16.From the recital of the agreement "Itself, it is clear that the service that the assessee subscriber is availing is the receipt of 'telecasting signals' from the licensor or the company. The expression 'service' has also been referred to mean the TV channel which is dealt with by the licensor or the company. Therefore, what the assessee has transacted for

with the licensor or company certainly includes within its ambit broadcasting and telecasting facility. The essence of the contract is to obtain broadcasting and telecasting of TV channels and thereafter its distribution amongst ultimate customers through the cable network of the assessee.

17. Another plea of the assessee/subscriber was that the licensor or the person to whom the assessee is making payment by itself does not do the work of broadcasting' and telecasting and is therefore outside the purview of s. 194C of the Act. This argument deserves to be negated at the threshold. As we have pointed out earlier what the assessee subscriber is looking for is to obtain the telecast signals from the licensor, which is enough. to deduce that the impugned contract involves broadcasting and telecasting of TV signals . Moreover, the licensor or the company, as is evident from the specimen agreement on record, in the business of distribution of satellite based TV channels and has exclusive rights to market and distribute said services in India, the service that is referred to in the agreement is the broadcasting and telecasting of TV signals.

18. For the reasons recorded above. we have no hesitation in concluding that the Tribunal was correct in holding that the assessee was required to deduct tax at source in terms of s. 194C of the Act on payments made to the licensor for obtaining TV signals. cable TV network owned by the assessee."

7. Thus after examination of the Explanation III to the then section 194C, the Hon'ble High Court held that the payment for obtaining the telecast licenses from the licensor falls under the provisions of section 194C. We find that the work of broadcasting/telecasting including production of programme or such broadcasting or telecasting falls under the definition of "work" as provided under clause (iv) of the Explanation to section 194C which reads as under:-

"Explanation - For the purpose of this section –

- (iv) "work" shall include-*
- (a) Advertising;*

(b) *Broadcasting and telecasting including production of programmes for such broadcasting or telecasting*

(c) *Carriage of goods or passengers by any mode of transport other than by railways;*

(d) *Catering;*

(e) *Manufacturing or supplying a product according to the requirement or specification of a customer by using material purchased from such customer,*

But does not include manufacturing or supplying a product according to the requirement of specification of a customer by using material purchased from a person, other than such customer.]”

8. *The Hon’ble Delhi High Court in the case of CIT Vs. Prasar Bharati (Broadcasting Corporation of India) (supra), has observed in para 11 as under:-*

“We are unable to agree with this submission. We observe that Explanation III, which was introduced simultaneously with section 194J, is very specific in its application to not only broadcasting and telecasting but also include "production of programmes for such broadcasting and telecasting". If, on the same date, two provisions are introduced in the Act, one specific to the activity sought to be taxed and the other in more general terms, resort must be had to the specific provision which manifests the intention of the Legislature. It is not, therefore, possible to accept the contention of the Revenue that programmes produced for television, including "commissioned programmes", will fall outside the realm of section 194C, Explanation III of the Act. We find no infirmity in the view taken by the Income-tax Appellate Tribunal which we hereby affirm.

9. *The Hon’ble Delhi High Court has made it clear that when two provisions are simultaneously introduced in the Act., one is specific and another is more general in terms then the resort must be to the specific provision. Therefore, when the work of broadcasting and telecasting of the programmes specifically falls under the ambit of provisions of section 194C, then in view of the decision of Hon’ble Delhi High Court (supra), the provisions of section 194J cannot be applied on such payments. The CBDT Circular No. 720 dated 30.08.1995, also supports this view as it was clarified in the said circular as under:-*

"1261. Payment of any sum shall be liable for deduction of tax only under one section .

It has been brought to the notice of the Board that in some cases persons responsible for deducting tax at source are deducting such tax by applying more than one provision for the same payment. In particular, it has been pointed out that the sums paid for carrying out work of advertising are being subjected to deduction of tax at source under section 194C as payment for work contract as also under section 1941 as payments of fees for professional services.

2. It is hereby clarified that each section, regarding TDS under Chapter XVII, deals with a particular kind of payment to the exclusion of all other sections in this Chapter. Thus, payment of any sum shall be liable for deduction of tax only under one section. Therefore, a payment is liable for tax deduction only under one section.

10. In view of the above discussion as well as the decisions of Hon'ble Punjab & Haryana High Court and Hon'ble Delhi High Court, we do not find any error or illegality in the impugned order of CIT(A) qua this issue."

4.2. Respectfully following the decision of the Hon'ble Jurisdictional ITAT in the Appellant's own case, the Assessing Officer is directed to delete the disallowance of expenditure of Rs.38,47,15,704/-"

7. On reading of the order of the Ld.CIT(A) we do not find any infirmity in the order of the Ld.CIT(A) in deleting the disallowance as the Ld.CIT(A) followed the order of the Tribunal and deleted the disallowance made u/s.40(a)(ia) of the Act. Even otherwise, the provisions of section u/s.40(a)(ia) of the Act have no application where there is short deduction of TDS as the Assessee in this case deducted TDS @2% under the provisions of section 194C of the Act as held by the Coordinate Bench of this Tribunal in the case of M/s. Sapiens Technologies (1982) India Pvt.

Ltd., v. DCIT in ITA.Nos. 170 & 171/Mum/2019 dated 17.09.2020. Thus, we do not see any infirmity in the order passed by the Ld.CIT(A). Grounds raised by the revenue on this issue are dismissed.

8. Ground No. 3 of grounds of appeal is relating to deleting the disallowance made u/s. 40(a)(ia) of the Act in respect of editing expenses. The Assessing Officer while completing the assessment noticed that assessee has debited ₹.8,20,650/- under the head editing expenses on which TDS was deducted @2% u/s. 194C of the Act. However, the Assessing Officer was of the view that assessee should have deducted TDS @10% as applicable for professional fees u/s. 194J and not as contract u/s. 194C. Therefore, since the assessee has deducted TDS @2% u/s. 194C instead u/s. 194J @10%, the amount debited by the assessee towards editing charges was disallowed u/s. 40(a)(ia) of the Act.

9. On appeal Ld.CIT(A) following the decision of the Hon'ble Calcutta High Court in the case of S.K. Tekriwal and the decision of the Coordinate Bench in the case of Chandanbhoj & Jassobhoj [49 SOT 448 (Mum. Trib.) deleted the disallowance u/s. 40(a)(ia) of the Act, as it was held that no disallowance can be made u/s. 40(a)(ia) of the Act in respect of short

deduction and provisions of section 40(a)(ia) of the Act applies only for non-deduction of TDS.

10. Ld. DR vehemently supported the orders of the Assessing Officer and the Ld. Counsel for the assessee submits that this issue is decided by the Hon'ble High Court in favour of the assessee as observed by the Ld.CIT(A) in Para No. 5.1 and he placed reliance on the order of the Ld.CIT(A).

11. We have heard the rival submissions, perused the orders of the authorities below. Assessing Officer disallowed editing expenses invoking provisions of section 40(a)(ia) of the Act as the assessee deducted TDS @2% u/s. 194C instead 10% u/s. 194J. Ld.CIT(A) deleted the disallowance following the decisions of the Hon'ble Calcutta High Court and the Mumbai Tribunal as it was held that no disallowance u/s. 40(a)(ia) of the Act is warranted for short deduction of TDS.

12. We find that an identical issue came up before the Tribunal in the case of M/s. Sapiens Technologies (1982) India Pvt. Ltd., v. DCIT in ITA.Nos. 170 & 171/Mum/2019 dated 17.09.2020 wherein the Tribunal

deleted the disallowance made u/s. 40(a)(ia) of the Act where there is short deduction of TDS observing as under: -

"7. We have heard the rival submissions, perused the orders of the authorities below and the case laws relied on. We noticed that the issue in appeal has been decided by the Coordinate Benches of the Tribunal in number of cases, wherein it has been held that the provisions of section 40(a)(ia) of the Act have no application when there is a short deduction of TDS.

8. In the case of ACIT v. M/s. TV 18 Home shopping Network Ltd., in ITA.Nos. 4725 & 4726/Mum/2018 dated 19.02.2020 the Coordinate Bench of the Tribunal held as under: -

"2. Briefly stated the facts are that during these two assessment years the assessee incurred expenses towards channel placement fees on which assessee deducted TDS @2% as per provisions of section 194C of the Act. However, the Assessing Officer was of the view that these expenses were in the nature of "Royalty" and TDS is liable to be deducted @10% u/s. 194J of the Act. The assessee was required to explain as to why the provisions of section 194J are not applicable. The assessee has submitted a detailed reply as to non-applicability of why the provisions of section u/s.194J of the Act. The assessee also contended that no disallowance U/s.40(a)(ia) of the Act should be made for short deduction of TDS. Not convinced with the reply filed by the assessee the Assessing Officer disallowed channel placement fees of ₹.10,20,88,270/- and ₹.8,40,82,020/- for the A.Ys. 2013-14 & 2014-15 respectively u/s. 40(a)(ia) of the Act treating these payments as Royalty.

3 On appeal the Ld.CIT(A) following the decision of the Mumbai Bench in the case of DCT v. Cox & Kings (I) Ltd & Anr [160 DTR 201] and Dish TV Indai Ltd v. ACIT [159 DTR 257] deleted the disallowance made u/s.40(a)(ia) of the Act. In these decisions the Coordinate Bench held that when there is a short deduction of TDS there cannot be any disallowance u/s.40(a)(ia) of the Act.

4. Ld. DR strongly supported the orders of the Assessing Officer and the Ld. Counsel for the assessee placed reliance on the decisions of the Tribunal particularly in the case of ACIT v. Hindustan Thompson Associated Pvt. Ltd., in ITA.No. 6729/Mum/2014 dated 13.07.2016 and ACIT v. M/s. UBJ Broadcasting Pvt. Ltd., in ITA.No. 1205/Mum/2018 dated 19.03.2019.

5. We have heard the rival submissions and perused the orders of the authorities below and the case laws relied on. On a perusal of the decisions of the Coordinate Bench, we find that the identical issue has been decided by the Coordinate Bench wherein in the case of ACIT v. Hindustan

Thompson Associated Pvt. Ltd., (supra) Coordinate Bench observed as under: -

"5. We have heard the rival contentions and perused the orders of the authorities below and the decision of the Co-ordinate Bench in assessee's own case for Assessment Years 2008-09 and 2009-10. The Co-ordinate Bench for the Assessment Year 2009-10 in ITA No. 746/M/2014 dated 19.02.2016 considered similar issue and held that provisions of Sec. 40(a)(ia) have no application when there is short deduction of tax observing as under:

"We have heard the rival submissions and perused the material before us. We find that the Hon'ble Kerala High Court in the case of P V S Memorial Hospital(supra), has held that deduction of TDS under wrong provision of law will not save assessee from disallowance u/s. 40(a)(ia)of the Act. However, the Kolkata High Court in the matter of Samir Tekriwal(supra), has held that expenses are not liable to be disallowed u/s.40(a)(ia)on account of short deduction of tax. The Hon'ble jurisdictional High Court has not decided the issue. Thus, we are faced with two diagonally opposite views about applicability of the provisions of section 40 (a)(ia)of the Act. We find that the Hon'ble Bombay High Court has in the case of Ashok Kumar Parekh (186 IT R212)has dealt with the binding precedence of the High Court judgments.Here,we would also like to reproduce the a portion of the judgment delivered by the Hon'ble Bombay High Court in the case of Siemens India Ltd.(156ITR11) and same reads as under :

"So far as the legal position is concerned, the ITO would be bound by a decision of the Supreme Court as also by a decision of the High Court of the State within whose jurisdiction he is (functioning), irrespective of the pendency of any appeal or special leave application against that judgment. He would equally be bound by a decision of another High Court on the point, because not to follow that decision would be to cause grave prejudice to the assessee. Where there is a conflict between different High Courts, he must follow the decision of the High Court within whose jurisdiction he is (functioning), but if the conflict is between decisions of other High Courts, he must take the view which is in favour of the assessee and not against him. Similarly, if the Tribunal has decided a point in favour of the assessee, he cannot ignore that decision and take a contrary view, because that would equally prejudice the assessee."

Considering the above, we are taking the view which is in favour of the assessee. We are following the judgment of Samir Tekriwal (supra) of the Hon'ble Kolkata High Court as well as the orders of the Mumbai Tribunal delivered by it for the earlier years. Effective ground of appeal is decide against the AO."

Respectfully following the said order, we uphold the order of the Ld. CIT(A) on this issue and dismiss the Revenue's appeal."

6. Similarly, in the case of ACIT v. M/s. UBJ Broadcasting Pvt. Ltd., (supra) the Coordinate Bench held as under: -

"5. We have carefully considered the submissions and material on record including the decisions cited before us. The undisputed position that emerges is that the assessee has suffered impugned disallowance u/s 40(a)(ia) for want of deduction of tax at source at higher rate i.e. 10%. It is undisputed fact that the assessee has deducted tax @2% and the additions have been made for short-deduction of tax as per Section 40(a)(ia). We find that the facts of the present case are squarely covered by the cited decision of this Tribunal rendered in ACIT Vs. M/s T.V.Vision Ltd. [supra] wherein the co-ordinate bench, after considering various decisions, decided the issue in assessee's favor, in the following manner:-

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.

Respectfully following the same, we confirm the stand of first appellate authority in the impugned order."

7. As could be seen from the above decisions wherein the Coordinate Benches have held that when there is a short fall in deduction of TDS there cannot be any disallowance u/s.40(a)(ia) of the Act. Undoubtedly in the case on hand the assessee deducted TDS @2% u/s 194C of the Act on the channel placement fees paid. However, the Assessing Officer was of the view that provisions of section 194J would apply and therefore the TDS would have been deducted @10% as against 2%. Therefore, this is a case of short deduction of TDS. Thus, respectfully following the said decisions, we uphold the order of the Ld.CIT(A) and reject the ground raised by the revenue.

8. In the result appeals of the revenue are dismissed."

9. Undoubtedly in the appeals before us the Assessing Officer made disallowance on the ground that assessee made short deduction of TDS. Therefore, this decision squarely applicable to the facts of the case. Respectfully following the said decision, we delete the disallowance made u/s. 40(a)(ia) of the Act."

13. The ratio of the above decision applies squarely to the facts of the case. Since in the case on hand also there is short deduction of TDS as the assessee had deducted TDS @2% as against 10%, it is a case of short deduction of TDS and not non-deduction of TDS. In the circumstances no disallowance is attracted u/s. 40(a)(ia) of the Act. Thus, we sustain the order of the Ld.CIT(A) and reject the grounds raised by the revenue on this issue.

14. Coming to last ground i.e. Ground No. 5 of grounds of appeal which relates to deletion of disallowance made towards commission expenses, we observed that Assessing Officer while completing the assessment noticed that assessee has paid commission of ₹.13,93,805/- and claimed as deduction. However, commission paid by the assessee was disallowed by the Assessing Officer stating that the assessee has not filed any details and not substantiated incurring of expenses. On appeal, Ld.CIT(A) deleted the disallowance as the assessee has given detailed breakup of the expenditure incurred towards commission.

15. Ld. DR vehemently supported the orders of the Assessing Officer and whereas the Ld. Counsel for the assessee placed reliance on the order of the Ld.CIT(A). Ld. Counsel for the assessee further submits that, Assessing Officer did not point out any defects in the Books of Accounts. The books were not rejected and Assessing Officer has made only an adhoc disallowance without rejecting Books of Accounts which is not proper and justified.

16. We have heard the rival submissions, perused the orders of the authorities below. The issue has been considered by the Ld.CIT(A) with reference to the submissions of the assessee and the averments made by

the Assessing Officer in Assessment Order and deleted the disallowance observing as under: -

*"9.2 I have considered the issue under appeal, carefully. I find that the Ld. Assessing Officer has disallowed the expenditure without any contrary evidences in possession. It is very evident from the assessment order itself that by letter dated 07.03.2014, the Assessee has submitted detailed break-up of the expenses. The Assessing Officer has not demonstrated as to why this commission expenditure is ingenuine and is not allowable. Since the Assessing Officer has not substantiated his reasoning and has not pointed out any defect in the claim of the Appellant, such disallowance of commission expenditure cannot be sustained. The Assessing Officer is therefore, directed to **delete** the disallowance of commission expenditure of Rs.13,93,805/-."*

17. On a perusal of the order of the Ld.CIT(A), we do not find any valid reason to interfere with the findings of the Ld.CIT(A) on this issue. Thus the same is sustained. Ground raised by the revenue on this issue is rejected.

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

Order pronounced on 11.12.2020 as per Rule 34(4) of ITAT Rules by placing the pronouncement list in the notice board.

Sd/-
(S. RIFAUH RAHMAN)
ACCOUNTANT MEMBER

Mumbai / Dated 11/12/2020
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