

**IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH 'B' NEW DLEHI**

**BEFORE SHRI O.P. KANT, ACCOUNTANT MEMBER
AND
SHRI K. NARASIMHA CHARY, JUDICIAL MEMBER**

**ITA No. 4888/Del/2019
Assessment Year: 2014-15**

**Dentsu Advertising & Media Service vs. Pr. CIT, Delhi-3,
India Pvt. Ltd., B-601, 6th Floor, New Delhi
Poonam Chambers, Dr. Annie Besant
Road, Worli, Mumbai.**

**PAN : AAECD1294L
(Appellant)**

(Respondent)

Appellant by : Sh. Satish Aggarwal, CA
Respondent by: Ms. Nidhi Srivastava, CIT/DR

Date of hearing: 05/04/2021
Date of order : 11/06/2021

ORDER

PER K. NARASIMHA CHARY, J.M.

Aggrieved by the order dated 29/3/2019 passed by the learned Pr. Commissioner of Income Tax, Delhi ("Ld. PCIT"), in the case of M/s Dentsu media and holding India private limited ("the assessee"), for the assessment year 2014-15, under section 263 of the Income Tax Act, 1961 (for short "the Act"), assessee preferred this appeal.

2. Brief facts of the case are that the assessee is a company engaged in the business of providing digital and media related advertisement to

place services and the nature and source of its income remained the same for the assessment year 2014-15 as in the earlier years. Assessee filed the return of income on 29/11/2014 declaring an income of Rs. 1,07,36,842/-and the learned Assessing Officer, while accepting the same concluded the assessment by order dated 19/20-12-2016 passed under section 143(3) of the Act, determined the income of the assessee at Rs. 1,07,36,842/-.

3. Ld. PCIT, however, noticed that the assessee had made a payment of Rs. 2,70,85,560/-to M/s Associated Broadcasting Company Limited without deducting tax at source (TDS)under section 194C of the Act in violation of provisions under section 40(a)(i) of the Act, and, therefore, the assessment order was erroneous and prejudicial to the interest of Revenue as the Assessing Officer failed to examine the vital aspects concerning deductibility of tax at source under section 194C of the Act. On this premise, he cancelled the order passed by the learned Assessing Officer and directed the Assessing Officer to pass a fresh assessment order by taking care of this aspect.

4. Aggrieved by such an action of the learned PCIT, assessee preferred this appeal stating that the order passed by the learned PCIT is arbitrary, biased and bad in law and on facts of the case. It is argued by the Ld. AR that M/s Associated Broadcasting Company Pvt. Ltd is an advertising agency and in terms of circular No. 715 dated 8/8/1995 the assessee is not required to make any deduction of tax at source and also that the circular No. 715 of CBDT does not provide that payment made to an entity in printed/electronic media should exclusively be engaged in media business only.

5. Per contra, it is the contention of the Ld. DR that M/s Associated Broadcasting Company Pvt. Ltd is also doing the news agency activities in addition to the business of TV9 having news channels in different languages, it is engaged in community, personal and social services as well and, therefore, the basic nature of its business is that of a service provider. He further submitted that CBDT circular No. 715 has no application to the facts of the case because there is principal-agent relationship in this transaction as the amount of charges are fixed by M/s Associated Broadcasting Company Pvt. Ltd that can be charged by the assessee from the advertiser. On this premise is he justified the order passed by the learned PCIT under section 263 of the Act.

6. We have gone through the record in the light of the submissions made on either side. It's not in dispute that the assessee is engaged in the business of providing digital and media related advertisement place services. It is also not in dispute that M/s Associated Broadcasting Company Pvt. Ltd to whom the amounts were paid by the assessee, was also in the business of advertising agency. However, as could be seen from the order of the Ld. PCIT the objection taken by him is that apart from doing the advertising agency business, M/s Associated Broadcasting Company Private Limited is also conducting news agency activities in addition to doing business as TV 9 having news channels in different languages. Ld. CIT observed that M/s Associated Broadcasting Company Pvt. Ltd is engaged in community, personal and social services as well and, therefore, the basic nature of its business is that of a service provider.

7. In spite of all these averments made by the Ld. PCIT, the fact remains that M/s Associated Broadcasting Company Pvt. Ltd is also an advertising agency and in that capacity it received amounts from the assessee. It could be seen from the clarifications issued on various provisions relating to tax deduction at source regarding changes introduced through Finance Act, 1995 issued by the Income Tax Department, it is clearly stated that the amended provisions of tax deduction at source would apply when a client makes payment to an advertising agency and not when advertising agency makes payment to the media. In circular No. 5/2016 dated 29/2/2016 it is clarified that under circular No. 715 dated 8/8/1995 TDS under section 194C will be applicable to the payment made by client to the advertising agency; that while referring to the decision of the Hon'ble Delhi High Court in the case of Living Media Limited and also the decision of Hon'ble Allahabad High Court in the case of Jagran Prakashan Ltd it was clarified that no TDS is attracted on payments made to the advertising agency for booking or procuring of our canvassing for advertisements.

8. It is further submitted for the subsequent assessment years of 2015-16, 2016-17 and 2017-18 no addition was made on this score. Having gone through the contents of the circular No. 715 dated 8/8/1995, 5 of 2016 dated 29/2/2016 and also taking into consideration the fact of the Revenue accepting the plea of the assessee for the subsequent assessment years, we are the considered opinion that the reasons given by the Ld. CIT to set aside the assessment order and to revise the same under section 263 of the Act do not hold much water and

therefore, the impugned order cannot be sustained. We accordingly quash the same.

9. In the result, appeal of the assessee is allowed.

Order pronounced in the open court on 11/06/2021

Sd/-
(O.P. KANT)
ACCOUNTANT MEMBER

Sd-
(K. NARASIMHA CHARY)
JUDICIAL MEMBER

Dated: 11/06/2021
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