

**IN THE INCOME TAX APPELLATE TRIBUNAL  
MUMBAI BENCHES "E", MUMBAI**

**BEFORE SHRI SAKTIJIT DEY, JUDICIAL MEMBER AND  
SHRI RAJESH KUMAR, ACCOUNTANT MEMBER**

**ITA No. 7570/MUM/2019  
Assessment Year: 2016-17**

M/s SCOD 18 Networking Private Limited, 3 & 4, Prathmesh Horizon, Link Road, Nr. Sailee SHP Center, Borivali (W)-400091 PAN: AALCS6147C	<b>Vs.</b>	The Dy. Commissioner of Income Tax 11 (2)(1), Room No. 417, 4 <sup>th</sup> Floor, Aayakar Bhavan, M K Marg, Mumbai - 400020
<b>(Appellant)</b>		<b>(Respondent)</b>

Assessee by : Shri Rashmi Kant Modi (AR)  
Revenue by : Shri Vijay Kumar Menon (DR)

Date of Hearing: 22/06/2021  
Date of Pronouncement: 09/07/2021

**ORDER**

**PER SAKTIJIT DEY, JM**

This is an appeal by the assessee against order dated 14.10.2019 of the learned Commissioner of Income Tax (Appeals)-30, Mumbai for the assessment year 2016-17.

2. The dispute in the present appeal is confined to disallowance made under section 40(a)(ia) of the Income Tax Act, 1961 towards alleged non deduction of tax at source.

3. Briefly the facts are, the assessee is a resident company engaged in the business of distribution of television channels to local cable operators through analogue and digital cable distribution network. For the assessment year under dispute, the assessee filed its return of income on 13.10.2016 declaring total income of Rs. 3,86,78,230/- under the normal provisions of the Act. Whereas, the assessee declared book profit of Rs. 4,40,22,958/- under section 115JB of

the Act. In course of assessment proceedings, the Assessing Officer (AO) while verifying the TDS statement furnished by the assessee found short deduction of tax on payment made to channel companies. He observed, instead of deducting tax at the rate applicable as per section 194J of the Act, the assessee had deducted tax at a lower rate by applying the provision of section 194C of the Act. After issuing show cause notice and rejecting assessee's explanation, the AO disallowed an amount of Rs. 5,86,28,748/-, being 30% of the payment not subjected to TDS at the appropriate rate, by invoking the provisions of section 40(a)(ia) of the Act. Though, the assessee contested the aforesaid disallowance before learned Commissioner (Appeals), however, it was unsuccessful.

4. The learned counsel for the assessee submitted, the assessee, being a distributor of various channels through its distribution network, was all along deducting tax at the rate applicable under section 194C of the Act. He submitted, subsequently, due to change in legal position as a result of some judicial precedents, assessee started deducting tax by applying rate as per section 194J of the Act. Thus, he submitted, it is not a case where the assessee has not at all deducted tax at source. He submitted, in respect of each and every payment made to the channel companies, the assessee had deducted at source, either under section 194C or section 194J of the Act. Therefore, he submitted, no disallowance under section 40(a)(ia) can be made for short deduction of tax at source. Further, he submitted, some of the payees i.e. Star India Pvt. Ltd. and Taj Television India Pvt. Ltd. have obtained certificates for no deduction and deduction at lower rate, respectively from the department. He submitted, by honoring such certificates issued to the concerned payees by the department, assessee has either not deducted at source or has deducted at the appropriate rate. In this context, he drew our attention to the certificates issued under section 197 of the Act in favour of Star India Pvt. Ltd. and Taj Television India Pvt. Ltd. Without prejudice, he submitted, in any case of the matter all payments made were subjected to TDS either under section 194C or 194J. He submitted, whether section 194C or 194J would be applicable to the payments made is a highly debatable issue, as, there are conflicting views by

judicial authorities on the issue. Thus, he submitted, in such circumstances no disallowance under section 40(a)(ia) of the Act can be made. Finally, he submitted the AO has not passed any order under section 201 of the Act holding the assessee as assessee in default. Therefore, no disallowance under section 40(a)(ia) of the Act can be made. In support of such contention, he relied upon the following decisions:

1. *ACIT 16 (1), Mumbai vs. Dish TV India Ltd, ITA Nos. 3061 & 3062/Mum/2017, ITA Nos. 3691&3692/Mum/2017 dated 10 October 2017,*
2. *Scrabble Entertainment Ltd. vs Asst CIT 11(1), I.T.A. Nos. 1742 and 2808/Mum/2016. 31 January 2018,*
3. *ACIT 16(1), Mumbai Vs. M/s UBJ Broadcasting Private Limited, ITA No. 1205/Mum/2018, pronounced on 19.03.2019.*
4. *CIT vs. S K Tekriwal, (2014)46 taxmann.com 444 (Calcutta)*
5. *ACIT 16(1) vs. M/s T V Vision Ltd., ITA 3387/Mum/2016, pronounced on 28.02.2018.*
6. *CIT TDS 2, Mumbai vs. UTV Entertainment Television Ltd. 88 taxmann.com 214 (2017) Bombay HC.”*

5. The learned Departmental Representative strongly relying upon the observations of the AO and learned Commissioner (Appeals) submitted, disallowance under section 40(a)(ia) of the Act can also be made for short deduction of tax. In support of such contention, he relied upon the following decision:

*Commissioner of Income Tax Vs. PVS Memorial Hospital Ltd. (2015) 60 taxman.com 69 (Kerala).*

6. We have considered rival submissions and perused the materials on record. Though, learned Commissioner (Appeals) has alleged that the assessee has not deducted tax in respect of some payments, however, on a careful perusal of materials on record including the audit report, we find the aforesaid allegation baseless. It is evident from the material on record, in the year under consideration the assessee had made payment to 19 parties an amount of Rs.

43,51,94,965/-. It is a fact that the assessee had deducted tax at source on such payments either by applying section 194C or section 194J of the Act. It is further evident, during the year under consideration the assessee has paid an amount of Rs. 10,35,16,700/- to Star India Pvt. Ltd., which has obtained a no deduction of tax at source certificate from the department. Further, Taj Television India Pvt. Ltd. Has also obtained a certificate for deduction of tax at a lower rate of 1.76%. Thus, the assessee in terms of the aforesaid certificates issued, either did not deduct at source or deducted at a lower rate while making payment to the concerned parties. Thus, as could be seen from the material on record, the difference in the amount to be deducted as per the assessee and as per the revenue is on account of the difference in rate as applicable under section 194C and 194J of the Act. Thus, it is clearly case of short deduction of tax and not a case of no deduction of tax.

7. As held by the Hon'ble Calcutta High Court in case of CIT vs. S.K. Tekriwal (supra), no disallowance under section 40(a)(ia) can be made for short deduction of tax at source. Though, there is a contrary decision of the Hon'ble Kerala High Court in case of CIT Vs. PVS Memorial Hospital (supra), however, as per the settled legal principle, when there is no decision of the Hon'ble Supreme Court or Hon'ble jurisdictional High Court and there are conflicting decisions of non jurisdictional High Courts, the decision holding the view favorable to the assessee has to be adopted. The co-ordinate Bench in case of ACIT Vs. Dish TV India Ltd. and other decisions cited before us by the learned counsel for the assessee has also expressed this view. It is also a fact that no order under section 201 of the Act has been passed by the AO holding the assessee as assessee in default. Thus, keeping in view the aforesaid factual and legal position, no disallowance under section 40(a)(ia) of the Act can be made. In any case of the matter, whether nature and character of payment made by the assessee falls under section 194C or 194J of the Act, is a highly debatable issue, as, there are decisions both in favour and against the assessee. That being the case, the assessee deserves the benefit of doubt. Thus, considering the overall facts and circumstances of the case and keeping in view the ratio

laid down in the decisions relied upon, we are of the considered view that no disallowance under section 40(a)(ia) of the Act can be made. Accordingly, we delete the disallowance.

8. In the result, appeal is allowed.

Order pronounced in the open court on 9<sup>th</sup> July, 2021.

**Sd/-**  
(RAJESH KUMAR)  
ACCOUNTANT MEMBER

**Sd/-**  
(SAKTIJIT DEY)  
JUDICIAL MEMBER

मुंबई Mumbai; दिनांक Dated: 09/07/2021  
*Alindra, PS*

**आदेश प्रतिलिपि अग्रेषित/ Copy of the Order forwarded to :**

1. अपीलार्थी / The Appellant
2. प्रत्यर्थी / The Respondent.
3. आयकर आयुक्त (अपील) / The CIT(A)-
4. आयकर आयुक्त / CIT
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, मुंबई /  
DR, ITAT, Mumbai
6. गार्ड फाईल / Guard file.

**आदेशानुसार/ BY ORDER,**

सत्यापित प्रति //True Copy//

**उप/सहायक पंजीकार (Dy./Asstt. Registrar)**  
**आयकर अपीलीय अधिकरण, मुंबई / ITAT, Mumbai**