

IN THE INCOME TAX APPELLATE TRIBUNAL  
"E" Bench, Mumbai  
Before Shri Shamim Yahya (AM) & Shri Pavan Kumar Gadale (JM)

I.T.A. No.8040/Mum/2019 (Assessment Year 2011-12)

DCIT(TDS)-2(2) Room No.717 Smt. K.G.M.Ayurvedic Hospital Building Charni Road(W) Mumbai-400 002  PAN : MUMS04399D (Appellant)	Vs.	Star India Pvt.Ltd. Star House Urmi Estate 95, Ganpatrao Kadam Marg, Lower Parel(W) Mumbai-400 013  (Respondent)
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Assessee by	Shri Divesh Chawla
Department by	Ms. Sunita Billa
Date of Hearing	15.07.2021
Date of Pronouncement	29.09.2021

O R D E R

Per Shamim Yahya (AM) :-

This appeal by the Revenue is directed against the order of learned CIT(A)-60 dated 29.10.2019 and pertains to Assessment Year 2011-12.

2. The grounds of appeal read as under :

1. "Whether on the facts and in the circumstances of the case and in law, the Ld. CIT(A) erred in deleting the demand of tax of Rs. 12,37,17,957/- raised u/s 201(1) of the Act without appreciating that payments towards placement fees are in the nature of fees for technical service and thus liable for TDS at the rate of 10% u/s 194J of the Act?"
2. "Whether on the facts and in the circumstances of the case and in law, the Ld, CIT(A) erred in deleting the levy of interest of Rs. 4,33,01,284/- u/s 201(1A) of the Act without appreciating that the payments towards placement fees are in the nature of fees for technical service and thus liable for TDS at the rate of 10% u/s 194J of the Act?"

3. Brief facts of the case are that the Appellant is an Indian company and is, among others, engaged in the business of broadcasting of channels over various countries,

including over Indian sub continent A show cause notice was issued under Section 201(1)/201(1A) of the Act to the Appellant to show cause why the taxes should not be deducted tax at source on the channel placement charges under the provisions of Section 194J of the Apt, as cable operators are providing "technical services" to the Appellant. The TDS officer thereafter passed order under section 201(1)7 201(1 A) of. the Act holding that payments made towards placement of channels ought to be subject to TD under section 194J of the Act @ 10%.

Accordingly, he computed short deduction of tax under section 201(1) of the Act amounting to Rs 12,37,17,957 and interest under Section 20i(1A) of the Act amounting to Rs4,33,01,284. It is against this order under section 201 (1)/(1 A) that the present appeal has been filed.

4. Consequent upon the AO's order, Ld.CIT(A) decided the issue in favour of the assessee by following decision of Hon'ble Bombay High Court and ITAT in assessee's own case.

5. The Ld.CIT(A) has held as under;-

“ I have gone through the assessment order, the grounds of appeal and the appellant's AR argument alongwith various case laws cited by him in their support. The Appellant has made payment of placement charges to cable operators. It was further evidenced that the cable operators agree with the Appellant to place the channels on certain preferred frequencies. It is only in consideration for providing choice of the desired placement of the channels that the Appellant agrees to make payment of placement fee to the cable operators. In order to transmit the TV signals to the ultimate viewers, the cable operators are as such required to place the signals on some frequency. By agreeing to place the channel on any preferred band, the cable operator does not render any technical service t o the distributor/ TV channel. Therefore, as per appellant's argument, such payment of placement fee by the Appellant to the cable operators should be subjected to TDS @ 2% as per the provisions of section 194C of the Act.

The TDS AO has adopted in the impugned order that the placement fee should be treated as Fees for technical services for the purpose of TDS under section 194J of the Act does; not hold ground.

On the said issue, the appellant's AR relied on the decision of Hon'ble Bombay High Court vide order bearing ITA No. 1420/1422 of 2016 which has upheld the decision passed by the Hon'ble ITAT in assessee's own case for AY 2008-09 and AY 2009-10 wherein it was concurred that channel placement fees are subject to withholding under section 194C of the Act and not under section 194 J of the Act.

In addition to the above reliance was placed on the decision of Hon'ble Bombay High Court in case of NGC (India) **Private** Limited ('NGC India') wherein vide ITA No. 397 of 2015 it was held it payment was not subject to tax under section 194J of the Act.

In furtherance to above, a similar view was taken by the Hon'ble Bombay High Court in the case of UTV Entertainment **Television** Ltd. (supra) wherein it was held that the impugned payments is liable to TDS under the provisions of Sec. 194C of the Act.

Lastly, reliance was placed on the decision pronounced in the case of Times Global Broadcasting Co. Ltd (supra) wherein the Hon'ble Bombay High Court relied on UTV Television Ltd (supra) (which was also relied in SIPL's own case in AY 2008-09 and AY 2009-10) and was adjudicated in favour of the assessee. It is pertinent to note that the above order in the case of Times Global Broadcasting Co. Ltd (supra) was affirmed by the Hon'ble Supreme Court by dismissal of revenue's appeal bearing SLP No 4394 of 2019 (thereby also strengthening SIPL's order).

In light of above judicial precedents pronounced by the Hon'ble Bombay High Court in SIPL's own case and in the case of other entities, and considering that the appellant has already deducted TDS under Section 194C of the Act, the TDS officer is directed not to consider the Appellant as assessee in default under Section 201 (1 )of the Act as there is no short demand of tax by the Appellant. Accordingly, the demand of tax of Rs.12,37,17,957 under Section 201 (1) of the Act is deleted.

Further, since the assessee is not a deemed defaulter u/s..201(1), the interest u/s 201(1A) is also not leviable and the interest amounting to Rs 4,33,01,284 under Section 201(1A) of the Act is also hereby deleted.”

6. Against the above order revenue is in appeal before us.

7. We have heard both the parties and perused the records. Ld. Counsel of the assessee submitted that issue is squarely covered in favour of the assessee by the

decision of Hon'ble Bombay High Court in assessee's own case and several decisions are as under:-

1. the decision of the Hon'ble High Court in the case of Star India Private Limited (ITA no 1420 of 2016 and 1422 of 2016)
2. The decision of the Hon'ble ITAT in the case of Star India Private Limited (ITA no 699 & 700/ Mum/ 2012 and CO No 21 & 22/Mum/2012)
3. The decision of the Hon'ble ITAT in the case of Star Den Media Services Pvt Ltd. (ITA No. 1311/Mum/2016)
4. The decision of the Hon'ble ITAT in the case of T.V. Vision Ltd. (ITA 3386/Mum/2016)
5. Copy of the decision of the Hon'ble ITAT in the case of Sristi Television (ITA No. 1297/Kol/2012 and ITA No. 276/Kol/2013)
6. The decision of Hon'ble Supreme Court dismissing the appeal filed by the department in the case of CIT vs Times Global Broadcasting Co Ltd (SLP No 4394 of 2019)
7. The decision of the Hon'ble High Court in the case of Times Global Broadcasting Co Ltd (ITA no 399 Of 2016)
8. The decision of the Hon'ble High Court in the case of 'UTV Entertainment Television Limited (ITANo 525/Mum/2015,732/Mum/2015,741/Mum/2015, 1035/Mum/2015 dated 10 and 11 October 201 7)
9. The decision of the Hon'ble ITAT in the case of Channel Guide India Limited (ITA no 1221 of 2006 and 579 of 2006)

8. Per contra Ld. DR could not dispute the decisions covered in favour of the assessee. Upon careful consideration, we note that Hon'ble Bombay High Court in assessee's own case in ITA Nos. 1420/2016 and 1422/2016, vide order dated 11/01/2019 had decided the issue in favour of the assessee by holding as under;-

1. The Revenue has filed both the appeals against the common judgment of the Income Tax Appellate Tribunal, raising similar question of law for our consideration, which is as under :
  - (i) Whether on the facts and in the circumstances of the case and in law, the Tribunal is correct in holding that the placement fees / carriage fees paid to cable operators / MSO/DTH Operators are payments for work contract covered u/s 194C and not fees for technical service u/s 194J, without appreciating that the services received by assessee are technical in nature?
2. The brief controversy between the appellant Revenue and the respondent assessee is with respect to the correct provision under which the payments made by the assessee for the purpose of channel placement should be made. The Revenue held that the deduction of tax at source should have been done in terms of Section

194J of the Act, whereas the assessee contended that the deduction was correctly made in terms of Section 194C of the Act

3. Upon perusal of the impugned order of the Tribunal, we notice that Tribunal while dismissing the Revenue's appeal and confirming the view of the CIT(A), has placed reliance on the decision of the Tribunal in the case of UTV Entertainment Television. We notice that such decision of the Tribunal was carried in appeal by the Department in Income Tax Appeal No.525 of 2015 and connected appeals. These appeals were dismissed by an order dated 10/11th October, 2017. The Court in the said judgment has made following observations :

“14. The Commissioner (Appeals) has given a finding of fact on the perusal of sample copies of the agreements. The agreements are entered into with the respondent by the cable operators for placement of channels on agreed frequencies on which the respondent wishes to place a particular channel. The placement fee is the consideration for providing choice of the desired placement of the channels. That is how, channel placement charges are paid to the cable operators under the agreement. Under the agreement, the cable operators agree for placing a particular channel on agreed frequency band. As stated earlier, the respondent has deducted tax at the rate of 2% at source by invoking Section 194C of the Income Tax Act while making payment towards placement fees to the cable operators/ MSOs. If Section 194J is to be applied, the deduction would be of 10%. The Commissioner (Appeals) has also gone through the method followed by the cable operators/ MSOs. The Commissioner (Appeals) has also gone into the submission of the Revenue that, in fact, Section 194J would apply. In substance, the argument is that placement charges are basically for rendering technical service. The Commissioner (Appeals) has recorded a finding of fact on the basis of material on record that the placement charges are consideration for placing the channels on agreed frequency bands. It was found that, as a matter of fact, by agreeing to place the channel on any preferred band, the cable operator does not render any technical service to the distributor/ TV channel. Reference is made to the standard fee paid for basic broadcasting of a channel at any frequency. The Commissioner (Appeals) has considered clause (iv) of the explanation to Section 194C which incorporates inclusive definition of “work”. Clause (iv) includes broadcasting and telecasting including production of programmes for such broadcasting and telecasting. The Commissioner (Appeals) rightly found that if the contract is executed for broadcasting and telecasting the channels of the respondent, the same would be covered by Section 194C as it falls in clause (iv) of the definition of “work”. Therefore, when placement charges are paid by the respondent to the cable operators/ MSOs for placing the signals on a preferred band, it is a part of work of broadcasting and telecasting covered by sub clause (b) of clause (iv) of the explanation to Section 194C. As a matter of fact, it was found by the Commissioner (Appeals) that whether the payment is towards a standard fee or placement fee, the activities involved on the part of the cable operators/ MSOs are the same. When placement fee is received, a channel is placed on a particular prime band. It was found that by an agreement to place the channel on a prime band by accepting placement fee, the cable operator/ MSO does not render any technical service. As far as Appellate Tribunal is concerned, again the definition of work in clause (iv) of the explanation to Section 194C was looked into. We must note here that a grievance was made by the learned counsel appearing for the

appellant that there are no detailed findings recorded by the Appellate Tribunal. However, the Commissioner (Appeals) has recorded detailed findings on the basis of material on record and by referring to the findings, the Appellate Tribunal has expressed general agreement with the findings recorded by the first Appellate Authority. While affirming the judgment of the first Appellate Authority, it is open for the Appellate Tribunal to express such general agreement.”

4. In view of this position, we do not find any question has arisen for our consideration. Accordingly, both the Income Tax Appeals are dismissed

9. Respectfully following the precedent as above, we do not find any infirmity in order of the Ld.CIT(A). Accordingly, we uphold the same.

10. In the result, revenue's appeal is dismissed.

Pronounced in the open court on 29 .09.2021.

Sd/-  
(PAVAN KUMAR GADALE)  
JUDICIAL MEMBER

Sd/-  
(SHAMIM YAHYA)  
ACCOUNTANT MEMBER

Mumbai; Dated : 29 /09/2021  
Thirumalesh, Sr.PS

Copy of the Order forwarded to :

1. The Appellant
2. The Respondent
3. The CIT(A)
4. CIT
5. DR, ITAT, Mumbai
6. Guard File.

//True Copy//

BY ORDER,  
(Assistant Registrar)  
ITAT, Mumbai