

IN THE INCOME TAX APPELLATE TRIBUNAL "J" BENCH, MUMBAI

BEFORE SHRI B. R. BASKARAN, AM AND SHRI ABY T. VARKEY, JM

आयकर अपील सं/ I.T.A. No.512/Mum/2022

(निर्धारण वर्ष / Assessment Years: 2013-14)

DCIT, Central Circle-2(4) Room No. 802, 8 th Floor, Prathishtha Bhavan, M. K. Road, Churchgate, Mumbai- 400020.	बनाम/ Vs.	Zee Entertainment Enterprises Ltd. 18 th Floor, A Wing, Marathon Futurex, N. M. Joshi Marg, Lower Parel, Mumbai-400013.
स्थायी लेखा सं./जीआइआर सं./PAN/GIR No. : AAACZ0243R		
(अपीलार्थी /Appellant)	..	(प्रत्यर्थी / Respondent)

Assessee by:	Shri Jay Bhansali
Revenue by:	Shri Vinod Tanwani (DR)

सुनवाई की तारीख / Date of Hearing: 02/08/2022
घोषणा की तारीख /Date of Pronouncement: 05/08/2022

ORDER

PER ABY T. VARKEY, JM:

This appeal preferred by the revenue against the action of the Ld. Commissioner of Income Tax (Appeals)-58, Mumbai [hereinafter referred to as the "CIT(A)"] dated 05.10.2021 for assessment year 2013-14.

2. The facts in brief are that assessee filed the return of income on 23.11.2013 declaring an income of Rs.9,53,02,05,770/- which was revised to Rs.9,53,45,48,223/- on 31.03.2015. The case of the assessee was selected for scrutiny. During the course of assessment proceedings, the AO noticed that the assessee has entered into international transactions with its AEs (associated enterprises) M/s. Taj TV and therefore a reference was made under section 92CA(1) of the Act dated 23.03.2015 to Transfer Pricing Officer-4(2), Mumbai. The assessee is in the business of broadcasting of satellite television channels, space selling agent for other television channels, sale of television programmes, films, movies etc. The AO finally framed the assessment under section 143(3) read with section 144C (13) of the Act by making two additions

i.e. one in respect of transfer pricing adjustment under section 92CA(3) as per TPO order to the tune of Rs.1,28,66,040/- in respect of corporate guarantee given by the assessee @ 1.5% of the total outstanding balance of facility obtained from Deutsche Bank [against 1% charged by the assessee] and 2nd in respect of disallowance under section 14A of Rs.10,40,723/- which disallowance was deleted by Ld. CIT(A) by relying on the decision of Special Bench of this Tribunal in ACIT Vs. Vireet Industriest 82 taxmann.com 415 (Del) (SB) which is not challenged by the revenue before us. The Revenue has challenged only the action of Ld CIT(A) deleting the transfer pricing adjustment to the tune of Rs.1,28,66,040/- in respect of corporate guarantee.

3. Ground No.1 of Revenue as noted is against the impugned action of deletion of Transfer Pricing Adjustment/addition of Rs.1,28,66,040/- which was made by the AO/TPO in respect of corporate guarantee given by the assessee for availing loan by the M/s. Taj TV (AE). The TPO calculated the total arm's length price of the guarantee fee at Rs.3,57,38,743/- and after reducing the guarantee fee received by the assessee @1% from its AEs to the tune of Rs.2,28,72,702/- treated the balance amount of Rs.1,28,66,040/- as adjustment under section 92CA as (transfer pricing adjustment) which has been deleted Ld. CIT(A) relying on the order of this Tribunal in assessee's own case for AY. 2012-13. Aggrieved by this action of Ld. CIT(A) deleting the Transfer Pricing Adjustment of Rs.1,28,66,040/-, the revenue is before us.

4. The Ld. CIT- D.R. supported the action of Transfer Pricing Officer (TPO), however could not point out any change in facts or law pertaining to AY 2012-13 vis-à-vis the relevant assessment year i.e. AY 2013-14 which could have enabled us to have looked into the issue. And the Ld. CIT-DR fairly agreed that issue is covered in favour of the assessee.

5. We have heard the rival submissions of both the parties and perused the material on record. We find that identical issue has been permeating from

earlier years and the issue has been decided by the co-ordinate bench of the Tribunal in assessee's own case in ITA No.1475/M/2017 for A.Y. 2012-13 vide order dated 08.06.18 wherein assessee's action of charging guarantee commission at 0.50% of the average amount of the loan outstanding has been upheld and consequently the Tribunal was pleased to delete the adjustment made by TPO/AO/DRP to the tune of Rs.63,45,801/-. And further we note that in this AY. 2013-14, the Ld. CIT(A) has relied on the order of this Tribunal in assessee's own case for AY. 2012-13 and taking note that the assessee has charged guarantee commission @ 1% was pleased to delete the same, which impugned action of Ld. CIT(A) stands confirmed because the Ld. DR could not point out any change in facts or law in respect of Tribunal's decision in assessee's own case for AY. 2012-13 vis-à-vis this AY. 2013-14. So following the rule of consistency and judicial discipline we uphold the impugned order of Ld. CIT(A) and dismiss the appeal of revenue.

6. Ground no. 2 & 3 of the revenue is against the action of Ld. CIT(A) allowing the additional ground of appeal preferred before him regarding deduction of education cess & secondary education cess to the tune of Rs.8,92,08,613/-.

7. Brief facts is that the assessee before the Ld. CIT(A) claimed deduction of education cess & secondary education cess of Rs.8,92,08,613/- which was allowed by the Ld. CIT(A) relying on the decision of Hon'ble Bombay High Court in the case of Sesa Goa Ltd. [2020 (3) TMI 347] and other judicial precedents cited in the impugned order. However, the Ld. AR fairly conceded before us that in the light of the amendment brought in by Finance Act, 2022, the claim of assessee allowed by Ld. CIT(A) cannot be sustained. In the light of the Finance Act, 2022 regarding this issue, we find force in the revenue's grounds of appeal 2 & 3 and reverse the action of Ld. CIT(A) and allow the grounds of appeal of revenue.

8. In the result, the appeal of revenue is partly allowed.

Order pronounced in the open court on this 05/08/2022.

Sd/-

(B. R. BASKARAN)
ACCOUNTANT MEMBER

Sd/-

(ABY T. VARKEY)
JUDICIAL MEMBER

मुंबई Mumbai; दिनांक Dated : 05/08/2022.
Vijay Pal Singh, (Sr. PS)

आदेश की 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.

सत्यापित प्रति //True Copy//

आदेशानुसार/ BY ORDER,

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