

**IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH "D" NEW DELHI**

**BEFORE SHRI CHALLA NAGENDRA PRASAD, JUDICIAL MEMBER
AND
SHRI M BALAGANESH, ACCOUNTANT MEMBER**

**आ.अ.सं./I.T.A Nos.1563, 1558 & 1559/Del/2020
निर्धारणवर्ष/Assessment Years:2012-13 to 2014-15**

DCIT International Taxation Circle, Noida.	बनाम Vs.	Jaypee Sports International Limited, Sector-93, Noida, Uttar Pradesh. PAN No. AABCB1562A
अपीलार्थी Appellant		प्रत्यर्थी/Respondent

Revenue by	Shri Vizay B. Vasanta, CIT-DR
Assessee by	Shri Ashwani Kumar Garg, Adv.

सुनवाईकीतारीख/ Date of hearing:	31.08.2023
उद्घोषणाकीतारीख / Pronouncement on	29.11.2023

आदेश /O R D E R

PER C.N. PRASAD, J.M.

These three appeals are filed by the Revenue against different orders of Ld. CIT(Appeals)-II, Noida for the assessment years 2012-2013, 2013-14 and 2014-15. The Revenue raised the following grounds of appeal: -

Grounds of ITA No.1563/Del/2020 - AY 2012-13:

1. *“The order of the Ld.CIT(A) is erroneous and contrary to facts and law.*
2. *That the Ld.CIT(A) has erred in law and on facts in restricting the disallowance u/s 40(a)(i) of the Income Tax Act, 1961 to the extent of Rs.50,19,52,442/- in place of Rs.197,70,15,716/- (As determined by AO) by holding that the liability of withholding of TDS was to the extent of chargeable sum in the case of Formula One World Championship (FOWC) i.e. income determined in the case of FOWC by the AO as attributable sum to PE in India.*
3. *That the Ld.CIT(A) has erred in law and on facts by deleting the disallowance of Rs.32,98,870/- u/s 40(a)(ia) of bank guarantee Commission paid by assessee by holding that there was no requirement to deduct TDS u/s 194H.”*

Grounds of ITA No.1558/Del/2020 - AY 2013-14:

1. *“The order of the Ld.CIT(A) is erroneous and contrary to facts and law.*
2. *That the Ld.CIT(A) has erred in law and on facts in restricting the disallowance u/s 40(a)(i) of the Income Tax Act, 1961 to the extent of Rs.50,19,52,442/- in place of Rs.225,15,45,000/- (As determined by AO) by holding that the liability of withholding of TDS was to the extent of chargeable sum in the case of Formula One World Championship (FOWC) i.e. income determined in the case of FOWC by the AO as attributable sum to PE in India.*
3. *That the Ld.CIT(A) has erred in law and on facts by deleting the disallowance of Rs.32,98,870/- u/s 40(a)(ia) of bank guarantee Commission paid by assessee by holding that there was no requirement to deduct TDS u/s 194H.”*

Grounds of ITA No.1559/Del/2020 - AY 2014-15:

1. *“The order of the Ld.CIT(A) is erroneous and contrary to facts and law.*
 2. *That the Ld.CIT(A) has erred in law and on facts in restricting the disallowance u/s 40(a)(i) of the Income Tax Act, 1961 to the extent of Rs.50,64,15,999/- in place of Rs.246,60,03,804/- (As determined by AO) by holding that the liability of withholding of TDS was to the extent of chargeable sum in the case of Formula One World Championship (FOWC) i.e. income determined in the case of FOWC by the AO as attributable sum to PE in India.*
 3. *That the Ld.CIT(A) has erred in law and on facts by deleting the disallowance of Rs.13,86,02,578/- u/s 40(a)(ia) being the payment made to M/s Formula One Management Ltd.(FOM) by holding that the liability of withholding of TDS was to the extent of chargeable sum in respect of M/s Formula One Management Ltd. (FOM).”*
2. At the outset, the Ld. Counsel for the assessee submits that in these appeals the first issue was whether the fees paid to M/s Formula One World Championship Ltd. (FOWC) & M/s Formula One Management Ltd. (FOM) were liable to be disallowed u/s 40(a) for non-deduction of tax. Ld. Counsel submits that the Assessing Officer (for short “AO”) while completing the assessment disallowed the gross fee paid to FOWC as well as FOM and the Ld.CIT(A) held that the disallowance was to be restricted to the chargeable sum in the gross fee paid in terms of the CBDT clarification vide Circular No.3/2015 and, therefore, the Ld.CIT(A) restricted the disallowance in respect of FOWC to the chargeable sum when the gross fee as

assessed. The Ld. Counsel for the assessee further submits that as regard the fee paid to FOM since the chargeable sum therein was assessed at Nil the Ld.CIT(A) deleted the entire disallowance. The Ld. Counsel for the assessee submits that on appeal the Hon'ble ITAT Delhi Bench vide order dated 13.03.2023 in ITA Nos. 1257, 1258 & 1259/2020 deleted the entire disallowance of the fee paid to FOWC for the reason that FOWC have filed their returns showing the fee received by them and paid the assessed tax in respect of the said amount. Further the Tribunal held that in view of the second proviso to clause(i) of Section 40(a) inserted w.e.f. 01.04.2020 essentially provides that where the relevant income had been declared by the payee and tax thereon had been paid no disallowance could be made u/s 40(a)(i) in the hands of the payer of income. Therefore, the Ld. Counsel for the assessee submits that the ground of the Department for disallowance of the gross fee paid to FOWC already stands decided against the Department by the Tribunal in assessee's own case. Ld. Counsel submits that as regards the disallowance of fee paid to FOM it is rightly deleted by the Ld.CIT(A) for both the reasons: (i) there was no chargeable sum in the gross fee and (ii) FOM had filed their returns and had paid their tax dues.

3. The Ld. Counsel further submits that coming to ground no.3 of the Revenue which is in respect of the deletion of disallowance of business expense on account of bank guarantee Commission paid to scheduled banks u/s 40(a) for non-deduction of tax. The issue is covered in favour of the assessee by the Tribunal vide order dated 31.08.2017 arising out of the appeal filed against 201 orders dated 25.03.2017.

4. The ld. DR fairly submits that the issues have been decided by the Tribunal.

5. Heard rival contentions.

6. In so far as the fee paid to Formula One World Championship Ltd. to UK (FOWC), we find that the issue stands covered in favour of the assessee by the order of the Tribunal in ITA Nos.1257 to 1259/2020 for the assessment years 2012-13 to 2014-15 by order dated 13.03.2023, wherein the Tribunal held as under:

“3. The short question arising for consideration in the above appeals for the Assessment Year 2012-13, 2013-14 & 2014-15 is regarding disallowance under Clause(i) of Section 40(a) in respect of RPC fees paid to Formula One World Championship Ltd. to UK without deducting the tax. It is the specific case of the assessee is that no disallowance could be made on RPC fees since the payee Formula One World Championship Ltd. had already been assessed on relevant income and tax

thereon had been paid by Formula One World Championship Ltd. directly. The assessee further contended that the second proviso to Clause 40(a)(ia) of the Act is curative and declaratory, therefore, has retrospective effect. The said contention has been turned down during the appellate proceedings. Apart from reiterating the stand of the assessee further contended that in any case the disallowance should be restricted to the chargeable sum comprised in the gross RPC paid (as assessed in the assessment of FOWC). In support of the above contention, the assessee relied on the CBDT Circular No. 3/2015 dated 12/02/2015 followed by Circular dated 26/10/2016 wherein the CBDT has clarified that only chargeable sum paid is liable to be disallowed u/s 40(a)(ia) of the Act. The CIT(A) is of the opinion that no disallowance could be made in respect of RPC fees for the reason that the relevant income had been declared and assessed in the hands of the payee and tax thereon had been paid. However, the CIT(A) has accepted that disallowance should be restricted to the chargeable sum comprised in the Grossed RPC fees as assessed in the hands of FOWC. The CIT(A) while determining the chargeable sum in the RPC fees with the total income charged in the hands of the FOWC including the chargeable sum in broadcasting revenue as well which was not paid by the assessee. Thus, the CIT(A) directed the disallowance to be restricted to Rs. 501,952,5442/- instead of Rs. 305,822,666/- in Assessment Year 2012-13, Rs. 368,025,412/- instead of Rs. 228,973,487/- in Assessment Year 2013-14 and Rs. 506,415,998/- instead of Rs. 307,349,578/- in Assessment Year 2014-15.

4. We have heard the parties perused the material on record. In our considered opinion, no part of the RPC fee paid by the assessee is liable to be disallowed under clause(i) of s.40(a) because the second proviso clause (i) of Section 40(a) has been inserted w.e.f. 1.4.2020. The said proviso essentially provides that where the relevant income has been declared by the payee and tax thereon has been paid by him then no disallowance shall be made in the hands of the payer. This proviso is similar to the second proviso to clause(ia) of s.40(a) which was

inserted w.e.f. 1.4.2013. Both these provisos were inserted to remove an anomaly and were therefore curative and declaratory in nature. Hence they had to be given retrospective effect.

5. In view of the above discussion the grounds of the appeal of the assessee deserves to be allowed and the disallowance/addition made by the A.O. which was sustained by the CIT(A) is hereby quashed.”

7. Respectfully following the said decision, we reject the grounds of Revenue on this issue.

8. Coming to the fee paid to Formula One Management Ltd. of UK (FOM) the Ld.CIT(A) observed as under:

“5.5.6 I have perused the facts of the case, submission of the appellant and the order of the Formula One Management (“FOM”). As per the assessment order of FOM, it is seen that the Global Profit Ratio of FOM was (-) 1.88%. The Assessing Officer has worked out the attributed profit in India at 56% of the global profit as it has been worked out in case of Formula One World Championship (“FOWC”). The attributable profit of PE in India in case of FOM has been worked out at (-)63,02,232. It is also ascertained that no order u/s 201 has been passed by the Assessing Officer for determining the TDS liability in case of M/s Jaypee Sports International Limited now M/s Jaiprakash Associates Limited and the chargeable sum worked at by department in the assessment order has become final.

5.5.7 In case of Formula One World Championship (“FOWC”) as it is discussed in forgoing para of this order that order u/s 201 was passed for determining the TDS liability in case of M/s Jaypee Sports International Limited which was subject matter of appeal before the Hon’ble ITAT and the Hon’ble ITAT has altered the “chargeable sum” worked out in the order u/s 201 passed by the Assessing Officer and directed to the

Assessing Officer to consider “chargeable sum” figure for the assessment order of Formula One Work Championship (“FOWC”). Based on Hon’ble ITAT decision, accepted by the department, the undersigned has also considered “chargeable sum in relation to P.E.” for profit of withholding over payment made to FOWC in case of appellant in this appeal order itself. From the order passed u/s 143(3), date 21.03.2018 in case of Formula One Management (“FOM”) it is found that the “chargeable sum” is resulted in loss, therefore, no withholding was required by the appellant. Hence, disallowance made by the Assessing Officer is not sustainable due to negative (loss) chargeable sum. Keeping in view of fact that income chargeable to tax arose at nil as per order of the AO which relevant part is reproduced in forgoing para, the disallowance of Rs. 224,999,606/- made by the Assessing Officer is unsustainable and directed to be deleted. The ground aneal is allowed.”

9. On careful observation of Ld.CIT(A), we noticed that the disallowance was deleted on the ground that the assessment made in FOM it was found that the chargeable sum resulted in loss therefore no withholding was required by the assessee the disallowance was rightly deleted. Grounds of Revenue on this issue are rejected.

10. Coming to deletion of disallowance of bank guarantee Commission, we find that the issue is covered by the order of the Tribunal in assessee’s own case in ITA Nos. 4279 to 4281/2015 dated 31.08.2017, wherein the Tribunal held as under:

“20. Ground No. 3 of the appeal of the assessee is with respect to deduction of tax at source on bank guarantee commission u/s 194H of the Act. In the case before us the Id CIT(A) has held that on bank guarantee commission no tax is required to be deducted following the decision of Hon'ble Delhi High Court in case of CIT Vs. Living Media India Ltd dated 06.05.2008. Furthermore, the assessee is acting not as an agent but on principle-to-principle basis.

21. We have carefully considered the rival contentions and we are of the opinion that the bank guarantee commission is not subject to withholding tax u/s 194H of the Act as it does not fall into Clause (i) of the Explanation of Section 194H. In view of this Ground No. 3 of the appeal of the Revenue is dismissed.”

11. As could be noticed from the above, the contention of the assessee that in view of the decision of the Hon'ble Delhi High Court in the case of CIT Vs. Living Media India Limited dated 06.05.2008 no tax is required to be deducted on bank guarantee Commission u/s 194H of the Act was accepted. Respectfully following the decision of the Tribunal, we reject the grounds raised by the Revenue on this issue.

12. In the result, appeals of the Revenue are dismissed.

Order pronounced in the open court on 29.11.2023

**Sd/-
(M BALAGANESH)
ACCOUNTANT MEMBER**

**Sd/-
(C.N. PRASAD)
JUDICIAL MEMBER**

Dated: 29.11.2023

**Kavita Arora, Sr. P.S.*

M/s Jaypee Sports International Ltd.

Copy of order sent to- Assessee/AO/Pr. CIT/ CIT (A)/ ITAT
(DR)/Guard file of ITAT.

By order

Assistant Registrar, ITAT: Delhi Benches-Delhi