

**IN THE INCOME TAX APPELLATE TRIBUNAL**

**"D" BENCH, MUMBAI**

**BEFORE SHRI NARENDRA KUMAR BILLAIYA, ACCOUNTANT MEMBER**

**SHRI SANDEEP SINGH KARHAIL, JUDICIAL MEMBER**

**ITA No. 949/MUM/2024**  
**(Assessment Year :2014-15)**

**Rapport Outdoor Advertising Pvt Ltd.,**

4<sup>th</sup> Floor, Chhibber House,  
Sakinaka, Mumbai – 400 072,  
Maharashtra.  
PAN: AAACF0807B

..... Appellant

v/s

**DCIT – 3(3)(1),**  
Mumbai.

..... Respondent

Assessee by :Shri Ajit Jain  
Revenue by :Smt. Mahita Nair, Sr.DR

Date of Hearing – 14/08/2024

Date of Order - 25/10/2024

**ORDER**

**PER SANDEEP SINGH KARHAIL, J.M.**

The present appeal has been filed by the assessee challenging the impugned order dated 04/01/2024, passed under section 250 of the Income Tax Act, 1961 (*"the Act"*), by the learned Commissioner of Income Tax (Appeals), National Faceless Appeal Centre, Delhi [*"learned CIT(A)"*], for the assessment year 2014-15.

2. In this appeal, the assessee has raised the following grounds: –

"1. General

1. *On the facts and circumstances of the case, and in law, National Faceless Appeal Centre ('NFAC') has erred in passing the order without considering the submissions made by the Appellant during the course of the appellate proceedings.*

*II. Addition of INR 92,26,013 made to the total income on account of difference in amount appearing in Form 26AS and books of accounts.*

2. *On the facts and circumstances of the case, and in law, NFAC has erred in confirming the addition of INR 92,26,013 to the total income of the Appellant, on account of difference in amount appearing in Form 26AS and books of accounts.*

3. *Without prejudice to the above, on the facts and circumstances of the case, and in law, the learned AO should have restricted the addition to the service fee / commission income of the Appellant and not the differential gross receipts of INR 92,26,013.*

4. *Without prejudice to the above, on the facts and circumstances of the case, and in law, NFAC erred in confirming the addition despite the undisputed fact on record that the income has been offered to tax in the subsequent years and thus resulting into double taxation.*

5. *Without prejudice to the above, on the facts and circumstances of the case, and in law, if the subject addition is confirmed in the current year, then due relief should be granted to the Appellant vis-à-vis the same income already offered to tax in the subsequent years.*

*III. Disallowance of management service fees amounting to INR 88,39,537*

6. *On the facts and circumstances of the case, and in law, NFAC has erred in confirming the disallowance of the management service fees amounting to INR 88,39,537, alleging the same to be excessive as per section 40A(2)(b) of the Income Tax Act, 1961 ('Act').*

7. *On the facts and circumstances of the case, and in law, the learned AO has erred in making an addition of INR 88,39,537 instead of INR 82,63,818 [INR 88,39,537 less INR 5,75,719 (i.e., the allowable expense computed by the learned AO)].*

*Non-grant of set off of earlier year's loss amounting to INR 36,38,049*

8. *On the facts and circumstances of the case, and in law, the learned AO has erred in not granting set off of earlier year's loss amounting to INR 36,38,049 against the income of the captioned year.*

*Each of the above grounds of appeal is without prejudice to and independent of one another*

*The Appellant prays that the additions made by the learned AO and upheld by the Hon'ble NFAC be deleted and consequential relief be granted.*

*The Appellant craves leave to add, alter, amend and/or withdraw any of the above grounds of appeal and to submit such statements, documents and papers as may be considered necessary either at or before the hearing of this appeal as per law."*

3. The issue arising in ground no.1 is general in nature and therefore needs no separate adjudication.

4. The issue arising in ground no.2 pertains to the addition made on account of the difference in the amount appearing in Form 26AS and books of account.

5. The brief facts of the case pertaining to this issue, as emanating from the record, are: The assessee is engaged in the business of advertisement. For the year under consideration, the assessee filed its return of income on 25/11/2014 declaring a total income of INR 1,56,56,150 and book profit under section 115 JB of the Act of INR 1,56,74,246. The return filed by the assessee was selected for scrutiny and statutory notices under section 143(2) and section 142(1) of the Act were issued and served on the assessee. During the assessment proceedings, it was observed that the assessee has claimed credit for TDS amounting to INR 1,34,10,835. Accordingly, the assessee was asked to furnish the reconciliation of income vis-à-vis the income as per Form 26AS. In response, the assessee submitted the reconciliation of income vis-à-vis the TDS credit. After perusal of the details submitted by the assessee, the Assessing Officer ("AO") vide order dated 29/12/2016 passed under section 143(3) of the Act noted that the income amounting to INR 92,26,013 has been short-offered to tax in the year under consideration. During the assessment proceedings, the assessee

was also asked to provide proof of why the above income was considered in the assessment year 2015-16, whereas the TDS was claimed in the assessment year 2014-15. In response, the assessee submitted that it runs various campaigns in the field of outdoor advertising and some campaigns run into two financial years. It was further submitted that many of the clients of the assessee company follow the accrual system of accounting and therefore, they make provisions in the month of March and deduct TDS thereon. However, the invoices are prepared after the campaign is over in the subsequent months and therefore the revenue is recorded in the subsequent financial year. Accordingly, the assessee submitted that there is no revenue loss to the government. The AO, vide assessment order, disagreed with the submissions of the assessee since the same was without any supporting document or material. Further, the AO held that the assessee has not provided any justification as to why the TDS has been claimed in the year under consideration without offering corresponding income to tax. Accordingly, the AO treated the income amounting to INR 92,26,013 as income of the assessee for the year under consideration and allowed the corresponding TDS credit. The learned CIT(A), vide impugned order, dismissed the ground raised by the assessee on this issue. Being aggrieved, the assessee is in appeal before us.

6. During the hearing, the learned Authorised Representative ("*learned AR*") placed reliance upon the application dated 06/08/2024 seeking admission of additional evidence and submitted that the assessee was earlier in the process of collecting the additional documentary evidence in

order to prepare a detailed reconciliation with respect to the addition amounting to INR 92,26,013, however the same could not be submitted. The learned AR submitted that the assessee has now compiled all the supporting documentary evidence, which has been submitted by way of the present application seeking admission of additional evidence. From the perusal of the afore-noted application, we find that the assessee has prepared a detailed statement showing party-wise reconciliation between the gross receipts as per Form 26AS and revenue offered to tax in the financial year 2013-14. Further, the assessee has also prepared a party-wise breakup of gross revenue, media cost and net revenue for the financial years 2013-14 and 2014-15. On the other hand, the learned Departmental Representative ("*learned DR*") submitted that since these documents were not filed before the lower authorities, therefore an opportunity should be given to the Revenue to verify the same.

7. Having considered the submissions of both sides and perused the material available on record, we admit the additional evidence filed by the assessee pertaining to the addition made on account of the difference in the amount appearing in Form 26AS and books of account. Since these documents have been filed by the assessee for the first time before us and have not been considered by the lower authorities, we deem it appropriate to restore this issue to the file of the jurisdictional AO for *de novo* adjudication after necessary examination/verification of the details filed by the assessee. No order shall be passed without affording the reasonable and adequate opportunity of hearing to the assessee. With the above directions,

the impugned order on this issue is set aside and ground no.1 raised by the assessee is allowed for statistical purposes.

8. The issue arising in ground no.2, raised in assessee's appeal, pertains to the disallowance of Management Service Fees.

9. The brief facts of the case pertaining to this issue, as emanating from the record, are: During the assessment proceedings, from the statement of profit and loss account for the year under consideration, it was observed that the assessee company has debited INR 2,00,58,486 on account of charges for Central Services. Further, notes to accounts revealed that the said payment was made to Lintas India Private Limited, which is a related party. Accordingly, the assessee was asked to furnish complete details of said expenditure. From the details filed by the assessee, it was noted that the assessee has incurred an expenditure of INR 88,29,527 on account of Management Service Fees. During the assessment proceedings, it was noticed from the previous year records that the assessee had accounted for the Management Service Fees as Professional Fees in the earlier years and the payment was found to be not commensurate with the revenue offered to advertisements. Accordingly, the excess payment of Professional Fees was disallowed under section 40A(2)(b) of the Act. It was further noted that the said disallowance has been made continuously since the assessment years 2007-08 to 2012-13 and the same has also been upheld by the first appellate authority. The AO after noting that in the year under consideration, the entire facts and circumstances remain the same except for the change nomenclature, which has been changed to "*Charges for Central*

*Services/Management Service Fees*" instead of *"Professional Fees"*. Accordingly, following the approach adopted in preceding years, the AO disallowed the Management Service Fees paid to Lintas India Private Limited under section 40A(2)(b) of the Act by treating the same as excessive.

10. The learned CIT(A), vide impugned order, dismissed the ground raised by the assessee on this issue. Being aggrieved, the assessee is in appeal before us.

11. We have considered the submissions of both sides and perused the material available on record. We find that a similar issue with respect to the payment made to Lintas India Private Limited came up for consideration before the coordinate bench of the Tribunal in assessee's own case in *Rapport Outdoor Advertising Pvt Ltd v/s ITO*, in ITA No. 7252/Mum./2012, etc., for the assessment years 2009-10 to 2011-13. While deciding the issue in favour of the assessee, the coordinate bench of the Tribunal vide order dated 10/08/2017 observed as follows: –

*"6. We have heard the rival submissions and perused the material before us. We find that assessee had made payment of Rs.56.65 lakhs to Lintas as against 10 lakhs paid in earlier years that the AO made a disallowance of Rs.43.18 lakhs, invoking the provisions of section 40A(2)(b) of the Act that the FAA restricted the disallowance to Rs.31.65 lakhs that managing director of the company and 11 other-key employees left the assessee during the year under appeal, that Lintas increased their active participant in providing management support for servicing clients of the assessee, that for the AY.2005-06 the management fee was 0.3%, that during the year the fee was 0.58% of the turnover, that turnover of the assessee had increased. In our opinion, the AO and the FAA were not justified in invoking the provisions of section 40A(2)(b) of the Act. The said section can be applied only if it is found that payments made or goods/services is higher than Fair Market Value of Goods/services received/availed. Both the authorities have failed to point out comparison of management fee with the FMV of services availed. By placing expenses of earlier AY.s vis a vis the revenue earned by it and the circumstances that compelled the assessee to incur higher expenses on record the assessee had discharged the initial onus cast upon it. Thereafter, the onus thus shifted to the Department to*

*demonstrate how the payment was excessive or unreasonable. Apart from the presumption, based on the relationship between the JV and the assessee- company, there was no other material before both the revenue authorities to come to the conclusion that the payment of management charges was not reasonable. In short, "Excessive - ness and unreasonableness of the payment, the precondition for making the disallowance U/s40A(2)(b)has not been proved.*

*Besides, as per the settled principles of tax jurisprudence AO's are not supposed to step into the shoes of the assessee. Considering the increased revenue of the assessee for the year under appeal as compared to the income of earlier years and absence of jurisdiction to invoke provisions of section 40A(2)(b) of the Act, we are unable to endorse the view taken by the FAA. So, reversing his order, we decide effective GOA in favour of the assessee."*

12. We find that the learned CIT(A), vide its order dated 12/10/2018 for the assessment year 2013-14, deleted the similar disallowance made under section 40A(2)(b) of the Act in respect of payment made to Lintas India Private Limited by following the decision of the Tribunal in assessee's own case cited supra.

13. In the present case also, it is evident from the record that the lower authorities have not compared the Management Fees paid to Lintas India Private Limited with the fair market value of the services availed and simply by following the approach adopted in the preceding years disallowed the expenditure claimed by the assessee. As noted above, in the preceding assessment years, similar disallowance in respect of payment made to Lintas India Private Limited has been deleted. Therefore, respectfully following the decision of the coordinate bench of the Tribunal in assessee's own case cited supra, we find no merits in the disallowance of Management Service Fees made under section 40A(2)(b) of the Act, and thus the same is deleted. As a result, ground no.3 raised in assessee's appeal is allowed.

14. The issue arising in ground no.4 raised in assessee's appeal pertains to the non-grant of set-off of earlier year losses. Having considered the submissions of both sides and perused the material available on record, we deem it appropriate to restore this issue to the file of the jurisdictional AO for adjudication as per law, after necessary verification of the details as may be submitted by the assessee. Accordingly, with the above directions, ground no.4 raised in the assessee's appeal is allowed for statistical purposes.

15. In the result, the appeal by the assessee is allowed for statistical purposes.

Order pronounced in the open Court on 25/10/2024

Sd/-  
**(NARENDRA KUMAR BILLAIYA)**  
**ACCOUNTANT MEMBER**

Sd/-  
**(SANDEEP SINGH KARHAIL)**  
**JUDICIAL MEMBER**

**MUMBAI, DATED: 25/10/2024**

Copy of the order forwarded to:

- (1) The Assessee;
- (2) The Revenue;
- (3) The PCIT / CIT (Judicial);
- (4) The DR, ITAT, Mumbai; and
- (5) Guard file.

By Order

Assistant Registrar  
ITAT, Mumbai