

**IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH, 'E': NEW DELHI**

**BEFORE SHRI MAHAVIR SINGH, VICE PRESIDENT
AND
SHRI BRAJESH KUMAR SINGH, ACCOUNTANT MEMBER**

**ITA No.3273/Del/2018
[Assessment Year: 2014-15]**

Income Tax Officer, Ward No.16(4), Room No.304, C.R. Building, I.P. Estate, New Delhi	Vs	M/s MNM Trading Solution Pvt. Ltd. 2 nd Floor, Building No.3, HAF Pocket Sector-18A, Phase-II, Dwarka New Delhi-110075
		PAN-AAGCM1566J
Revenue		Assessee

Revenue by	Sh. Krishna K. Ramawat, Sr. DR
Assessee by	Dr. Rakesh Gupta, Adv. & Sh. Somil Agrawal, Adv.

Date of Hearing	18.11.2024
Date of Pronouncement	27.11.2024

ORDER

PER BRAJESH KUMAR SINGH, AM,

This appeal filed by the Revenue is directed against the order dated 23.02.2018 of the Ld. Commissioner of Income Tax (Appeals)-6, Delhi, relating to Assessment Year 2014-15.

2. The grounds of appeal raised by the Revenue are as under:-

“1. Whether in facts and circumstances of the case, Ld. CIT(A) is legally justified in deleting disallowance of Rs. 5,21,02,473/- on account of excess production and broadcasting fee claimed during the year without appreciating the fact that the assessee failed to submit necessary documentary evidence to substantiate its claim during assessment proceedings even after providing sufficient opportunity of being heard ?

2. Whether in facts and circumstances of the case, the Ld. CIT(A) is legally justified in deleting addition of Rs. 5,21,02,473/- by admitting additional evidence under Rule 46A of the Income Tax

Rules, 1962 (hereinafter referred as "the Rules") even when the assessee had not fulfilled conditions as laid down under Rule 46A of the Rules and specific denial of the Assessing Officer in his remand report dated 12.10.2017?."

3. Brief facts of the case:- The assessee company during the year was engaged in trading of products through website and channel of Star CJ network and third party website and channels. The AO on perusal of the copy of profit & loss account observed that an amount of Rs.15,27,74,805/- was debited against 'Production and Broadcast Fees'. In this regard, the AO asked the assessee to produce the copy of ledger, copy of agreement and the relevant bank statement. The assessee submitted the copy of agreement and ledger of expenses except the ledger of 'Production and Broadcasting Fees'. The AO also stated that the assessee did not provide the bank statement either. On perusal of the agreement, it was noticed that the charges on sale of product on channels or third party channels under the head production and broadcasting fee was @ 8% of the invoiced amount less taxes. The AO noted that the said agreement was effective from 1st September, 2013 and the assessee was asked to produce the rate of the said charges w.e.f 01.04.2013, which was not submitted. From the rate of charges made available by the assessee, the AO taking it to be the charges of 'Production and Broadcasting Fees' @8% of the invoice amount considered it to be the purchase cost of the products from Star CJ work. Accordingly, the AO calculated the 'Production and Broadcasting Fees' @ 8% allowable to the assessee and the resultant difference of Rs.5,21,32,655/- as under:-

i	Purchase of Traded Goods	Rs.1,25,80,26,882/-
ii	Rate of P & B Fees	8%

iii	Production & Broadcasting Fees	Rs.10,06,42,150/-
iv	Production & Broadcasting Fees as debited in P & L	Rs.15,27,74,805/-
	Diff. (iv-iii)	Rs.5,21,32,655/-

3.1. The AO show cause the assessee on 30.12.2016 on this assessee and noted that the CA of the assessee appeared on 31.12.2016 but expressed her inability to produce the said agreement effective from 01.04.2013. Further, the AO after analyzing the business model of the assessee observed that the same was destined to suffer losses and to never earn profit and considered it to be a well thought step for tax evasion. The AO on examination of the expenses submitted by the assessee on 15.11.2016 also noted that the contract center fees, know how fees and proprietary marks are fixed but 'Production and Broadcast Fees' fluctuated. He held that such an arrangement was not genuine and moreover the assessee failed to substantiate it. In view of these facts, the AO disallowed the sum of Rs.5,21,32,655/- and added to the total income.

3.2. Against the above order, the assessee preferred an appeal before the Id. CIT(A). During the appellate proceedings, the AR submitted that the case was heard in October, 2016 and all the submissions were completed and asked the AO to inform if any further details was required by him. According to the Id. AR, no clarification was asked till 31.12.2016 (on the date on which the case was getting time bared) when on 31.12.2016 at 1.57 PM a mail was sent by way of a show cause notice dated 30.12.2016 asking for further information and giving time upto 31.12.2016 at 5.30

PM. It was informed by the assessee company that the concerned person was out of Delhi and the Directors were also not in town but still the assessee company deputed Ms. Mansi Jain, to explain the AO as far as possible the questions that the AO had asked. However, it is stated that when she reached the office of the AO, she was informed that the order had already been passed and posted even though the time given of 5.30 PM had not expired.

3.2. On merits and facts, it was explained before the Id. CIT(A) as under:-

"2. On facts and merits it is explained as under:-

i) The charges levied by Star C] during the year were governed by two agreements. One was effective from 01.04.2013 till 31.12.2013. Then an amendment was entered into from 01.09.2013 till the close of the year.

ii) Production & broadcasting fees charged by Star C] from April to August was 15.70% whereas it was reduced to 8.0% from September to March.

iii) In the assessment order he has calculated the fees for the entire year at 8% only. He thus arrived at a much lower expense than claimed and thus made an addition of Rs. 5,21,02,473/-.

iv) We are challenging this addition on the above two grounds of not giving any time to explain our case and even otherwise making the addition without going through the Complete documents and agreements.

Therefore, the additions deserve to be deleted."

3.1. The Id. CIT(A) after examining the additional evidence i.e. The relevant agreement w.e.f. 01.04.2013 and taking into view that nothing have been brought on record to show that the payment under the head 'Production and Broadcast Fees' has not been made or that it was not genuine and also the fact that 'Production and Broadcasting Fees' was allowed @18.5% for AY 2012-13 deleted the disallowance of

Rs.5,21,32,655/-. The relevant discussion of the Ld. CIT(A) in para no.6 to 6.1.1 is reproduced as under:-

“6. Determination

6.1 The appellant has raised five grounds of appeal out of which grounds of appeal Nos. 1 to 4 challenge the disallowance of Rs.5,21,32,655/- out of production and broadcasting fees claimed. Since these grounds of appeal are interlinked, these are being adjudicated together.

6.1.1 I have considered the assessment order and the submissions of the appellant. The main reason why the Assessing Officer has made the disallowance on account of production and broadcasting fees appears to be the inability of the appellant to produce a copy of document to support its contention regarding the rate of charges with effect from 01.04.2013 since the agreement available with the Assessing Officer was effective from 01.09.2013 in which the production and broadcasting fees was to be charged at the rate of 8%. The rate at which the production and broadcasting fees was charged was taken at 8% for the entire year whereas as per the submissions of the appellant and based on the document submitted as additional evidence which is the amendment agreement effective from 01.04.2013 (pages 50 and 51 of the paper book), the production and broadcasting fees is to be calculated at the rate of 15.7% for the period from 01.04.2013 to 31.08.2013. It is also seen from the submissions made that in the assessments made in the past, broadcasting fees at a higher percentage has been allowed in successive assessments. For instance for A.Y. 2012-13, the production and broadcasting fees was 18.5 % and the same was allowed. Similarly, production fees at higher rates has been allowed and the percentage accepted for A. Y. 2013-14 also. In the case under consideration, nothing has been brought on record to show that the payment has not been made or that it is not genuine. Disallowance has been made only since the earlier agreement had not been submitted. Since the agreement Showing charging effecting from 01.04.2013 has now been admitted as additional evidence in which it is clearly shown that production and broadcasting fees will be recovered at the rate of 15.7%, the Assessing Officer is directed to allow production and broadcasting fees at the rate of 15.7% for the period 01.04.2013 to 31.08.2013. Consequently, the addition made is deleted. Grounds of appeal Nos. 1 to 4 are allowed.”

4. Against the above order, the Revenue is in appeal before us.
5. During the hearing before us, the ld. DR relied upon the order of the AO, whereas the ld. AR supported the order of the Ld. CIT(A).

6. We have heard both the parties and perused the material available on record. On merits, no material has been brought on record by the ld. DR to contradict the finding of the ld. CIT(A). We find that the order of the Ld. CIT(A) is based on sound reasoning and after verifying the rate of 'Production and Broadcasting Fees' @ 15.70% in the agreement for the period 01.04.2013 (placed at page no. 4 to 46 of the paper book). Further, in the remand report dated 12.10.2017 (placed at page no. 1 to 3 of the paper book), the AO has not made any adverse comment on the merits of the allowability of the expenses towards 'Production and Broadcasting Fees' @15.70% and has only objected to the filing of the agreement in this regard effective from 01.04.2013 before the Ld. CIT(A) and not during the assessment proceedings despite opportunities given.

6.1. Considering the above facts, there is no ground to interfere with the finding of the ld. CIT(A) in deleting the disallowance of Rs.5,21,32,655/-. Further, as per the submissions of the ld. AR about the short time made available to the assessee company for submitting the agreement effective from 01.04.2013, which has not been contested by the AO, it is held that there is no violation of Rule-46A in this case in admitting the agreement effective from 01.04.2013 by the Ld. CIT(A). Ground no.1 and 2 of the appeal is dismissed.

7. In the result, the appeal of the Revenue is dismissed.

Order pronounced in the open court on 27th November, 2024.

Sd/-
[MAHAVIR SINGH]
VICE PRESIDENT

Dated 27.11.2024.

Sd/-
[BRAJESH KUMAR SINGH]
ACCOUNTANT MEMBER

Shekhar

Copy forwarded to:

1. Assessee
2. Respondent
3. PCIT
4. CIT(A)
5. DR

Asst. Registrar,
ITAT, New Delhi,