

**IN THE INCOME TAX APPELLATE TRIBUNAL  
KOLKATA 'D' BENCH, KOLKATA**

**Before**

**SHRI UDAYAN DAS GUPTA, JUDICIAL MEMBER  
&  
SHRI RAKESH MISHRA, ACCOUNTANT MEMBER**

**I.T.A. Nos.: 1872 & 1873/KOL/2025  
Assessment Years: 2012-13 & 2013-14**

Tapas Kumar Sarkar	Vs.	CIT(A), NFAC I.T.O., Ward-50(1), Kolkata
<b><i>(Appellant)</i></b>		<b><i>(Respondent)</i></b>
<b>PAN: ALVPS7489P</b>		

**Appearances:**

**Assessee represented by** : Parbayan Basu, Adv.

**Department represented by** : S.B. Chakraborty, Addl. CIT, Sr.  
DR.

Date of concluding the hearing : 22-October-2025

Date of pronouncing the order : 23-October-2025

**ORDER**

**PER RAKESH MISHRA, ACCOUNTANT MEMBER:**

These appeals filed by the assessee are against the separate orders of the Commissioner of Income Tax (Appeals)-NFAC, Delhi [hereinafter referred to as Ld. 'CIT(A)'] passed u/s 250 of the Income Tax Act, 1961 (hereinafter referred to as 'the Act') for AYs 2012-13 and 2013-14 dated 06.06.2025, which have been passed against the assessment orders u/s 147 of the Act, dated 27.12.2019. Since the issues are common, both the appeals were heard together and are being decided vide this common order for the sake of convenience and brevity.

2. The assessee is in appeal before the Tribunal raising the following grounds of appeal:



**I. ITA No. 1872/KOL/2025, AY 2012-13:**

**“1. Disallowance under Section 40(a)(ia):**

*The learned CIT(A) erred in upholding the disallowance of ₹50,05,666 and 26,24,969 under section 40(a)(ia) for non-deduction of TDS. Section 40(a)(ia) is a compliance provision, not penal, and must be interpreted fairly. Section 40(a)(ia) applies only to amounts "payable" and not to amounts already "paid." If payments have been made without TDS but the payee has accounted for the income, disallowance may not apply.*

**2. Erroneous Application of TDS Sections:**

*The learned CIT(A) incorrectly upheld the application of Section 194C on advertisement payments and Section 194J on incentive/commission payments without appreciating the true nature of these transactions and established judicial principles. Payments to media (media commission) are not subject to TDS under 194C if the appellant acts merely as a facilitator/agent. Incentives paid to individuals for procuring advertisements are not professional or technical fees and do not attract section 1941.*

**3. Non-Consideration/ Erroneous Interpretation of CBDT Circulars:**

*The learned CIT(A) erred in rejecting the benefit of CBDT Circulars Nos. 715 (dated 08.08.1995) and 5/2016. These clarify that advertisement agencies acting as intermediaries are not liable to deduct TDS on the gross media payments and that no TDS is deductible on payments by advertising agencies to media, Circulars are binding on tax authorities.*

**4. Non-Consideration of the Fact that the Recipient had disclosed the payments in their ITR:**

*The learned CIT(A) erred in law and on facts in upholding the disallowance under Section 40(a)(ia) of the Income Tax Act, 1961, despite the fact that the recipients of the payments have duly included such income in their respective tax returns and have paid taxes thereon. The payee has paid tax on the income, the deductor should not be penalized for non-deduction of TDS. The interest of revenue is protected when tax has been paid by the recipient. Where payments are supported by documentation and there is no revenue loss (taxes being paid by the recipient), disallowance under Section 40(a)(ia) should not be applied mechanically.*

**5. Non-Consideration of the Fact that the Transactions were genuine and the non-payment was due to technical lapse of the Accountant:**

*Disallowance under Section 40(a)(ia) is not warranted if the transactions are genuine and the payee has accounted for the income, especially where the failure to deduct TDS is due to a bona fide belief or technical lapse. Penalty/Disallowance cannot be imposed where the failure to deduct TDS resulted from a bona fide belief, technical issue, or issue under legal debate.*

**6. Lack of Adequate Opportunity and Misreading of Facts:**

The learned CIT(A) did not properly consider facts on record, failed to adjudicate all legal grounds, and disregarded the substance of transactions.

7. The Ld. CIT was wrong, unjustified and contrary to the facts and circumstances of the case.

8. The Appellant craves leave to add, alter, modify or delete any grounds at the time of hearing.”

**II. ITA No. 1873/KOL/2025, AY 2013-14:**

**“1. Disallowance under Section 40(a)(ia):**

The learned CIT(A) erred in upholding the disallowance of ₹50,05,666 and ₹6,24,969 under section 40(a)(ia) for non-deduction of TDS. Section 40(a)(ia) is a compliance provision, not penal, and must be interpreted fairly. Section 40(a)(ia) applies only to amounts "payable and not to amounts already "paid." If payments have been made without TDS but the payee has accounted for the income, disallowance may not apply.

**2. Erroneous Application of TDS Sections:**

The learned CIT(A) incorrectly upheld the application of Section 194C on advertisement payments and Section 194J on incentive/commission payments without appreciating the true nature of these transactions and established judicial principles. Payments to media (media commission) are not subject to TDS under 194C if the appellant acts merely as a facilitator/agent. Incentives paid to individuals for procuring advertisements are not professional or technical fees and do not attract section 194J.

**3. Non-Consideration/Erroneous Interpretation of CBDT Circulars:**

The learned CIT(A) erred in rejecting the benefit of CBDT Circulars Nos. 715 (dated 08.08.1995) and 5/2016. These clarify that advertisement agencies acting as intermediaries are not liable to deduct TDS on the gross media payments and that no TDS is deductible on payments by advertising agencies to media. Circulars are binding on tax authorities.

**4. Non-Consideration of the Fact that the Recipient had disclosed the payments in their ITR:** The learned CIT(A) erred in law and on facts in upholding the disallowance under Section 40(a)(ia) of the Income Tax Act, 1961, despite the fact that the recipients of the payments have duly included such income in their respective tax returns and have paid taxes thereon. The payee has paid tax on the income, the deductor should not be penalized for non-deduction of TDS. The interest of revenue is protected when tax has been paid by the recipient. Where payments are supported by documentation and there is no revenue loss (taxes being paid by the recipient), disallowance under Section 40(a)(ia) should not be applied mechanically.

**5. Non-Consideration of the Fact that the Transactions were genuine and the non-payment was due to technical lapse of the Accountant:**



*Disallowance under Section 40(a)(ia) is not warranted if the transactions are genuine and the payee has accounted for the income, especially where the failure to deduct TDS is due to a bona fide belief or technical lapse. Penalty/Disallowance cannot be imposed where the failure to deduct TDS resulted from a bona fide belief, technical issue, or issue under legal debate.*

*6. Lack of Adequate Opportunity and Misreading of Facts:*

*The learned CIT(A) did not properly consider facts on record, failed to adjudicate all legal grounds, and disregarded the substance of transactions.*

*7. The Ld. CIT was wrong, unjustified and contrary to the facts and circumstances of the case.*

*8. The Appellant craves leave to add, alter, modify or delete any grounds at the time of hearing.”*

3. We shall take up ITA No. 1872/KOL/2025 for A.Y. 2012-13 for adjudication first as the lead case. Brief facts of the case are that the assessee had filed his return of income showing total income of ₹6,49,930/-. Proceeding u/s 147 of the Act was initiated as the assessee had not deducted tax at source on certain payments which were liable for TDS and accordingly notice u/s 148 of the Act was issued to him on 27.03.2019. In response to the said notice, the assessee filed his ITR again on 25.04.2019 declaring the same total income as per his original ITR. Subsequently, notices u/s 143(2) and 142(1) of the Act were issued to the assessee and he was also provided with a copy of reasons recorded by the Assessing Officer (hereinafter referred to as Ld. 'AO') for initiation of proceedings u/s 147 of the Act. After considering the reply submitted by the assessee, the Ld. AO concluded the proceedings by passing an order u/s 147 r.w.s. 143(3) of the Act dated 27.12.2019 after making addition of ₹50,05,666/- on account of advertisement charges and ₹6,24,969/- on account of incentives paid without deduction of tax at source. Aggrieved with the assessment order, the assessee filed an appeal before the Ld. CIT(A) who, vide order dated 06.06.2025, upheld the findings of the Ld. AO and dismissed the appeal of the assessee.



4. Aggrieved with the order of the Ld. CIT(A), the assessee has filed the appeal before the Tribunal.

5. Rival contentions were heard and the submissions made have been examined. The Ld. CIT(A) issued several notices for hearing, in response to which the assessee filed submission, but no response was filed to the notice issued on 16/05/2025. The assessee claimed that both the sums of ₹ 6,24,969/- as well as ₹ 50,05,666/- being incentives to procure advertisement on behalf of the assessee and the other being payment to several media houses as the agents on account of advertisement were not liable for direction of tax under section 194J and 194C respectively. The assessee relied upon the two circulars issued by the CBDT, viz Circular No. 4/2016 dated 29/02/2016 and Circular No. 5/2016 dated 29/02/2016, both of which have been reproduced in the order of the Ld. CIT(A). The assessee also made an alternate claim that the disallowance was to be restricted to 30% of expenses on which TDS was not done as against the earlier rate of 100% on account of the amendment in the provision of section 40(a)(ia) with effect from 01/04/2015. These contentions were examined by the Ld. CIT(A), but were not found acceptable. However, the Bench was of the view that the assessee could not make proper submission and the Ld. AR requested before the Bench that the matter may be remanded to the Ld. CIT(A) so that proper submission could be made in support of the claim that both these payments were not liable for TDS. After examining the facts of the case and the law, we deem it appropriate to set aside the order of the Ld. CIT(A) and restore the appeal to the Ld. CIT(A) for disposal of the grounds of appeal taken by the assessee on merit by passing a speaking order. Needless to say, the assessee shall be given a reasonable opportunity of being heard to make any further



submission it wants to make in support of its grounds of appeal and shall not seek unnecessary adjournments and rule 46A of the I.T. Rules, 1962 shall also be followed and an opportunity of being heard may be provided to the Ld. AO, if required. Accordingly, all the grounds taken by the assessee in his appeal are partly allowed for statistical purposes.

6. Since the facts and issues in ITA No. 1873/KOL/2025 are similar to that of ITA No. 1872/KOL/2025 although details mentioned in the grounds of appeal are slightly incorrect as the details of A.Y. 2012-13 appear to have been reproduced while only a sum of ₹81,09,130/- paid to several media houses on account of non-deduction of TDS was disallowed, but as the issues are similar, we also set aside the order of the Ld. CIT(A) for A.Y. 2013-14 and restore the appeal to the Ld. CIT(A) for disposal of the grounds of appeal taken by the assessee on merit as directed in A.Y. 2012-13. Thus, all the grounds raised by the assessee before the Tribunal for A.Y. 2013-14 are also partly allowed for statistical purposes.

7. In the result, both the appeals filed by the assessee are partly allowed for statistical purposes.

**Order pronounced in the open Court on 23<sup>rd</sup> October, 2025.**

Sd/-

**[Udayan Das Gupta]**

Judicial Member

Sd/-

**[Rakesh Mishra]**

Accountant Member

Dated: 23.10.2025

*Bidhan (Sr. P.S.)*



*Copy of the order forwarded to:*

1. **Tapas Kumar Sarkar, Manorama Super Market, 12 No. Rail Gate, P.O. Nabapally, Barasat, North 24 Parganas, West Bengal, 700126.**
2. **I.T.O., Ward-50(1), Kolkata.**
3. CIT(A)-NFAC, Delhi.
4. CIT-
5. CIT(DR), Kolkata Benches, Kolkata.
6. Guard File.

*// True copy //*

By order

Assistant Registrar  
ITAT, Kolkata Benches  
Kolkata