

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

BEFORE SHRI D. KARUNAKARA RAO, ACCOUNTANT MEMBER AND
SHRI SANJAY GARG, JUDICIAL MEMBER

ITA NO 3515/Mum/2012
Assessment year: - 2009-10)

ACIT (TDS) 3(1), Mumbai 9 th Floor, Smt. K.G. Mittal Ayurvedic Hospital Building, Charni Road(W) Mumbai – 400 002.	Vs.`	M/s Viacom 18 Media Pvt. Ltd. 36-B, Dr. R.K. Shirodkar Marg, Parel (East), Mumbai – 400012.
PAN/GIR No. AAACM9164E		
Appellant		Respondent

CO No. 131/Mum/2013
Arising out of ITA No. 3515/Mum/2012
Assessment year: - 2009-10)

M/s Viacom 18 Media Pvt. Ltd. 36-B, Dr. R.K. Shirodkar Marg, Parel (East), Mumbai – 400012.	Vs.`	ACIT (TDS) 3(1), Mumbai 9 th Floor, Smt. K.G. Mittal Ayurvedic Hospital Building, Charni Road(W) Mumbai – 400 002..
PAN/GIR No. AMNPS 6283 Q		
Appellant		Respondent

ITA NO 4208/Mum/2012
Assessment year: - 2010-11)

ITO(OSD) (TDS) 3(1), Mumbai, 10 th Floor, Smt. K.G. Mittal Ayurvedic Hospital Building, Charni Road(W) Mumbai – 400 002.	Vs.`	M/s Viacom 18 Media Pvt. Ltd. 36-B, Dr. R.K. Shirodkar Marg, Parel (East), Mumbai – 400012.
PAN/GIR No. AAACM9164E		
Appellant		Respondent

CO NO 156/Mum/2013
 Arising out of ITA No. 4208/Mum/2012
 Assessment year: - 2010-11)

M/s Viacom 18 Media Pvt. Ltd. 36-B, Dr. R.K. Shirodkar Marg, Parel (East), Mumbai – 400012.	Vs. `	ITO(OSD) (TDS) 3(1), Mumbai, 10 th Floor, Smt. K.G. Mittal Ayurvedic Hospital Building, Charni Road(W) Mumbai – 400 002.
PAN/GIR No. AAACM9164E		
Appellant		Respondent

ITA NO 4209/Mum/2012
 Assessment year: - 2011-12)

ITO(OSD) (TDS) 3(1), Mumbai, 10 th Floor, Smt. K.G. Mittal Ayurvedic Hospital Building, Charni Road(W) Mumbai – 400 002.	Vs. `	M/s Viacom 18 Media Pvt. Ltd. 36-B, Dr. R.K. Shirodkar Marg, Parel (East), Mumbai – 400012.
PAN/GIR No. AAACM9164E		
Appellant		Respondent

CO NO. 157/Mum/2013
 Arising out of ITA NO 4209/Mum/2012
 Assessment year: - 2011-12)

M/s Viacom 18 Media Pvt. Ltd. 36-B, Dr. R.K. Shirodkar Marg, Parel (East), Mumbai – 400012.	Vs. `	ITO(OSD) (TDS) 3(1), Mumbai, 10 th Floor, Smt. K.G. Mittal Ayurvedic Hospital Building, Charni Road(W) Mumbai – 400 002.
PAN/GIR No. AAACM9164E		
Appellant		Respondent

Assessee By	Shri G.M.Doss
Revenue By	Shri Farooq Irani.

Date of hearing	10.08.2015
Date of pronouncement	14.10.2015

ORDER

Per Bench

These three appeals by the revenue and even number of Cross Objections by the assessee are directed against the three separate orders of CIT(A) dated 9.02.2012, 30.03.2012 & 30.03.2012 respectively arising from the orders of the AO passed u/s 201(1)/201(1A) of the Income Tax Act for the A.Y. 2009-10 to 2011-12 respectively. The common grounds have been raised by the revenue in these appeals. For the sake of convenience and brevity, we take the facts from the appeal for assessment year 2009-10. The revenue in its appeal has taken the following grounds of appeal:-

"I. The Ld. CIT (A) has erred on facts and in law in not correctly appreciating the nature of the services rendered by the cable operators / D.T.H. operators for which placement charges are paid and holding that such charges come within the purview of section 194C whereas such placement charges are in nature of technical fee within the meaning of section 194J of the income-Tax Act, 1961.

II. The Ld. CIT (A) has erred on facts and in law in not appreciating that for placing the channel of broadcaster in prime band, for which placement charges are paid, application of human mind by a technical person is essential

and the same cannot be done merely by mechanical means. Therefore, the payment on account of placement charges is in nature of technical fee within the meaning of section 194J and section 194C has no application to the facts of the case Accordingly, CIT (A) has erred in law and on facts in holding to the contrary.

III. Without prejudice to the first two grounds of appeals as above, since providing the services of preferred channel placement on account of which placement charges are paid requires use of industrial, commercial or scientific equipment within the meaning of sub clause (iv) to Explanation to sub clause (vi) of section 9(1) of the income tax Act, 1961, the said payment is payment on account of royalty and therefore, section 194J is clearly applicable. Accordingly, CIT (A) has erred in law and on facts in not appreciating this factual and legal positing and in giving relief to the assessee.

IV. The CIT (A) has further erred on facts and in law in not appreciating the in any case nature of services rendered by the cable operator / multi service operators consists in facilitating delivery of products of broadcaster to the viewer and in view of implied agency, such payment on account of carriage fee is in nature of commission or brokerage as defined in Explanation to section 194H of the income tax Act, 1961.

V. The CIT (A) has erred in law and on facts in holding that section 194C applies to the payment of placement charges without appreciating the correct nature of these charges, as is clearly brought out in the statement of fact annexed to the ground of appeal and the order u/s.201 (1) of the income tax Act, 1961.

VI. The CIT (A) has erred in law and On facts in holding that section 194C applies to the payment of unlinking charges without appreciating the correct nature of these charges, as is clearly brought out in the statement of facts annexed to the ground of appeal and the order u/s.201(1) of the income tax Act,1961.

VII. The CIT (A) has erred in law and on facts in holding that section 194C applies to the payments made on account of cuts-touring of production work

without appreciating the correct nature of these charges, as is clearly brought out in the statement of fact annexed to the ground of appeal and the order u/s.201 (1) of the income tax Act 1961.

2. Ground no. 1 to 5 relates to the issue whether the payment of placement charges to cable operator/D.T.H. was liable for deduction of tax at source u/s 194C or u/s 194J.

3. The facts in brief are that the assessee is a company incorporated in India and is primarily engaged in broadcasting and telecasting of television serials /films/other programs from India viz. Colors, MTV, Nick and VH1. It is also engaged in marketing of advertising airtime on these channels, distribution of the channels, marketing and distribution of films through its film division and production of program content/television software. For such broadcasting and telecasting of programs , the assessee needed to place its programmes on the bandwidth or frequency so that these could reach the end viewers . The cable operator/D.T.H. are the last in the rung of broadcasting and telecasting and thus are in a inherent position to decide that which programme is to be placed or released at what frequency or bandwidth. The placement charges were paid by the assessee to cable operators for placing a particular channel on a preferred bandwidth in order to telecast programmes during peak hours so that it attracted the viewership and also fetched better revenue for the TV Channels. The assessee deducted tax at source at the rate of 2% u/s 194C from such payments.

4. The AO held that the said payment were in the nature of technical services and, therefore, the assessee was to deduct tax at source at the rate of 10% u/s 194J and not u/s 194C and consequently treated the assessee in default u/s 201(1)/201(1A). Aggrieved by the order of AO, assessee carried the matter to CIT (A).

5. The CIT(A) by disagreeing with the view taken by the AO decided the issue of deduction of tax at source on placement charges in favour of the assessee by following the Judgment of Honourable Delhi High Court in the case of **Prasar Bharati (Broadcasting Corporation of India) [2006] 158 taxmann 470** by holding that the placement charges/ carriage fees is covered under the definition of work contract u/s 194C.

6. The Ld. DR relied on the order of AO and submitted that the services provided by the cable operators are highly technical, involves technical equipment for transmitting the channel network to end user and, therefore, the payment is in the nature of fees for technical services and thus attracted deduction of tax at source u/s 194J.

7. On the other hand, the Ld. AR relying upon the following decisions submitted that the issue of TDS on placement charges was squarely covered in its favour by the following decisions of Tribunals and High Courts :-

- (a) ACIT (TDS) V. UTV Entertainment Television Limited (ITA Nos. 2699, 4204, 4205, 2700/Mum/2012 dated 29 October 2014 (Mumbai Tribunal)**
- (b) DCIT (TDS) 1(1), v. M/s Genx Entertainment Ltd (ITA Nos. 2627, 4197/2012, CO 228,229/2013 dated 14 January 2015 (Mumbai Tribunal)**
- (c) DCIT (TDS) 1(1), V M/s Genx Entertainment Ltd. (ITA Nos. 4986, 4987/2013 dated 22 July 2015) (Mumbai Tribunal)**
- (d) DCIT (TDS)-3(1), V Zee Entertainment Enterprises Ltd (ITA Nos.: 3931 to 3935/Mum/2013)**
- (e) ACIT Vs. NGC Network (I) Pvt Ltd. (ITA No. 1382/Mum/2014 dated 9 July 2014)**
- (f) Kurukshetra Darpan V. CIT [2008] 169 Taxman 344 (P&H High Court)**
- (g) CIT Vs. Prasar Bharati [2007] 292 ITR 580 (Del.)**
- (h) CIT Vs. Prasar Bharati [2007] 292 ITR 580 (SC)**
- (i) ACIT Vs. Sahara One Media & Entertainment Ltd. (ITA Nos. 4548, 4549, & 4550/Mum/2012.**

8. He further relied and referred to circular no. 720 dated 30th August, 1995 and prayed for dismissal of appeal of Revenue on this ground.

9. We have considered the rival submissions, decisions referred to above and carefully perused the materials on record . We find that the issue regarding deduction of tax at source for the payment made to cable operators as placement charges is fully covered in favour of the assessee by the various decisions and also by the Circular no. 720 of 30.08.1995. The Hon' ble Delhi

High Court in the case of CIT Vs. Prasar Bharati [2007] 292 ITR 580 (Del.) on a similar issue has held as under:-

“ We are unable to agree with this submission. We observe that Explanation III, which was introduced simultaneously with section 194J, is very specific in its application to not only broadcasting and telecasting but also include “production of programmes for such broadcasting and telecasting” if, on the same date, two provisions are introduced in the Act, one specific to the activity sought to be t0061ed and the other in more general terms resort must be had to the specific provisions which manifests the intention of the Legislature. It is not, therefore, possible to accept the contention of the Revenue that programmes produced for television, including “commissioned programmes”, will fall outside the realm of section 194C, Explanation III of the Act.

In this view of the matter we hold that these appeals do not involve any substantial question of law. The appeals are accordingly dismissed with no order as to costs.

10. In view of the facts and circumstances of the case and the Judgment of Hon'ble Delhi High Court in the case of CIT Vs. Prasar Bharati (supra), we do not find any reason to interfere with the order of CIT(A) qua this issue and the same is hereby affirmed. Accordingly, the grounds no. 1 to 5 are dismissed.

11. Ground no. 6 relates to the issue whether the uplinking charges were liable for deduction of tax at source u/s 194C or 194J.

12. The facts of the case are that the assessee is in the business of telecasting/broadcasting TV channels and for which the signals/channels need to be uplinked from the earth station to the satellite. The assessee

entered into an agreement with TV- 18 India Ltd for uplinking its channels/signals from TV18's uplink centre and thus made payment of uplinking charges to the said company and deducted TDS u/s 194C.

13. The AO held that the uplinking involved operation of complex equipments at the uplink centre and further that the assessee was paying uplinking charges not for broadcasting but towards royalty and thus provisions of section 194J were attracted and not 194C.

14. The CIT(A) rejected the action of the AO by observing that uplinking was an integral part of broadcasting/telecasting and is covered under the Explanation to section 194C of the Income Tax Act by following the Judgement of Honourable Delhi High Court in the case of Prasar Bharati (Broadcasting Corporation of India) (Supra) and CBDT circular no 720 dated 30.08.1995 (supra) by observing as under:-

. that since the assessee has already deducted TDS under section 194C of the Act on the uplink fee, the AO is directed not to consider the assessee as assessee in default under section 201(1) of the Act as there is no short deduction of tax by the assessee. The demand of tax of Rs. 51,56,464/- u/s 201(1) and consequential levy of interest at Rs. 15,64,479/- under section 201(1A) is hereby deleted. “

15. The Ld. DR heavily relied on the order passed by the AO as well as the decision of Mumbai Bench of Tribunal in the case of **Asst. CIT Vs. Sanskar Info. T.V.P. Ltd [2008] 24 SOT 87 (Mum.)**

16. On the other hand, the Ld. AR, in support of his claim , relied upon the following decisions as well as Circular No. 720 dated 30.08.1995.

- (a) ACIT (TDS) V. UTV Entertainment Television Limited (ITA Nos. 2699, 4204, 4205, 2700/Mum/2012 dated 29 October 2014 (Mumbai Tribunal)**
- (b) DCIT (TDS) 1(1), v. M/s Genx Entertainment Ltd (ITA Nos. 2627, 4197/2012, CO 228,229/2013 dated 14 January 2015 (Mumbai Tribunal)**
- (c) DCIT (TDS) 1(1), V M/s Genx Entertainment Ltd. (ITA Nos. 4986, 4987/2013 dated 22 July 2015) (Mumbai Tribunal)**
- (d) DCIT (TDS)-3(1), V Zee Entertainment Enterprises Ltd (ITA Nos.: 3931 to 3935/Mum/2013**
- (e) ACIT Vs. NGC Network (I) Pvt Ltd. (ITA No. 1382/Mum/2014 dated 9 July 2014)**
- (f) Kurukshetra Darpan V. CIT [2008] 169 Taxman 344 (P&H High Court)**
- (g) CIT Vs. Prasar Bharati [2007] 292 ITR 580 (Del.)**
- (h) CIT Vs. Prasar Bharati [2007] 292 ITR 580 (SC)**
- (i) ACIT Vs. Sahara One Media & Entertainment Ltd. (ITA Nos. 4548, 4549, & 4550/Mum/2012.**

17. We have considered the rival submissions and also perused the relevant material on record. The decision of Mumbai Bench in the case Asst. CIT Vs. Sanskar Info. T.V.P. Ltd (supra), relied upon by the Ld. DR are not applicable in the facts and circumstances of the present case as the payment made in that case was made to a non-resident whereas in the present case the payment has been made to Indian resident. In the light of the proposition laid down by the Hon'ble Delhi High Court in the case of CIT Vs. Prasar Bharati (supra), the specific provisions of section 194J are applicable in case of uplinking fees

being integral part of the broadcasting and telecasting. Following the Judgment of Hon'ble Delhi High Court in the case of CIT Vs. Prasar Bharati, and other decisions relied upon by the Ld. AR, we do not find any reason to interfere with the order of CIT (A) on this issue and the same is hereby affirmed. Thus the ground no 6 is decided against the Revenue and in favour of the assessee.

18. Ground No. 7 relates to whether the payment for production of programmes for broadcasting and telecasting was liable to tax u/s 194C or 194J.

19. The brief facts of the case are that the assessee used to get his programmes such as TV serials, films and other programmes produced from outside producers/studios for which it used to make payments. The similar production was also undertaken by the assessee in-house. The assessee deducted TDS u/s 194C from the payments made to such producers of programmes.

20. The AO rejected the contention of assessee that section 194C was applicable to such payments and opined that such payment are in the nature of royalty and technical fee and, therefore, the provisions of section 194J were applicable.

21. The CIT(A) decided the issue in favour of the assessee by following the decision in the case of Prasar Bharati (Broadcasting Corporation of India) (Supra) and CBDT circular dated 30.08.1995 (supra) By holding that the AO was not justified in treating the payments for programmes production as royalty. In any case as also held in the aforesaid judgment provisions of section 194C are more specific as compared to those of section 194J(Since provision of 194C deals with very payment in question- production of programmes and not with general category of payment like fee for technical services or royalty as in section 194J and hence section 194J cannot apply to the payment for production of programmes. Section 194C clearly states that payment for production of programmes constitutes payment for work u/s 194C. Accordingly, applying the said Judgment of the Honourable Delhi High Court and also relying on CBDT circular, he held that provisions of section 194C would prevail over section 194J of the Act in this case.

22. The Ld. DR relied upon the order of AO.

23. The Ld. AR argued that payment for production of programme for broadcasting/telecasting is covered by a series of Judgments.

(a) CIT Vs. Prasar Bharati [2007] 292 ITR 580 (Del.)

(b) CIT Vs. Prasar Bharati [2007] 292 ITR 580 (SC)

- (c) ACIT Vs. Sahara One Media & Entertainment Ltd. (ITA Nos. 4548, 4549, & 4550/Mum/2012.**
- (d) Nitin M. Panchamiya Vs. Add. CIT [2012] 73 DTR 202**
- (e) DCIT (TDS)-3(1), V Zee Entertainment Enterprises Ltd**
- (f) ACIT (TDS) V. UTV Entertainment Television Limited (ITA Nos. 2699, 4204, 4205, 2700/Mum/2012 dated 29 October 2014 (Mumbai Tribunal)**
- (g) DCIT (TDS) 1(1), v. M/s Genx Entertainment Ltd (ITA Nos. 2627, 4197/2012, CO 228,229/2013 dated 14 January 2015 (Mumbai Tribunal)**
- (h) DCIT (TDS) 1(1), V M/s Genx Entertainment Ltd. (ITA Nos. 4986, 4987/2013 dated 22 July 2015) (Mumbai Tribunal)**
- (i) Circular No. 720 dated 30 August 1995.**

24. We have considered the rival submissions and also perused the relevant material on record. We find that this issue regarding payment for production of programmes for broadcasting and telecasting has been considered and decided by the Honourable Delhi High Court in the case of CIT Vs. Prasar Bharati (supra) as discussed above. Respectfully following the same, this issue is accordingly decided in favour of the assessee.

25. In view of the above finding, we find that there is no merit in the appeal of the Revenue and the same is hereby dismissed.

26. Since the issues raised in all the appeals of Revenue are common, our decision in the appeal for assessment year 2009-10

shall apply *mutatis mutandis* in the other two appeals being ITA Nos. 4208& 4209/Mum/2012.

27. Since we have dismissed the appeal of Revenue, the Cross Objections filed by the assessee have become infructuous and the same are hereby dismissed.

28. In the result appeals of the Revenue as well Cross Objections by the assessee are dismissed.

Order pronounced on this 14th day of October 2015.

Sd/-

(D. Karunakara Rao)
(Accountant Member)

Sd/-

(Sanjay Garg)
(Judicial Member)

Mumbai dated 14-10-2015
SKS Sr. P.S,

Copy to:

1. *The Appellant*
2. *The Respondent*
3. *The concerned CIT(A)*
4. *The concerned CIT*
5. *The DR, "B" Bench, ITAT, Mumbai*

By Order

Assistant Registrar
Income Tax Appellate Tribunal,
Mumbai Benches, MUMBAI