



IN THE INCOME TAX APPELLATE TRIBUNAL “H”, BENCH MUMBAI

BEFORE SHRI R.C.SHARMA, AM

&

SHRI SANDEEP GOSAIN, JM

ITA No.5153/Mum/2016

(Assessment Year :2012-13)

ACIT – 16 (1) Room No.439 Aayakar Bhavan M.K.Marg Mumbai – 400 020	Vs.	M/s. Media Worldwide Ltd., 5 th Floor, Techweb Centre Link Road, Oshiwara Mumbai – 400 102
PAN/GIR No.		AAICS5926L
Appellant)	..	Respondent)

CO No.04/Mum/2018

ITA No.5153/Mum/2016

(Assessment Year :2012-13)

M/s. Media Worldwide Ltd., 5 th Floor, Techweb Centre Link Road, Oshiwara Mumbai – 400 102	Vs.	ACIT – 16 (1) Room No.439 Aayakar Bhavan M.K.Marg Mumbai – 400 020
PAN/GIR No. AAICS5926L		
Appellant)	..	Respondent)

Assessee by	Shri B. Srinivas
Revenue by	Shri Vimal Punmiya
Date of Hearing	13/04/2018
Date of Pronouncement	06/07/2018

आदेश / O R D E R

PER R.C.SHARMA (A.M):

This is an appeal filed by the Revenue and Cross Objection by assessee against the order of CIT(A)-4, Mumbai dated 02/05/2016 for A.Y..2012-13 in the matter of order passed u/s.143(3) of the IT Act, 1961.

2. Grievance of Revenue relates to deleting disallowance made u/s.40(a)(ia) in respect of payment made for channel carriage fees, uplinking charges and Bandwith charges.

3. Rival contentions have been heard and record perused. Facts in brief are that the assessee is a Company, which is engaged in the business of Media Broadcasting. During the year under consideration, the assessee declared income under head Income from Business & Professional. Assessee-company while making the payment towards channel carriage fees, up-linking charges and Bandwidth charges to the various parties had deducted tax at source at 2% as per the provisions of section 194C. According to the Assessing Officer, the said payments made by the assessee were covered by section 194J and the assessee, therefore, was required to deduct tax at source at 10% instead of 2%. Since TDS was not deducted as per the provisions of 194J, AO made disallowance of these payments by invoking provisions of Section 40(a)(ia).

4. By the impugned order, CIT(A) deleted disallowance after observing as under:-

“3.2 I have considered the issue under appeal carefully. I find that this is not a case of no TDS but is a case of less IDS, hence disallowance of expenditure cannot be made. Such issue has been decided against the department in the case of DCIT Vs M/s. S.K. Tekriwal ITA No.1135/Kol/2010 and DCIT-11(2) Vs M/s.Chandabhoy & Jassobhoy. Further, it is important to point out the issue related to TDS has also been decided by the CIT(A)-24, Kolkata in the appellant's own case against the department/ findings of the AO vide appeal; No.1292/CIT(A)-24/ KOL/2014-15 dated 15-01-2016. Considering the facts of

3.3 In the result, Ground No.1 is allowed.”

5. Against the above order of CIT(A), revenue is in further appeal before us.

6. It was argued by learned AR that issue with regard to taxability of channel charges is covered by the recent decision of the Hon'ble Bombay High Court in case of NGC Network India Ltd., dated 29/01/2018.

7. We had carefully gone through the order of the Bombay High Court in case of NGC Network India Ltd., (supra) and found that Hon'ble High Court confirmed the decision of the Tribunal holding that channel placement fees is not in the nature of royalty u/s.9(1)(vi) and so the tax is not required to be deducted u/s.194J of the IT Act.

8. Respectfully following the decision of the Bombay High Court, we do not find any infirmity in the order of CIT(A) for holding that TDS was not required to be deducted u/s.194J and assessee had correctly deducted the same u/s.194C, accordingly no disallowance is warranted u/s.40(a)(ia) of IT Act.

9. With regard to the uplinking and downlinking charges, it was argued by learned AR that in satellite communication, uplink means that data are being passed from any earthbound terminal or device up towards the satellite. The opposite of this is a downlink, where the communication is coming from the satellite towards any earthbound device. In broadcasting, an uplink is seen from the broadcaster's perspective as it pertains to the communication link of any device sending data towards the base station.

These are done through the networking machines which are already available. The payment is to ensure that there is continuous uploading of information from the broadcaster's device to the satellite. For example when sending a text message, the phone creates an uplink with the base station in order to send the text message. The inverse is receiving a text message through a downlink.

10. With regard to Band with charges, it was argued by learned AR that Band with in the media sector is availability of the specific frequency on the satellite. For telecasting the channel you need to purchase the bandwidth which is available with the supplier who allots you the frequency of telecasting the channel. This payment is to ensure that the channel is available to the customer on ranging frequency to get uninterrupted signals. Based on the category of frequency the payments are made to ensure that the signals are available to the customer

11. It was further argued by learned AR that Judgement of High Court of Kerala in the case of CIT-1, Kochi vs P V S Memorial Hospital Ltd is not relevant to the assessee on the following grounds:

a) The line of business the Appellant is of television channel whereas the • judgement given in the support is of Hospital;

b) The definition of professional as per the IT Act is Doctors, Chartered Accountants, Architects etc. which are qualified degree holders of respective institute specified for that profession and in the judgement given the services have been taken by one professional person from another professional person, be which is definitely a professional service as defined in the Act;

c) In the judgement the nature of payment is professional services taken from one professionals and to other professional (hospital), which required deduction of TDS u/s 194J whereas in the case of

Appellant the nature of service is broadcasting which is covered under the definition of Section 194C as per the definition of the Act;

d) The case law relates to the High Court of Kerala which is not in the jurisdiction of Mumbai as the Mumbai High Court has also delivered judgements on the same matter on the same grounds which to be made applicable to the Appellant and this is not the line of activity which the Appellant is carrying on.

12. Reliance was placed by learned AR on the decision of Delhi High Court in case of Estel Communications Pvt. Ltd., 217 CTR 102 (Delhi wherein the Court held that no technical services were rendered in case of payment for the provision of bandwidth and hence the provision of Section 9(l)(vii) does not apply.

13. Further reliance was placed on the decision of Delhi High Court in case of Asia Satellite Telecommunications Co. 197 Taxman 263. Reliance was also placed on the decision of NGC Networks (I) P. Ltd., vs. Department of Income Tax on 09/07/2014. In this appeal, issue raised by the Revenue was in respect of directions of the DRP in deleting the disallowance made by AO u/s. 40(a)(ia) as the assessee has deducted short tax at source u/s. 194C. AO was of the view that the payment made by the Assessee for placement of its channel is in the nature of royalty as per Explanation-2 of section -9(l)(vi) and, therefore, TDS should have been deducted as per provisions of Section 194J.

14. The DRP found that the payment of channel placement fee is not tantamount to payment of fee for transmission purpose which includes hiring of transponder, up linking/ downlinking etc. Thus the DRP held that

the disallowance u/s. 40(a)(ia) on account of short deduction of tax is not warranted.

15. We find that the channel placement fee paid to the cable TV operator/DTH provider can not be regarded as royalty as it does not fall under the definition in terms of Explanation-2 of Section- 9(l)(vi) of the Income tax Act. Though there is an amendment in the provision and as per newly inserted Explanation-6 with retrospective effect the term process has been defined and it includes transmission, uplinking and down linking of signals etc. But the said retrospective amendment can not be pressed into service for the purpose of disallowance u/s. 40(a)(ia) because of the reason that at the relevant time when the assessee has deducted the tax at source it was not in the statute.

16. It is a Contract charges as per Section 194C. Decision of Mumbai High Court in the case of CIT-11 v/s NGC Networks (I) P Ltd, Income Tax - Appeal No 397 of 2015 is applicable.

17. On the other hand, it was argued by learned DR that assessee has already deducted tax at 11% in respect of very similar payment made to BT India Pvt. Ltd., and BT Global Communication India Pvt. Ltd.,, therefore, there was no justification for deducting tax at source at 2% for the payment made to Essel Shyam Communications Ltd.,

18. It was replied by learned AR that assessee has deducted tax at high rate of 10% on the plea that both these companies were foreign companies, who have agreed for deduction of tax at higher percentage.

As per learned DR, CIT(A) has not decided merit of the case with regard to the nature of payment and is merely relied on the order of the Tribunal wherein Tribunal have observed that no finding was given by the AO. With regard to nature of payment, therefore Tribunal concurred with the CIT(A) with regard to nature of payment. As per learned DR in this case, specific finding has been given by AO with regard to the nature of payment being royalty.

19. Rival contentions have been heard and record perused.

20. The issue under consideration is squarely covered by the decision of Tribunal in assessee's own case for the very same A.Y.2012-13 wherein, the Tribunal have held that the payment so made by the assessee for channel carriage fees, up-linking charges and band width charges was liable to deduction of tax u/s.194C and not u/s.194J. After accepting this contention, the Tribunal have set aside the order of AO passed u/s.201 (1) / 201(1A) of the IT Act. The precise observation of the Tribunal in its order dated 29/11/2017 was as under:-

4. We have heard the rival submissions. During the course of hearing, the Ld. AR stated that this issue is covered in favour of the assessee by the decision of this Tribunal in assessee's own case for the assessment year 2011-12 in I.T.A. No. 2057/Kol/2014 dated 12.05.2017. In the said order of this Tribunal it was held as under:

"4. We have heard the arguments of both the sides and also perused the relevant material available on record. As agreed by the Id. representatives of both the sides, the issue involved in this appeal of the Revenue is squarely covered in favour of the assessee by the decision of this Tribunal in assessee's own case for the immediately preceding year, i.e. AY 2010-11 rendered vide its order dated 29.08.2014 in ITA No. 1422/KOL/2012, whereby the order passed by

the Id. CIT(Appeals) cancelling the demand raised by the Assessing Officer against the assessee under section 201(1)/2QJ(IA) for the alleged short deduction of tax at source from the similar payments made by the assessee was upheld by the Tribunal vide paragraph no. 8 of its order, which reads as under:-

"8. Upon careful consideration of the submissions, we find that identical issue was considered by the tribunal in the case of M/s. Sristi Television (referred to supra). We find that the Tribunal has adjudicated the issue as under:-

"8. We have heard both the parties and perused the material available on record. We can gainfully refer to the provisions of sections 194C and 194J, which are reproduced as under:-

"194C-Payments to contractors: Any person responsible for paying any sum to any resident (hereafter in this section referred to as the contractor) for carrying out any work (including supply of labour for carrying out any work) in pursuance of a contract between the contractor and a specified person shall, at the time of credit of such sum to the account of the contractor or at the time of payment thereof in cash or by issue of a cheque or draft or by any other mode, whichever is earlier, deduct an amount equal to".

"194J-fees for professional or technical services:

(1) Any person, not being an individual or a Hindu undivided family, who is responsible for paying resident any sum by way of-

(a) Fees for professional services, or

(b) Fees for technical services,

(c) Royalty, or

(d) Any sum referred to in clause (va) of section 28. Shall, at the time of credit of such sum to the account of the payee or at the time of payment thereof in or by issue of a cheque or draft or by any other mode, whichever is earlier, deduct an amount equal to per cent, of such sum as income tax on income comprised therein.

We find that the assessee produced various types of programmes/serials and news and these were telecasted/broadcasted through Multi System Operators for which payments were made to them under the head 'carriage charges'. The assessee has duly deducted and paid tax under section 194C of the Act. We agree with the Id CIT(Appeals) that no technical services were involved in payment of carriage charges made by the assessee for broadcasting of the programmes produced by the assessee. The assessee produced various types of programmes/serials and news and these were telecasted/broadcasted through Multi System Operators. Payments in this regard were made as carriage charges for which payment of tax was deductible under section 194C of the Income Tax

Act. As per definition of technical services given in Explanation to Section 9 of the Act, the deductee should have rendered managerial, technical or consultancy services. In this case, we find that there is no such finding of the Assessing Officer. The deductee has only telecasted the programmes produced by the assessee. In this case law referred to by the Id.CIT'(Appeals) decision in the case of DC IT - vs- NNM Securities Limited, ITAT held that if the assessee is using any facility of anyone the same is not technical services. Hon'ble Punjab & Haryana High Court in the case of Karukshetra Darpan (P) Ltd -vs- CIT[217 CTR 326J has held that telecasting on {he programme was covered under section 194C of the Act.

9. In the background of the above discussion and following the precedent as above, we do not find any reason to interfere with the order of the Id. CIT(Appeals). Accordingly, we uphold the same". Since the facts in the case before us are identical, respectfully following the above precedent, we uphold the order of the Id.CIT(A) on this issue. Accordingly, this appeal of the revenue stands dismissed".

Respectfully following the decision of the Coordinate Bench of this Tribunal in assessee's own case for AY 2010-11 on a similar issue, we uphold the impugned order of the Id. CIT(Appeals) deleting the demand raised by the Assessing Officer for the alleged short deduction of tax at source by the assessee from the payments made towards channel carriage fees, up-linking charges and Bandwidth charges and dismiss this appeal of the Revenue.

Respectfully following the same, we hold that the issue is covered in favour of the assessee and hence the assessee is liable to deduct tax at source only u/s 194C of the Act in respect of aforesaid subject mentioned payments. Accordingly the grounds raised by the Revenue are dismissed.

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

21. It is clear from the order of the Tribunal that payment so made by the assessee was liable to deduction of tax u/s.194C @2% and not u/s.194J @10% and consequently, disallowance made by the AO is not sustainable u/s.40(a)(ia) of the IT Act.

22. The Cross Objection so raised by the assessee is in support of the order of CIT(A). Since we have already dismissed the appeal of the Revenue, the Cross Objection is also dismissed as infructuous.

23. In the result, appeal of Revenue as well as Cross Objection filed by the assessee are dismissed.

Order pronounced in the open court on this 06/07/2018

Sd/-
(SANDEEP GOSAIN)
JUDICIAL MEMBER

Sd/-
(R.C.SHARMA)
ACCOUNTANT MEMBER

Mumbai; Dated 06/07/2018
Karuna Sr.PS

Copy of the Order forwarded to :

1. The Appellant
2. The Respondent.
3. The CIT(A), Mumbai.
4. CIT
5. DR, ITAT, Mumbai
6. Guard file.

सत्यापित प्रति //True Copy//

BY ORDER,

(Asstt. Registrar)
ITAT, Mumbai