IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION

INCOME TAX APPEAL NO. 1676 OF 2013

Director of Income Tax (IT)-I, Mumbai. … Appellant's
v/s

Satellite Television Asian Region Ltd.
(Star Ltd.), Mumbai. … Respondent

Mr.Tejveer Singh for the appellant.

Mr.Porus Kaka, senior counsel a/with Dinesh Chawla i/by Atul Jasani for the respondent.

CORAM: M.S. SANKLECHA &
N.M. JAMDAR, JJ.

DATED : 16TH JUNE, 2015

P.C.:

This appeal by the revenue under Section 260-A of the Income Tax Act, 1961 (the Act) challenges the order dated 23 January 2013 passed by the Income Tax Appellate Tribunal (the Tribunal) in respect of Assessment Year 2000-01.

2 At the hearing, Mr.Tejveer Singh, learned counsel for the revenue urges the following questions of law for our consideration :

(1) Whether on the facts and in circumstances of the case and in law the Tribunal erred in holding that SAS BV (IGN BV) was not a conduit for the assessee or a sham entity even though it has

been established by the Assessing Officer in the assessment order that there was no commercial expediency in setting up via media companies and the only aim of this arrangement was to avoid assessee's direct taxability in India ?

(2) Whether on the facts and in circumstances of the case and in law the Tribunal was justified in the upholding the cash system of accounting as adopted by the assessee and also in holding that the advertisement revenues could be offered on receipt basis even when the Supreme Court has held in the case of Standard Triumph Motors Ltd. v/s C.I.T. (201 ITR 391) that in the case of Non-Resident, the credit entry to the account of the assessee non-resident, in the books of Indian company amounts to receipt by the non-resident and that even credit to a non-resident of an amount would be taxable as receipt and, therefore, liable for tax deduction at source immediately on credit, though it may ultimately be not paid at all ?

(3) Whether on the facts and in circumstances of the case and in law the Tribunal erred in holding that as no income has accrued or arisen to the assessee, interest under Section 234A was not chargeable to assessee even when decision of the Tribunal has not been accepted by the Department ?

(4) Whether on the facts and in circumstances of the case and in law the Tribunal erred in applying the ratio of decision of the jurisdictional High Court in the case of DIT V NGC Network

Asia LLC in holding that interest under Section 234C was not chargeable as the case of DIT v/s NGC Net Work Asia (313 ITR 187) is not on applicability of interest under Section 234A and Section 234C and deals only with the chargeability of interest under Section 234B ?

3 So far as question No.1 is concerned, the respondent-assessee incorporated in Hong Kong, is engaged in broadcasting. With effect from 1 June 1994 the respondent-assessee engaged Satellite Television Asian Region Advertising Sales B.V. (SAS BV), its wholly owned subsidiary for the purpose of undertaking advertisement-sales activity. SAS BV was thereafter renamed as International Global Networks BV (IGN BV). The SAS BV (IGN BV) had returned income on its activity of advertisement-sales, however, the revenue was of the view that SAS BV (IGN BV) is a conduit and the returned income of SAS BV (IGN BV) has to be assessed in the hands of the respondent-assessee. M/s. SAS BV (IGN BV) challenged the finding of the Assessing Officer and carried the matter in appeal. Finally, the Tribunal by its order dated 21 May 2010 for the subject Assessment Year 1999-00 held that SAS BV (IGN BV) is not a conduit of the appellant and the amount earned by it is liable to be taxed. This order of the Tribunal dated 21 May 2010 passed by the Tribunal was accepted by the revenue for the Assessment Year 1999-00. In the present appeal, the revenue is seeking to tax the very same income which has already been subjected to tax in the hands of SAS BV (IGN BV). This, even after the Tribunal by order dated 21 May 2010 has already held that SAS BV (IGN BV) is not a

conduit or a sham entity and they are chargeable to tax on the income earned on account of their advertisement activity. In the above view, the impugned order holds that there can be no occasion to tax the same income in the hands of the respondent-assessee when the same has been subjected to tax in the hands of M/s.SAS BV (IGN BV). This is particularly so, bearing in mind that the revenue has accepted the order of the Tribunal dated 21 May 2010 in case of SAS BV (IGN BV). It is relevant to note that, for the Assessment Year 2000-01 and 2002-03 on the same issue in respect of SAS BV (IGN BV), the revenue had challenged in this Court the order of the Tribunal holding that SAS BV (IGN BV) is not a conduit of Star Limited, the respondent-assessee herein by Income Tax Appeal Nos.2462 of 2011 and 2461 of 2011. This Court on 13 March 2013 dismissed the revenue's appeal for the Assessment Years 2000-01 and 2003-03.

4 Thus, question No.1 stands concluded by the decision of the Tribunal dated 21 May 2010 which has been accepted by the revenue. Therefore question No.1 raises no substantial question of law so as to be entertained.

5 So far as question No.2 is concerned, we find that the impugned order has relied upon its earlier order dated 24 March 2004 passed in respect of SAS BV (IGN BV) for the Assessment Year 1997-98 to hold that it is open to a non-resident company to follow either the cash method of accounting or mercantile method of accounting. This issue stands concluded in favour of the assessee by

the decision by this Court in the case of ***Pfizer Corporation v/s C.I.T.,*** reported in ***259 ITR 391,*** wherein it is held that a non-resident has an option to follow either the cash system or mercantile system of accounting. It is contended on behalf of the revenue that, in view of the decision of the Supreme Court in ***Standard Motors v/s C.I.T.,*** reported in ***201 ITR 391*** it is not open to the non-resident to follow the cash system of accounting. We find that the Apex Court has in fact not touched upon this aspect and has observed that the method of accounting adopted in the facts of the case are irrelevant and thus there is no occasion to examine the same. No fault can be found with the impugned order. Accordingly, question No.2 cannot be entertained as it does not give rise to a substantial question of law.

6 So far as question No.3 is concerned, the impugned order of the Tribunal has rendered a finding of fact that no income has accrued/arisen to the respondent-assessee during the subject assessment year. The aforesaid finding of the Tribunal is based on having held that the income arising on account of adversement-sales is taxable in the hands of SAS BV (IGN BV) for the reasons indicated while considering question No.1. This finding of fact is not shown to be perverse. Thus, no substantial question of law arises with regard to question No.3. Accordingly, question No.3 cannot be entertained.

7 So far as question No.5 is concerned, we find that the impugned order of the Tribunal has merely followed the decision of

this court in ***D.I.T. v/s NGC Network Asia*** , reported in ***313 ITR 187.*** Moreover, once it is held that no income has arisen or accrued in the hands of respondent-assessee, the question of payment of any interest does not arise. Accordingly question No.4 does not raise any substantial question of law. Thus not entertained.

8 Accordingly, the appeal is dismissed. No order as to costs.

(N. M. JAMDAR, J.) ***(M.S. SANKLECHA, J.)***