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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

\+ ITA 729/2016, CM APPL. 39130/2016 (Exemption)

PRINCIPAL COMMISSIONR OF INCOME TAX,
DELHI-7, NEW DELHI ..... Appellant

Through: Mr. Rahul Kaushik, Sr. St. Counsel.

versus

M/S OGAAN PUBLICATION PVT. LTD. ..... Respondent

Through: None.

CORAM:
HON'BLE MR. JUSTICE S. RAVINDRA BHAT
HON'BLE MR. JUSTICE NAJMI WAZIRI

O R D E R

% 16.11.2016

The question of law which the Revenue urges relates to the applicability of Section 194H of the Indian Income Tax Act, 1961. This Court notices that for previous years i.e. for AY 2006-07 & 2007-08, a similar question was urged in ITA Nos. 181-182/2012. The Revenue's appeal was rejected in those matters. The matter was pertaining to the present Assessee. The Court had then observed as follows:

> *" 3. We have considered the contention of the appellant but find that there is a finding recorded by the Tribunal that the transactions between the respondent-assessee and the advertising concerns, who have been described as agencies, was on principal to principal basis. We may notice that the departmental representative, who had urged and argued the matter on behalf of the Revenue before the Tribunal had conceded that transactions of type (A) were between principal and principal but had submitted that the transactions of type (B) were between a principal and an agent. The Tribunal examined the nature of transactions type (A) and (B) and did not find any difference between the same.*

> *4. Before us the copy of the agreement between the respondent-assessee and the advertising concerns has not been placed. It is not shown and stated how and on what basis it is stated that the finding recorded by the Tribunal that the transactions were between principal and principal is not correct and the contention that the transactions were between a principal and an agent is urged. The advertising concern had purchased the space in the publication and had sold the same to third parties. The factual finding recorded by the tribunal is that amount treated and given nomenclature of commission was a discount and what was received by the assessee was the net amount. The description/ deduction given in the bill was in fact and de facto not commission. In the case of Director, Prasar Bharti (supra), the finding of the High Court was that the transactions were between a principal and an agent and the Court had referred to the agreement entered into by the Doordarshan and its agencies. The Kerala High Court in the said case, distinguished Ahmedabad Stamp Venders Association v. UOI, (2002) 257 ITR 202 (Guj.) and M.S. Hameed v. Director of State Lotteries, (2001) 249 ITR 186 (Ker.) on the ground that they related to discounted prices.*
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> *5. Keeping in view the aforesaid aspects, we do not think any substantial question of law arises for consideration and the appeal is dismissed."*

In view of the above developments, no substantial question arises. The appeal is, therefore, dismissed.

S. RAVINDRA BHAT, J

NAJMI WAZIRI, J

NOVEMBER 16, 2016/acm