IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION
WRIT PETITION NO. 148 OF 2017

Star India Pvt. Ltd. .. Petitioner
v/s.
The Union of India & Ors. .. Respondents

Mr. Porus Kaka, Senior Counsel a/w Mr. Dinesh Chawla i/b Mr. Atul Jasani for the petitioner
Mr. Suresh Kumar for the respondent

CORAM : M.S. SANKLECHA &
A.K. MENON, J.J.
DATED : 23rd JANUARY, 2017.

P.C.

1. This petition under Article 226 of the Constitution of India challenges the order dated 29th November, 2016 passed by the Dispute Resolution Panel (DRP) under Section 144C of the Income Tax Act, 1961 (the Act). The impugned order *inter alia* confirms the draft assessment order passed by the Assessing Officer to the extent it holds that the petitioner was obliged to deduct tax under Section 194J of the Act rather than under Section 194C of the Act, as done by the petitioner. The incorrect deduction of tax has led to disallowance of expenditure under Section 40(a)(ia) of the Act.

2. The grievance of the petitioner is that the impugned order of the DRP has ignored the binding decisions of the Tribunal in the petitioner's

own case holding that the tax in respect of the payments made to the cable operators was deductible by them under Section 194C of the Act. Notwithstanding the above, the DRP proceeds to uphold the view of the Assessing Officer in the draft assessment order *inter alia* by observing as under :-

> *"Therefore, in order to protect the interest of the Revenue, the DRP is of the considered opinion that the issue has to be kept alive and hence the addition made by the TPO needs to be sustained".*

3. It is the petitioner's grievance that the Assessing Officer is in terms of Section 144C (13) of the Act, obliged to give effect to the order of the DRP within one month of its receipt. This according to the petitioner would result in not only Revenue adopting proceedings for recovery of tax attributable on the above count as well as adjustment of the refunds due to the petitioner to meet the demand on the above count.

4. Mr. Suresh Kumar, learned Counsel for the Revenue states that there is an alternative remedy of appeal available to the petitioner from the order of the Assessing Officer consequent to the direction of the DRP. Therefore, the grievance raised herein could be raised by the

petitioner's before the Income Tax Appellate Tribunal and appropriate interim reliefs should be sought from the Tribunal, if so entitled. Mr. Suresh Kumar, on instructions, to allay the fears of the petitioner states that the respondent Revenue will not act upon the final assessment order passed by the Assessing Officer consequent to the direction of the DRP for a period of 4 weeks from the date of its communication to the petitioner on the above account. Mr. Suresh Kumar further states that there shall be no recovery and / or adjustment of the amounts refundable against the amounts payable by the petitioner on the disallowance of expenses under Section 40(a)(ia) of the Act on account of channel placement fees paid to the cable operators, for a period of 4 weeks from the date of communication of the final assessment order of the Assessing Officer to the petitioner.

5. In view of the above statement made on behalf of the Revenue, Mr. Kaka, learned Senior Counsel appearing for the petitioner seeks to withdraw the present petition.

6. The Petition is disposed of as withdrawn.

(A.K. MENON, J.) **(M.S. SANKLECHA, J.)**