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

INCOME TAX APPEAL NO. 796 OF 2017

Commissioner of Income-Tax .. Appellant

v/s.

M/s. Viacom 18 Media Pvt. Ltd. .. Respondent

Mr. Suresh Kumar for the appellant
Mr. F. Irani a/w Mr. Atul Jasani for the respondent

CORAM : M.S. SANKLECHA &
NITIN JAMDAR, J.J.

DATED : 16th SEPTEMBER, 2019

P.C.

1. This appeal under Section 260A of the Income Tax Act, 1961 challenges the order dated 30th March, 2016 passed by the Income Tax Appellate Tribunal (Tribunal) for Assessment Year 2012-13.

2. The Revenue has urged the following questions of law for our consideration :-

"(a) Whether on the facts and in the circumstances of the case and in law, the Tribunal is correct in holding that the placement fees / carriage fees paid to cable operators / MSO/ DTH Operators are payments for work contract covered u/s 194C and not fees for technical services u/s 194J, without

appreciating that the services rendered by the assessee are technical in nature ?

(b) Whether on the facts and in the circumstances of the case and in law, the Tribunal is correct in holding that the uplinking charges paid to TV-18 India Ltd. for up-linking its channels / signals from TV-18's up-linking centre are payments for work contract covered u/s 194C and not fees towards royalty u/s 194J, without appreciating that the services received by assessee are technical in nature ?

(c) Whether on the facts and in the circumstances of the case and in law, the Tribunal is justified in holding that the payment for production of programme constitutes payment for work u/s 194C and not fees for royalty and technical services u/s 194J, without appreciating that such payments are in nature of royalty and technical fees ?

(d) Whether on the facts and in the circumstances of the case and in law, the Tribunal was correct in accepting the claim of the assessee that tax was deductible under Section 194C on placement fees / carriage fees by treating it as contract work by restoring to interpretative reasoning and not under section 194J of the I.T. Act without appreciating the definition of fees for technical services given in section 194J and without appreciating that as per the settled principle of jurisprudence, this exercise is required only when the law is unclear?

(e) Whether on the facts and in the circumstances of the case and in law, the Tribunal was justified in rejecting the order of the Assessing Officer by holding that the assessee is not in default u/s 201(1) in respect of the amount of tax which has not been deducted from the payments made under the required sections and that the assessee is not liable for levy of interest under section 201(1A)?"

3. Mr. Suresh Kumar, learned Counsel appearing in support of the appeal very fairly states that the identical questions had been raised by the Revenue from an order of the Tribunal dated 14th October, 2015 relating to Assessment Years 2009-10 and 2010-11 in respect of the same respondent. The Revenue had filed two appeals being Income Tax Appeal Nos. 1410 of 2016 and 1409 of 2016 from the order dated 14th October, 2015 of the Tribunal in respect of the aforesaid two assessment years. All the aforesaid questions were dismissed by this Court by its order dated 10th January, 2019 as not giving rise to any substantial question of law and thus, not entertained.

4. Therefore, for the reasons indicated in our order dated 10th

January, 2019 passed in Income Tax Appeal Nos. 1410 of 2016 and 1409 of 2016, these questions also do not give rise to any substantial questions of law. Thus, not entertained.

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

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