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

INCOME TAX APPEAL NO. 950 OF 2017

Pr. Commissioner of Income Tax-16 .. Appellant

v/s.
M/s. Star Entertainment Media Pvt. Ltd. .. Respondent

Mr. Suresh Kumar for the appellant
Mr. P.F. Kaka, Senior Counsel a/w Mr. Divesh Chawla i/b Mr. Atul Jasani for the respondent

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

DATED : 14th OCTOBER, 2019

P.C.

1. This appeal under Section 260A of the Income Tax Act, 1961 (Act) challenge the order dated 29th April, 2016 passed by the Income Tax Appellate Tribunal (Tribunal). This appeal relates to Assessment Year 2010-11.

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

(a) Whether on the facts and in the circumstances of the case and in law, the Tribunal is justified in holding that the disallowance of Channel Placement Fee cannot be made under Section 40(a)(ia) of the I.T. Act when the tax was deducted

thereon u/s 194C instead of Sec. 194J of the I.T. Act?

(b) Whether on the facts and in the circumstances of the case and in law, the Tribunal has erred in upholding the order of DRP to delete the disallowance on account of advertising, marketing and publicity expenses incurred by the assessee for promotion of its channels without denying the fact that the foreign sister concern of the assessee is benefited by these expenses?

(c) Whether on the facts and in the circumstances of the case and in law, the Tribunal has erred in holding that deduction of tax at a lesser rate would not lead to applications of provision of section 40(a)(ia) of the Act without appreciating that the Hon'ble Kerala High Court in its judgment dated 20.07.2015 in the case of CIT-1, Kochi Vs. PVS Memorial Hospital Ltd. (2015) 60 taxmann.com 69 (Kerala) has held that whenever tax was deductible under Section 194J but was deducted under section 194C, such a deduction does not satisfy requirement of Section 40(a)(ia) of the I.T. Act, 1961?

3. Regarding question no.(a) :-

(a) The impugned order of the Tribunal dismissed the Revenue's appeal by holding that the amounts paid to cable operators for channel placement fee was subject to tax deduction at source under Section 194C of the Act and not under Section 194J of the Act as contended by the Revenue. This by following the decision of its co-ordinate benches in the case of Star Den Media Services Pvt. Ltd. (ITA No. 1418/M/2014) rendered on 5th August, 2015 and in the case of NCG Networks (ITA No. 1525/M/2015) rendered on 12th July, 2016.

(b) Mr. Suresh Kumar, learned Counsel appearing for the Revenue very fairly states that issue arising in this case is covered by the decisions of this Court in CIT Vs. M/s. Star Den Media Services Pvt. Ltd. (Income Tax Appeal No.1237 of 2016) decided on 4th January, 2019 and CIT Vs. M/s. NCG Networks India Pvt. Ltd. (Income Tax Appeal No.397 of 2015). In both the orders, this Court held that payments made for channel placement fee are subject to tax deduction at source under Section 194C of the Act. No distinguishing feature in this case is shown, which would warrant different view.

(c) Therefore, for the reasons indicated in the above two orders dated 29th January, 2018 and 4th January, 2019 passed by this Court, this question no.(a) does not give rise to any substantial question of law. Thus, not entertained.

4. ***Regarding question no.(b) :-***

(a) The respondent had incurred expenditure of Rs.9.75 crores by way of marketing and publicity expenses for promoting its regional channels 'Star Pravaha' and 'Star Maza'. The respondent claimed the above marketing and publicity expenses as deduction under Section 37(1) of the Act. The Assessing Officer held that the promotion expenses incurred not only benefited the respondent but also resulted in benefit to M/s. Star Ltd. who owned the 'Star' brand. In the above context, the Assessing Officer allowed only 75% of Rs.9.75 crores incurred by way of marketing and publicity expenses under Section 37(1) of the Act. Thus, disallowed Rs.2.44 crores being the balance 25% of the marketing and publicity expenses incurred by the respondent.

(b) The Dispute Resolution Panel (DRP) on an application of the petitioner, deleted the disallowance.

(c) On appeal by the Revenue, the Tribunal held that once it is not disputed that the expenses were primarily incurred for the purpose of business, incidental benefit to some other party from such expenses, would not reduce the allowability of such expenditure as a deduction. This more particularly when the same has been incurred in the course of and for the purpose of business. The impugned order of the Tribunal held that the 100% expenditure of Rs. 9.75 crores by way of marketing and publicity expenses are allowable as expenses deductible under Section 37(1) of the Act. This by following the decision of this Court in CIT Vs. NCG Networks India (Income Tax Appeal No.538 of 2012) decided on 13th October, 2014 and the decision of this Court in CIT Vs. Star India Pvt. Ltd. (Income Tax Appeal No. 165 of 2019) decided on 24th March, 2009.

(c) The Revenue has not able to show any distinguishing features in the present facts which would make the decisions of this Court in NCG Networks India Ltd. (supra) and Star India Pvt. Ltd. (supra) inapplicable to the present facts.

(d) In view of the fact that this issue is concluded by the decisions of this Court in favour of the respondent, the question as proposed does not give rise to any substantial question of law. Thus, not entertained.

5. Regarding question no.(c) :-

(a) In view of our answer to question (a) above, this question has become academic.

(b) In view of the fact that this question has become academic, the same is not being entertained.

6. In view of the above, the appeal is dismissed.

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