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

INCOME TAX APPEAL NO.200 OF 2017

Commissioner of Income
Tax (IT) - 4 .... Appellant

versus

M/s Fox Networks Group
Asia Pacific Limited ... Respondent

…....

- Mr.Tejveer Singh, Advocate for Appellant.
- Mr.Porus Kaka, Senior Advocate with Mr.Divesh Chawla i/b. Mr.Atul Jasani, Advocate for Respondent.

CORAM : AKIL KURESHI &
SARANG V. KOTWAL, JJ.
DATE : 30th APRIL, 2019.

P.C. :

1. This Appeal is filed by the revenue to challenge the judgment of Income Tax Appellate Tribunal. Following questions are presented for our consideration;

"(a) Whether, on the facts and in the circumstances of the case and in law, the ITAT has erred in holding that the distribution revenue (subscription charges)

of amount Rs.124,82,45,000/- is not taxable u/s 44DA without giving any specific reasons as to why the said amount should not be treated as royalty income u/s 44DA as assessee is having dependent agent PE and itself offered income in its hand on net basis?

(b) Whether on the facts and in the circumstances of the case and in law, the ITAT erred in holding that the Interest u/s 234B is not leviable in this case without taking into consideration the existence of PE in India in the return of income and thus liable to pay advance tax?"

2. The Respondent-Assessee is a registered company engaged in business of television distribution of channels. The appeal relates to the return of income tax for the assessment year 2007-2008. The question (a) relates to computation of distribution revenue of which a certain proportion would be accrued as the income. The Tribunal in the impugned judgment noted that this distribution revenue has been taxed in the hands of the assessee on protective basis. Remaining 50% has been

taxed in the hands of the channel companies. The Tribunal correctly observed that such amount cannot be added separately because it had been already included in the pool and in the combined rate of 27.18% (PSM). In the opinion of Tribunal therefore retaining this amount would amount to double taxation.

3. Having heard learned Counsel for the parties. We gather that the Tribunal is correct is making the above observations. We notice that there is no dispute about the quantification of 50% of total distribution of Rs.249,64,90,000/-. The assessee having disputed the income arising out of such revenue collection and Tribunal having accepted the same, the department is not in Appeal against such decision of the Tribunal. No question of law therefore arises.

4. Second question pertains to whether the Petitioner is liable to pay interest under section 234B of the Income Tax Act, 1961, on non-deduction of tax at source. The assessee being the

payee, relies on the decision of this Court in case of ***Director of Income Tax (international Taxation) Vs. NGC Network Asia LLC, reported in 313 ITR 187 (Bom)***. Apart from the said judgment, we note that if the revenue's first question is not entertained, the applicability of question of interest under section 234B of the Act would have of must similar grounds. In any case, when the decision of Bombay High Court covers the field, we do not see any reason to entertain the Appeal.

5. The Income Tax Appeal is dismissed.

(SARANG V. KOTWAL, J.) **(AKIL KURESHI, J.)**