IN THE INCOME TAX APPELLATE TRIBUNAL (VIRTUAL COURT DB-II), MUMBAI

BEFORE SHRI M.BALAGANESH, AM

&

SHRI AMARJIT SINGH, JM

ITA No.30/Mum/2018
(**Assessment Year :2013-14**)

M/s. Star India Pvt. Ltd., Star House, Urmi Estate 95, Ganpat Rao Kadam Marg, Lower Parel Mumbai – 400 013	Vs.	Asst. CIT 16(1) Room No.467, 4th Floor Mumbai
PAN/GIR No.AAACN1335Q		
(Appellant)	..	**(Respondent**)

Assessee by	Shri Porus Kaka, Senior Advocate
Revenue by	Shri Sanjay Singh, CIT DR
Date of Hearing	**15/07/2020**
Date of Pronouncement	**17/07/2020**

आदेश / O R D E R

***PER M. BALAGANESH (A.M)*:**

This appeal in ITA No.30/Mum/2018 for A.Y.2013-14 preferred by the order against the final assessment order passed by the Assessing Officer dated 31/10/2017 u/s.143(3) R.W.S. 144C(13) of the Income Tax Act 1961, hereinafter referred to as Act, pursuant to the directions of the ld. Dispute Resolution Panel (DRP in short) u/s.144C(5) of the Act dated 22/08/2017 for the A.Y.2013-14

2. The assessee is engaged in producing / promoting television programmes / movies and broadcasting of the same on satellite television channels. The assessee also exports programmes to overseas media companies and provides other media services. The assessee also acts as an agent for advertisement as well as for overseas media companies and carries all channel subscription business.

3. The ground No.1 raised by the assessee is general in nature and does not require any specific adjudication.

4. The ground Nos.2-4 raised by the assessee is with regard to ld. CIT(A) confirming the action of the ld. AO in disallowing the depreciation on payment of brand license fees.

4.1. We have heard rival submissions and perused the materials available on record. Both the parties accepted to the primary fact that this issue is covered in favour of the assessee by the order of this Tribunal in assessee's own case for the A.Yrs. 2011-12 and 2012-13 in ITA No.1901/Mum/2016 and 1048/Mum/2017 dated 01/08/2019 wherein it was held as under:-

> *"57. After hearing both the sides, we noted that the consideration for the payment towards brand license was determined based on valuation of the brand by an independent valuer and the said payment towards brand license was capitalized in the books of accounts and depreciation was claimed under the Act only on yearly basis. The payment for the said consideration was also subjected to RBI approvals. Further, it would be relevant to note that the department has taxed the entire amount received by Star Ltd from the assessee in AY 2011-12. The TPO also accepted this FAR analysis between STAR Ltd and Channel companies in it is order for STAR Ltd for AY 2008-09 which was considered as appropriate while upholding the profit split of 50:50 mechanisms as appropriate on basis of the same. The said order of the TPO forms part of the legal paper book (refer case law at Sr. no. 30 of legal paper book of assessee for ÀY 2012-*

13). After considering the FAR analysis, the TPO concluded and accepted profit split of (50:50 i.e. profit split of 50% to channel companies and 50% to Star Ltd) at page 13 of the order (refer case law at sr. no. : 30 of legal paper book for ÀY 2012-13).

58. In light of the said observations of the TPO, the remuneration (50%) of the profits taxed in the hands of STAR Ltd included remuneration for the brands, etc. The TPO in it is order for STAR Ltd for AY 2008-09 has observed that over a period of time STAR Ltd. has nurtured and invested significantly in the creation anti promotion of the STAR brand including the logo, along with Channel name in form of Star Cropped box / Star logo. Therefore, it said that STAR Ltd has developed the brand and is the economic owner of the STAR Ltd. Even, the Tribunal in the case of assessee's sister concern for AY 2008-09 in ITA No. 7680/Mum/2012 has approved this FAR analysis of the Transfer Pricing Officer.

59. We noted that the channel companies, i.e. STEL, SAML, SAR, which were owners of various channel at the time of merger, merged with SIPL who then carried on broadcasting business under its own umbrella. The STAR brand, however, continued with STAR Ltd. Thus, the STAR brand which was earlier utilized by the channel companies as part of their arrangements did not form part of the merger since the same was owned by STAR Ltd. Thus, in order to be able to earn from broadcasting business using STAR brand, SIN, had to enter into a license agreement with STAR Ltd. In the current assessment year, the entire profits of the broadcasting business of the channel companies, i.e. STEL SAML and SAR was assessed by the department in SIPL's hands, unlike in the past years wherein it was assessed on the agency commission received. This income represented around 80% of the assessee's revenue taxed in India. Further, having acquired the channel company's business, the assessee could not carry on the business under the "STAR" brand nor earn the revenue, taxed by the department, without payment of license fees. It was contended that the affiliation to the 'STAR' name is a significant driver in the Indian television market and in the revenue earning potential of the channels, on account of the fact that the brand 'STAR' has a reputation for quality. Any new channel which is introduced in the market with the Star affiliation suffers lesser entry constraints as compared to other channels, significantly reducing the possible gestation cycle for the channel. The association of a channel with 'STAR' assists in offering channels to the cable operators as a bouquet. Also, the use of a common brand makes marketing exercise more feasible and effective. Thus, SIPL's channels are able to attract loyal Star customers and thereby garner higher Television Rating Points ('TRPs'). Higher TRPs enable the assessee to attract better prices from the sale of its advertisement airtime.

60. The brand is the communication interface between the consumers and the products. Facing the constantly evolving Television market and increasing consumer demands, the STAR brand has achieved a position of reliability and credibility in the market over the period. Thus, without this payment, it cannot be possible for SIPL to carry on the business. Further, where SIPL were to decide that the channels that came within its ownership shall he treated as completely new channels and broadcasted with a new look and re- branding approach, the same would not have come without a substantial additional cost and effort. Not only would the assessee be needed to expend money but would also need to develop new strategies for promoting its channel, creating awareness amongst viewers and work towards achieving brand loyalty and credibility. Thus, since SIPL could not run its operations without the Star brand, it entered into a licensing arrangement for 10 years.

61. We also noted that the approval of the RBI to brand license fee was taken and for the purpose of making lump sum payment to STAR Ltd, had determined the total value of brand license to be of USD : 36.02 million for the use of STAR mark for a tenure of two years on the basis of a valuation by third party valuer. SIPL, intended to pay the above payment in six installments. Considering the deferral in the payments, an interest component was considered to the overall value based on which the total value was determined to of USD 36.95 million. After consideration, the reserve bank refused to permit the assessee to pay the amount of US$ 36.95 Million and only approved all of USD 36.02 Million thereby excluding any interest on the value of brand license fees was approved basis the letter dated 01.08.2011 received by Deutsche Bank AG (authorized representative) from the Reserve Bank of India (RBI') providing approval for the payment of USD 36.02 million to be made by SIPI to STAR Ltd subject to non-payment of interest component. Once the payments including the amount have been approved by the competent authority (RBI), that had specifically considered the value of the brand license, fees paid for the STAR Mark and there cannot be any disallowance of expenses by the TPO that the assessee has not gained any benefits. In view of the above, we are of the view that no disallowance shall be made and we direct the AO / TPO accordingly."

4.2. We find that the year under appeal is the third year of claim of depreciation by the assessee on payment of brand license fees. Respectfully following the aforesaid decision in assessee's own case by this Tribunal, we direct the ld. AO to delete the disallowance made on

account of depreciation on payment of brand license fees. Accordingly, the ground Nos.2-4 raised by the assessee are allowed.

5. The next issue to be decided in this appeal is with regard to disallowance of property tax amounting to Rs.31,54,827/- which was reimbursed to Precision Components Pvt. Ltd., (PCPL).

5.1. We have heard rival submissions and perused the materials available on record. We find that during the course of assessment proceedings, the ld. AO observed that assessee company had entered into an addendum to leave and license with PCPL for running of premises "The Masterpiece" situated in Andheri. The assessee had reimbursed to PCPL, the property tax at Rs.31,54,827/- paid by PCPL. The assessee claimed the said reimbursement of property tax paid on the rental premises as business expenditure u/s.37(1) of the Act. The assessee had filed the following documents to support its claim of deduction:-

a) Copy of leave and license agreement with PCPL
b) Copy of the letter signed with PCPL
c) Copy of the municipal challans and debit notes
d) Copy of the computation of total income and the tax liability of PCPL
e) Copy of acknowledgment of return of income of PCPL

5.2. We find that this claim was disallowed by the ld. AO in the assessment on the ground that the same need not be reimbursed by the assessee as the property tax had to be borne by the landlord. The ld. AO also in support of his action placed reliance on the decision taken by his predecessor for the A.Y.2006-07 in this regard. We find that this Tribunal

for A.Y.2006-07 in ITA No.4818 and 4675/Mum/2010 dated 01/04/2016 had held with regard to the subject mentioned issue before us as under:-

> *"7. According, to this issue the matter of controversy is that whether, the learned CIT(A) has erred in upholding the disallowance of Rs.30,63,248/- represented the expenditure incurred by the Appellant in respect of reimbursement of property taxes to Precision Component(P) Ltd.(PCPL). It is argued by the assessee that in accordance with the letter dated 01.04.2001 to the PCPL, the assessee company was under obligation to pay that property tax and the said tax was paid. Therefore, the expenditure to the tune of Rs.30,63,248/- is required to be allowed. The learned A.O. recorded the findings that in view of the clause 4 of the agreement dated 01.04.2001 the liability was with the licensor i.e. PCPL and PCPL was under obligation to pay the tax. Therefore, this expenditure was not found to be justified and disallowed the same. There should not be any dispute that the issue relating to payment of rent is normally decided between the land lord and tenant. Though the agreement has fastened the liability about payment of property tax upon the land lord, yet the fact remains that the assessee has reimbursed its property tax which was contrary to the term of license agreement. Under normal circumstances, such kind of violation of agreement does not happen. However, the assessee has drawn support from a letter claimed to have been signed by the assessee and the land lord, which states that the assessee here in should reimburse the property tax.*
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> *We notice that the monthly rent paid by the assessee was Rs.1,16,000/-. However, the property tax reimbursed by the assessee works out to Rs.30,63,248/-, which works out to about 26 months of rent. This proportion appears to be highly disproportionate and beyond human conduct and probabilities. A tenant, under normal circumstances would not agree to bear such a high cost. Hence there appears to be merit in view taken by tax authorities. However, we notice that they have taken adverse view without conducting any enquiry.*
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> *The learned A.R. contended the reimbursement of property tax partakes the character of rent only. There is merit in its said contention also. Hence, what is required to be seen is as to whether to aggregate amount of rent plus reimbursements compares well with the earlier years payment. If it does not compare well, then it is the duty of the assessee to justify the payment.*
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> *In view of the above, this issue required fresh examination at the end of Assessing Officer. Accordingly we set aside the order of learned CIT(A)*

on this issue and restore this issue to the file of Assessing Officer for fresh examination."

5.3. Respectfully following the aforesaid decision in assessee's own case for the A.Y.2006-07 referred to supra, we remand this issue to the file of the ld. AO for fresh adjudication in accordance with law. Accordingly, the ground No.5 raised by the assessee is allowed for statistical purposes.

6. The next issue to be decided in this appeal is with regard to the claim of depreciation on software expenditure.

6.1. We have heard rival submissions and perused the materials available on record. We find that the entire details of software expenditure has been provided before the ld. AO by the assessee and the same was treated as capital expenditure by the ld. AO in earlier years. We find that the ld. AR before us pleaded for grant of depreciation on the fresh software expenditure incurred during the year and on the opening written down value (WDV) of software expenditure grouped under the head 'computers'. He fairly stated that the assessee is not pressing the issue as to whether the said expenditure is capital or revenue in nature. We find that the expenditure incurred towards software need to be treated as capital in nature in the facts and circumstances of the case before us and the ld. AO is directed to grant depreciation on the software expenditure incurred during the year in addition to granting depreciation on opening WDV of computer and computer software. Accordingly, the ground No.6 raised by the assessee is allowed for statistical purposes.

7. The ground Nos. 7 – 14 raised by the assessee is with regard to action of the ld. CIT(A) in confirming the disallowance made by the ld. AO u/s.40(a)(ia) of the Act in respect of channel placement fees.

7.1. The brief facts with regard to this issue are that the signals of TV channels telecast by the broadcaster are distributed in the area covered by the foot print of the channels by distributors such as assessee. However, the so called last mile connectivity is always provided by the cable operator and it is the cable operator's discretion to place a particular channel on a preferred band or a higher frequency. To ensure such placement of the channel on a preferred band / high frequency, which in turn would ensure higher viewership, higher subscriptions and higher advertising revenues, the assessee paid the cable operators the impugned channel placement fees. The cable operator collects subscriptions and passes them on after retaining a portion thereof.

7.2. The assessee submitted that it had deducted tax at source in terms of Section 194C of the Act on the channel placement fees paid. The assessee further submitted that the specific explanatory provision in this regard is Explanation 6 to Section 9 of the Act, which states that the expression 'process' shall be held to have always included down – linking by satellite or cable. The assessee submitted that while explanation 2 (on royalty) to Section 9 of the Act finds mention in Section 40 (a)(ia) of the Act, there is no such mention of explanation 6 to Section 9 of the Act therein. The assessee thus, claimed that it cannot be expected to do the impossible and subject the impugned payments on account of down-linking, to TDS obligations subsequently, when such a provision was earlier not there in the statute. The assessee relied on the decisions of the Hon'ble Supreme Court in the case of Krishnaswamy S. Pd & Anr. v. Union of India & Ors. (281 ITR 305) and the Hon'ble Mumbai Tribunal in the case of Channel Guide India Ltd. v. ACIT (139 ITD 49) to support its claim.

7.3. The ld. AO observed that the channel placement fees charges paid by the broadcasters to the Multi System Operator (MSO) for placing their channel on a particular frequency / bandwidth. He observed that these charges are paid to put the channel in prime band so that viewership as well as quality of the channel can be increased. He observed that the carrying a particular channel on a particular frequency is an integral part of transmission or broadcasting PROCESS. Hence, he held that the said PROCESS would be covered within the ambit of definition of the term 'royalty' as per Explanation 6 in Section 9(i)(vi) of the Act which was introduced with retrospective effect from 01/06/1976. Accordingly, he held that the same would fall within the ambit of deduction of tax provisions as per Section 194J of the Act instead of Section 194C of the Act. The AO relied on the decisions of the Delhi Tribunal in the cases of Asia Satellite Telecommunication Co. Ltd. vs. DCIT (322 ITR 140), ACIT v. Sansker Info T.V. P. Ltd (24 SOT 87) and New Skies Satellites NV v. ADIT (121 ITD 1). Since, there was a short deduction of tax at source made by assessee, the ld. AO disallowed the differential sum of Rs.16,20,89,346/- (Rs.2,63,94,30,108 – 2,47,73,40,762/-) u/s.40(a)(ia) of the Act in the assessment which was upheld by the ld. DRP by following the order passed by them in assessee's own case in A.Yrs. 2011-12 and 2012-13.

7.4. The assessee distinguished the decisions cited by the AO, submitting that they were in the context of payments made for use of a transponder. It was also submitted that the decision of Asia Satellite Telecommunication Co. Ltd. v. DCIT (322 ITR 140) and New Skies Satellites NV v. ADIT (121 ITD 1) has been reversed by the Delhi High Court and that the decision of ACIT v. Sansker Info T.V. P. Ltd (24 SOT 87) was based on the decision of the Tribunal in the case of Asia Satellite

Telecommunication Co. Ltd. vs. DCIT (322 ITR 140). The assessee claimed that deduction of tax at source on the impugned payment had been done under section 194C of the Act by way of abundant caution.

7.5. We have heard the rival submissions and perused the materials available on record. We find that the primary facts stated hereinabove mentioning the purpose of payment of channel placement fees by the assessee are not in dispute before us. We find that the ld. AR placed reliance on various jurisdictional High Court decisions which were decided in favour of the assessee on the impugned issue. He drew our attention to the decision of the Hon'ble Jurisdictional High Court in the case of CIT vs. UTV Entertainment Television Ltd., in Income Tax Appeal No.525/2015 & 732/2015, 741/2015 and 1035/2015 dated 10th & 11th October 2017. The said order of Hon'ble Jurisdictional High Court is reproduced hereinbelow for the sake of convenience :-

> *"The submissions of the learned counsel appearing for the parties were heard on earlier date. As there is a challenge to the same impugned judgment and order dated 29th October, 2014 in these appeals, for the sake of convenience, we are referring to the facts of the Appeal No.1035 of 2015.*
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> *2. With a view to appreciate the submissions made across the bar, it will be necessary to briefly highlight the controversy involved. The respondent is a Public Limited Company carrying on business of broadcasting of Television (TV) channels. It is stated that the respondent operates certain TV entertaining channels. Survey was carried out firstly of the books of accounts of the respondent. The Assessing Officer found that certain amounts were paid by respondent on account of carriage fees, editing expenses and dubbing charges. Tax was deducted on the said amounts as per Section 194C of the Income Tax Act, 1961.*
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> *3. The Assessing Officer was of the opinion that the carriage fees, editing charges and dubbing charges were in the nature of fees payable for technical services and, therefore, tax should have been deducted under Section 194J of the Income Tax Act, 1961 (for short "the Act"). Accordingly, a show cause notice was issued to the*

respondent asking for explanation with respect to following payments made.

(i) Carriage Fees / Placement Charges.

(ii) Subtitling charges (Editing Expenses)

(iii) Dubbing Charges.

4. After considering the reply of the respondent assessee, it was held that an aggregate amount of Rs.34,71,36,096/- is in the nature of fees for rendering technical services and therefore tax should have been deducted under Section 194J of the said Act. Before we come to the submissions made across the bar, it will be necessary to make reference to the relevant provisions of the Income Tax Act. Section 194C and Section 194J of the Income Tax Act form part of the Chapter XVII which generally deals with the collection and recovery of tax. Section 194C deals with the payment to the contractors while Section 194J deals with fees for professional or technical services.

5. As observed earlier, the Assessing Officer passed an order dated 18th March 2011 under Section 201(1)/ 201(1A) of the Income Tax Act holding that the three items were not covered by Section 194C but by Section 194J.

6. Therefore, a demand of Rs.1,11,13,964/- was raised. Being aggrieved by the said order, an appeal was preferred by the respondent before the Commissioner of Income Tax (Appeals). The appeal preferred by the respondent was partly allowed holding that there was no short deduction of tax by the appellant on account of payment of placement charges, subtitling charges and dubbing charges. An appeal was preferred by the Revenue to the income Tax Appellate Tribunal, "F" Bench, Mumbai. By the impugned judgment and order, the appeal preferred by the Revenue was dismissed and the cross objection was held to be academic in nature and therefore, held to be infructuous.

7. The learned counsel appearing for the appellant- Revenue has taken us through the impugned orders. The learned counsel appearing for the appellant submitted that the payments made by the respondent will not be covered by Section 194C. It was submitted that, in fact, Section 194J will be applicable. He invited our attention to the findings of the fact recorded by the Assessing Officer. He submitted that various substantial questions of law arise

in these appeals, which are set out as questions (a) to (e) in the appeal.

8. According to the learned counsel appearing for the appellant, the Appellate Tribunal as well as the Commissioner (Appeals) have committed a gross error by applying Section 194C. He submitted that the payments made by the respondent are not contractual payments and, therefore, Section 194C of the Income Tax Act will not be applicable. His contention is that the activity for which payments were made by the respondent are either for professional or for technical services and, therefore, Section 194J will apply to the present case. His submission is that reasons recorded by the Appellate Tribunal are completely erroneous and need to be interfered with by this Court. The learned counsel for the respondent supported the impugned judgment and order.

9. We have given careful consideration to the submissions. Firstly, it will be necessary to advert to the facts of the case. For that purpose, it will be necessary to make a reference to the order passed by the Income Tax Officer. Paragraph 3 of the order reads thus :

> *"3. During the Survey, on perusal of the books of accounts of the assessee company, it was found that for Financial Years 2010-11, the year under consideration the assessee company has debited an amount of Rs. 33,24,56,189/- on account of "carriage fees" Rs.8,20,650/- on account of Editing expenses and Rs.12,95,400/- on account of Dubbing Charges. The assessee was asked to give the details of the Carriage Fees, Editing Expenses and Dubbing Charges paid by the company and the services rendered to them along with copies of Agreements made in this regard. The assessee has deducted TDS as per the provisions of section 194C of the I.T.Act on such payment. On further perusal of the Agreements submitted by the assessee it is seen that these payments are given to MSO/Cable Operators to retransmit and/or carry the service of the channels on 'S' Band in their respective territories. The services provided by these MSOs / Cable Operators does not come within the purview of section 194C of the I. T. Act, as placing the service of the channel on 'S' Band is a Technical Service for which the TDS is required to be deducted as per the provisions of Section 194J of the I.T.Act instead deducted by the*

assessee company as per the provisions of section 194C of the I.T.Act, 1961."

10. Thus, we are concerned with three categories of charges i.e. carriage fees, editing expenses and dubbing charges. It is to be noted that the respondent- assessee had deducted TDS as per the provision of Section 194C of the said Act. The show-cause-notices were issued to the assessee for the Financial Years 2007-08, 2008-09, 2009-10 and 2010-11.

11. The Assessing Officer held that the placement charges will be governed by Section 194J. Similarly in case of dubbing charges, the same finding was recorded. Even the same view was taken in respect to editing expenses. As stated earlier, the Commissioner (Appeals) (the first appellate authority) interfered in the appeal preferred by the assessee.

12. The first Appellate Authority has made in-depth consideration of the factual aspects. Reference to the factual aspects will be necessary to understand technicalities associated with carriage fees, editing expenses and dubbing charges. Firstly, it will be necessary to consider the nature of carriage fees or placement fees in the context of the nature of business carried on by the respondent.

13. The Commissioner (Appeals) has recorded a finding of fact after having perused the copies of the agreements entered into between the respondent- assessee and the cable operators/ Multi System Operators (MSOs), that the cable operators pay a fee to the respondent for acquiring rights to distribute the channels. It is pointed out that the cable operators face bandwidth constraints and due to the same, the cable operators are in a state to decide which channel will reach the end viewer at what frequency (placement). Accordingly, broadcasters make payments to the cable operators to carry their channels at a particular frequency. Fee paid in that behalf is known as "carriage fee" or "placement fee". The payment of placement fee leads to placement of channels in prime bands, which in turn, enhances the viewership of the channel and it also leads to better advertisement revenues to the TV channel.

14. The Commissioner (Appeals) has given a finding of fact on the perusal of sample copies of the agreements. The agreements are entered into with the respondent by the cable operators for placement of channels on agreed frequencies on which the respondent wishes to place a particular channel. The placement fee is the consideration for providing choice of the desired placement of

the channels. That is how, channel placement charges are paid to the cable operators under the agreement. Under the agreement, the cable operators agree for placing a particular channel on agreed frequency band. As stated earlier, the respondent has deducted tax at the rate of 2% at source by invoking Section 194C of the Income Tax Act while making payment towards placement fees to the cable operators/ MSOs. If Section 194J is to be applied, the deduction would be of 10%. The Commissioner (Appeals) has also gone through the method followed by the cable operators/ MSOs. The Commissioner (Appeals) has also gone into the submission of the Revenue that, in fact, Section 194J would apply. In substance, the argument is that placement charges are basically for rendering technical service. The Commissioner (Appeals) has recorded a finding of fact on the basis of material on record that the placement charges are consideration for placing the channels on agreed frequency bands. It was found that, as a matter of fact, by agreeing to place the channel on any preferred band, the cable operator does not render any technical service to the distributor/ TV channel. Reference is made to the standard fee paid for basic broadcasting of a channel at any frequency. The Commissioner (Appeals) has considered clause (iv) of the explanation to Section 194C which incorporates inclusive definition of "work". Clause (iv) includes broadcasting and telecasting including production of programmes for such broadcasting and telecasting. The Commissioner (Appeals) rightly found that if the contract is executed for broadcasting and telecasting the channels of the respondent, the same would be covered by Section 194C as it falls in clause (iv) of the definition of "work". Therefore, when placement charges are paid by the respondent to the cable operators/ MSOs for placing the signals on a preferred band, it is a part of work of broadcasting and telecasting covered by sub-clause (b) of clause (iv) of the explanation to Section 194C. As a matter of fact, it was found by the Commissioner (Appeals) that whether the payment is towards a standard fee or placement fee, the activities involved on the part of the cable operators/ MSOs are the same. When placement fee is received, a channel is placed on a particular prime band. It was found that by an agreement to place the channel on a prime band by accepting placement fee, the cable operator/ MSO does not render any technical service. As far as Appellate Tribunal is concerned, again the definition of work in clause (iv) of the explanation to Section 194C was looked into. We must note here that a grievance was made by the learned counsel appearing for the appellant that there are no detailed findings recorded by the Appellate Tribunal. However, the Commissioner (Appeals) has recorded detailed findings on the basis of material on record and by referring to the findings, the Appellate Tribunal has expressed general agreement

with the findings recorded by the first Appellate Authority. While affirming the judgment of the first Appellate Authority, it is open for the Appellate Tribunal to express such general agreement.

15. Now, turning to the second grievance regarding subtitling charges, again the Commissioner (Appeals) has gone into the details of the factual aspects. Subtitles are textual versions of the dialogs in the films and television programmes which are normally displayed at the bottom of the screen. Sometimes, it is a textual version of the dialogs in the same language. It can also be a textual version of the dialogs in a particular language other than the language of the film or the TV programme. Again the stand of the Revenue was that this will be covered by Section 194J and not by Section 194C. We must note here that in this appeal, the Revenue has not made any grievance regarding applicability of Section 194C to dubbing charges. The finding of fact recorded by the Commissioner (Appeals), which is confirmed by the Appellate Tribunal, is that work of subtitling will be covered by the definition of "work" in clause (iv) of explanation to Section 194C. Reliance is placed by the Commissioner (Appeals) on the CBDT notification dated 12th January 1977. The said notification includes editing in the profession of film artists for the purpose of Section 44AA of the Income Tax Act. However, the service of subtitling is not included in the category of film artists. As noted earlier, sub-clause (b) of clause (iv) of the explanation to Section 194C covers the work of broadcasting and telecasting including production of programmes for such broadcasting or telecasting. The work of subtitling will be naturally a part of production of programmes. Apart from confirming the finding of fact recorded by the Commissioner (Appeals) on both the aspects on placement fee and subtitling charges, the Appellate Tribunal has noted that both Sections 194C and 194J having introduced into the Income Tax Act on the same day, it is observed that the activities covered by Section 194C are more specific and the activities covered by Section 194J are more general in terms. Therefore, for the activities covered by Section 194C, Section 194J cannot be applied being more general out of the two.

16. In the alternative, a submission was canvassed by the learned counsel for the appellant that the carriage fees or the placement charges are in the nature of commission or brokerage as defined in explanation to Section 194H of the Income Tax Act. Further, in the alternative, it was submitted that carriage fees/ placement charges were in the nature of royalty covered by Section 194J of the Income Tax Act.

> *17. We have already discussed in detail the findings of fact recorded by the Commissioner (Appeals) as regards placement fees/ carriage fees. We have agreed with the findings of fact based on material on record that when the payment is made towards standard fee or placement fee, the activity involved is the same in both cases. As stated earlier, when services are rendered as per the contract by accepting placement fee or carriage fee, the same are similar to the services rendered against the payment of standard fee paid for broadcasting of channels on any frequency. In the present case, the placement fees are paid under the contract between the respondent and the cable operators/ MSOs. Therefore, by no stretch of imagination, considering the nature of transaction, the argument of the appellant that carriage fees or placement fees are in the nature of commission or royalty can be accepted.*
>
> *18. Thus, as far as both the grounds of challenge are concerned, there are findings of fact recorded by both the authorities. We concur with the view taken by the Appellate Tribunal. In our view, no question of law arises in these appeals. There is no merit in the appeals and the same are dismissed with no order as to costs.*

7.6. We also find that the Hon'ble Jurisdictional High Court in the case of CIT vs. Times Global Broadcasting Co. Ltd., in Income Tax Appeal No.399/2016 dated 14/08/2018 had endorsed the same decision taken in the case of UTV Entertainment Ltd., referred to supra and we find that Special Leave Petition (SLP) preferred by the revenue against the decision of the Hon'ble Bombay High Court in the case of Times Global Broadcasting Co. Ltd., supra has been dismissed by the Hon'ble Supreme Court in SLP No.4394/2019 dated 25/02/2019. In view of the aforesaid decision of Hon'ble Jurisdictional High Court, we direct the ld. AO to delete the disallowance made u/s.40(a)(ia) of the Act in the hands of the assessee. Accordingly ground Nos. 7-14 raised by the assessee are allowed.

8. The ground No. 15 raised by the assessee is with regard to short grant of credit for tax deducted at source by the ld. AO. We direct the ld.

AO to verify the same with the relevant records and decide the issue as per law. Accordingly, the ground No.15 raised by the assessee is allowed for statistical purposes.

9. The ground No. 16 raised by the assessee is with regard to short grant of foreign tax credit by the ld. AO. We direct the ld. AO to verify the same with the relevant records and decide the issue as per law. Accordingly, the ground No.16 raised by the assessee is allowed for statistical purposes.

10. The ground No.17 raised by the assessee is with regard to initiation of penalty proceedings u/s.271(1)(c) of the Act which would be premature for adjudication at this stage.

11. In the result, appeal of the assessee is allowed for statistical purposes.

Order pronounced on 17/07/2020 by way of proper mentioning in the notice board.

Sd/-	**Sd/-**
(AMARJIT SINGH)	**(M.BALAGANESH)**
JUDICIAL MEMBER	**ACCOUNTANT MEMBER**

Mumbai; Dated 17/07/2020

KARUNA, *sr.ps*

Copy of the Order forwarded to :

1. The Appellant
2. The Respondent.
3. The CIT(A), Mumbai.
4. CIT
5. DR, ITAT, Mumbai
6. Guard file.

//True Copy//

BY ORDER,

(Asstt. Registrar)
ITAT, Mumbai