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* IN THE HIGH COURT OF DELHI AT NEW DELHI

+ ITA Nos. 44/2009 & 46/2009

THE COMMISSIONER OF INCOME TAX Appellant

Through: Ms Rashmi Chopra,
Advocate

Versus

MOVING PICTURE COMPANY (INDIA) LTD. Respondent

CORAM

HON'BLE MR JUSTICE VIKRAMAJIT SEN

HON'BLE MR JUSTICE RAJIV SHAKDHER

ORDER

05.03.2009

C.M. No. 656/2009 (condonation of delay) in ITA 44/2009 &
C.M. No. 660/2009 (condonation of delay) in ITA 46/2009

For the reasons stated in the applications, delay in refilling is condoned.

CMs stand disposed of.

C.M. No. 659/2009 (exemption) in ITA 46/2009

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Allowed, subject to all just exceptions.

CM stands disposed of.

ITA Nos. 44/2009 and 46/2009

1. In these appeals the Revenue has challenged a common order dated 28.09.2007 passed by the Income Tax Appellate Tribunal (hereinafter referred to in short as 'the Tribunal') in ITA No 3949/Del/06 and ITA No 3950/Del/06 pertaining to assessment years



2000-01 and 2001-02. The Revenue is aggrieved by the impug judgment in so far as the order passed by the Assessing Officer under Section 201(1) and 201(1A) has been set aside and the order of the Commissioner of Income Tax (Appeals) [hereinafter referred to in short as 'the CIT (A)] has been sustained.

2. The assessing Officer while passing the order under Section 201(1) and 201(1A) has held that the assessee had failed to deduct tax under Section 194J of the Income Tax Act, 1961 (hereinafter referred to in short as 'the Act) in respect of payments made to its subsidiary TVAM (India) Pvt Ltd on account of cost of production of a serial entitled 'Subah Savere'. The Assessing Officer was of the view that the TVAM had rendered 'technical services' and hence, the assessee was required to deduct tax at source under Section 194J of the Act.

3. Similarly, the Assessing Officer was of the view that, in so far as the payments retained by the advertising agencies (which were equivalent to 15% of the sale proceeds) in respect of sale of free commercial time (FCT), being in the nature of commission, the assessee, not having deducted tax at source under the provisions of Section 194H, was liable for consequences under Section 201(1) and 201(1A).

4. As regards the first issue, the finding returned by the Tribunal



is that the TV serial was produced by TVAM and the expenditure for the said purpose was incurred by it. In order to earn revenue TVAM sold the rights in the programme to the assessee at cost plus 7.5% being the profit of TVAM. Resultantly, the assessee acquired the rights in the FCT which TVAM had in turn acquired under a contract with Doordarshan for production of the serial 'Subah Savere'. Based on these observations and findings, the Tribunal, as well as, the CIT(A) came to the conclusion that TVAM had not rendered any technical services to the assessee but had only transferred its rights in the serial alongwith the right in FCT made available by the Doordarshan to the assessee against consideration paid by the assessee. Based on this finding, the Tribunal concluded that assessee had not made any payment towards technical services rendered by TVAM. It concluded that therefore the provisions of Section 194J of the Act were not applicable.

5. We concur with the view of the Tribunal. There is nothing to suggest that the payments made by the assessee to TVAM was a fee for technical services within the meaning of Section 194J read with Explanation 2 to clause (vii) of sub-Section (1) of Section 9 of the Act. The said provision defines fee for technical services as one which is paid for rendering any managerial, technical or consultancy services. As found by the Tribunal, the assessee had only acquired



rights in the TV serial 'Subah Savere' alongwith a right in FCT n available by Doordarshan. TVAM did not provide technical services within the meaning of the aforesaid provision. These are pure findings of fact. There is no discernible perversity in the findings returned by the Tribunal and CIT(A). No interference is called for in respect of this issue.

6. As regards the second issue, it is observed that the CIT(A) as well as the ITAT has come to the conclusion that the subject relationship was one of principal to principal; and that it was not a commission which was paid but rather the trade discount which was allowed to be retained by the advertisers. So far as the Assessing Officer is concerned, we find no discussion beyond a statement that the contention of the assessee is 'untenable', and that, therefore, the provision of Section 194H of the Income Tax Act, 1961 was applicable. In view of pure finding of fact returned by both CIT(A) and Tribunal, we find no scope for interference with the impugned judgment.

7. No substantial question of law arises for our consideration. Accordingly, these appeals are dismissed.

VIKRAMAJIT SEN, J.

RAJIVSHAKDHER, J.

MARCH 05, 2009/kk/mb