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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

+ ITA 181/2012

+ ITA 182/2012

CIT

..... Appellant

Through Ms. Suruchi Aggarwal, Sr. Standing
Counsel

versus.

OGAAN PUBLICATION PVT LTD

..... Respondent

Through

CORAM:

HON'BLE MR. JUSTICE SANJIV KHANNA

HON'BLE MR. JUSTICE R.V.EASWAR

ORDER

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16.03.2012

These two appeals filed by the Revenue pertain to assessment years 2006-07 and 2007-08 and relate to disallowance under Section 40a(ia) in respect of ₹1,20,34,012/- and ₹1,70,07,440/- made by the Assessing Officer on account of failure to deduct tax (TDS) resource under Section 194H of the Income Tax Act, 1961 ('Act', for short).

2. Ld. sr. standing counsel for the appellant has relied upon the decision of Kerala High Court in ***CIT Vs. Director, Prasar Bharti*** (2010) 325 ITR 205 (Ker.) in support of her submission that the



discount given to the advertising agencies should be treated as commission.

3. We have considered the contention of the appellant but find that there is a finding recorded by the Tribunal that the transactions between the respondent-assessee and the advertising concerns, who have been described as agencies, was on principal to principal basis. We may notice that the departmental representative, who had urged and argued the matter on behalf of the Revenue before the Tribunal had conceded that transactions of type (A) were between principal and principal but had submitted that the transactions of type (B) were between a principal and an agent. The Tribunal examined the nature of transactions type (A) and (B) and did not find any difference between the same.

4. Before us the copy of the agreement between the respondent-assessee and the advertising concerns has not been placed. It is not shown and stated how and on what basis it is stated that the finding recorded by the Tribunal that the transactions were between principal and principal is not correct and the contention that the transactions were between a principal and an agent is urged. The advertising concern had purchased the space in the publication and had sold the same to third parties. The factual finding recorded by the tribunal is that amount treated and given nomenclature of commission was a discount and what was received by the assessee was the net amount. The description/ deduction given in the bill was in fact and *de facto* not commission. In the case of **Director, Prasar**



Bharti (supra), the finding of the High Court was that transactions were between a principal and an agent and the Court had referred to the agreement entered into by the Doordarshan and its agencies. The Kerala High Court in the said case, distinguished **Ahmedabad Stamp Venders Association v. UOI**, (2002) 257 ITR 202 (Guj.) and **M. S. Hameed v. Director of State Lotteries**, (2001) 249 ITR 186 (Ker.) on the ground that they related to discounted prices.

5. Keeping in view the aforesaid aspects, we do not think any substantial question of law arises for consideration and the appeal is dismissed.


SANJIV KHANNA, J


R.V.EASWAR, J

MARCH 16, 2012
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