

THE INCOME TAX APPELLATE TRIBUNAL
“J” Bench, Mumbai
Before S/Shri B.R. Baskaran (AM) & C.N. Prasad (JM)

I.T.A. No. 3935/Mum/2015
(Assessment Year 2012-13)

DCIT (TDS)-1(3) Room No. 703 Smt. K.G. Mittal Ayurvedic Hospital Building Charni Road Mumbai-400 002.	Vs.	M/s. Music Broadcast Pvt. Ltd. 5 th Floor RNA Corporate Park Kalanagar Bandra (E) Mumbai-400 051.
(Appellant)		(Respondent)

C.O. No. 20/Mum/2017
(Assessment Year 2012-13)

M/s. Music Broadcast Pvt. Ltd. 5 th Floor RNA Corporate Park Kalanagar Bandra (E) Mumbai-400 051.	Vs.	DCIT (TDS)-1(3) Room No. 703 Smt. K.G. Mittal Ayurvedic Hospital Building Charni Road Mumbai-400 002.
(Appellant)		(Respondent)

PAN No. AACCM4036H

Assessee by	Shri Manish Malik
Department by	Ms. Arju Garodia
Date of Hearing	18.4.2017
Date of Pronouncement	18.4.2017

ORDER

Per Bench :-

The appeal filed by the Revenue and cross objection filed by the assessee are directed against the order dated 9.4.2015 passed by the learned CIT(A)-59, Mumbai and they relate to A.Y. 2012-13.

2. The Revenue is aggrieved by the decision of the learned CIT(A) in deleting the demand raised by the Assessing Officer u/s. 201(1) and 201(1A) of the Act for non-deduction of tax at source on discount paid to the advertisement

agents and also for short deduction of tax at source on the payments made to the radio jockeys.

3. We have heard the parties and perused the record. The assessee-company is engaged in radio broadcasting business by operating a FM radio. Its main revenue is generated through advertisements. While raising invoices towards advertisement charges, the assessee offered a discount of 15% on the bills. The assessee treated the same as discount expenditure and hence deducted tax at source. The Assessing Officer noticed that the advertisements have been collected through the agents and accordingly he took the view that the discount, referred above should be considered as commission payments. Accordingly he took the view that the assessee should have deducted tax at source u/s. 194H of the Act. Since the assessee did not deduct tax at source on the discounts so offered, he treated the assessee as assessee in default and raised demand u/s. 201(1) of the Act and also charged interest u/s. 201(1A) of the Act from 1.4.2011 to the date of order.

4. The Assessing Officer also noticed that the assessee has entered into service agreements with persons for hosting shows on radio, popularly known as "radio jockey". The assessee deducted tax at source u/s. 194J of the Act treating the payment as payment to professionals. The Assessing Officer took the view that the relationship between the assessee-company and the radio jockeys is that of the employer-employee. However, he categorized the payments made to the radio jockeys in two categories, i.e., those who received less than Rs.3.00 lakhs in a year and those who received more than Rs.3.00 lakhs in a year. The AO took the view that the persons who received less than ₹ 3 lakhs can be considered freelancers and hence the payment made to them was accepted by the AO as payments made to professionals. However, in respect of the payments made to persons exceeding ₹ 3 lakhs in a year, the Assessing Officer took the view that the same should be treated as salary payments. Accordingly he took the view that the assessee was liable to deduct tax at source u/s. 192 of the Act. Accordingly, he raised the demand u/s.

201(1) for short deduction of tax at source and also charged interest u/s. 201(1A) of the Act from 1.4.2011 to date of order.

5. In the appellate proceedings, the learned CIT(A) agreed with the contentions of the assessee and accordingly deleted the demand raised u/s. 201(1) of the Act and 201(1A) of the Act in respect of both the payments discussed above. Aggrieved, the Revenue has filed this appeal before us and the assessee has filed the cross objection only to support the order passed by the learned CIT(A).

6. At the time of hearing, learned AR submitted that identical issues were considered by the Coordinate Bench of the Tribunal in assessee's own case relating to A.Y. 2011-12 in ITA No. 548/Mum/2015 and the Tribunal, vide its order dated 7.12.2016 has held that the discount paid to the advertisement agents cannot be considered as commission payments, since the advertisement agencies cannot be considered as "agents" of the assessee. It was also brought to our notice that the Coordinate Bench has also held that the payments made by the assessee to the radio jockeys were in the nature of payments to professionals which are liable for deduction of tax at source u/s. 194J of the Act.

7. Since the view taken by the learned CIT(A) on both the issues discussed above is consonance with the view taken by the Tribunal in assessee's own case in A.Y. 2011-12, we do not find any reason to interfere with the order passed by the learned CIT(A).

8. The cross objection filed by the assessee only supports the order passed by the learned CIT(A) and hence it does not require any adjudication.

9. In the result, appeal filed by the Revenue and Cross Objection filed by the assessee stand dismissed.

Order has been pronounced in the Court on 18.4.2017.

Sd/-
(C.N. PRASAD)
JUDICIAL MEMBER

Sd/-
(B.R.BASKARAN)
ACCOUNTANT MEMBER

Mumbai; Dated : 18/4/2017

Copy of the Order forwarded to :

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

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PS

BY ORDER,

(Dy./Asstt. Registrar)
ITAT, Mumbai