IN THE HIGH COURT OF DELHI AT NEW DELHI
ITA Nos. 44/2009 and 46/2009
05.03.2009

THE COMMIISONER 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 and 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

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 impugned 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 made 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.

RAJIV SHAKDHER, J.

MARCH 05, 2009/kk/mb