

**IN THE INCOME TAX APPELLATE TRIBUNAL
[DELHI BENCH: 'D' NEW DELHI]**

**BEFORE SHRI N. K. BILLAIYA, ACCOUNTANT MEMBER
AND
SHRI YOGESH KUMAR U.S., JUDICIAL MEMBER**

I.T.A. No. 1257/DEL/2020 (A.Y 2012-13)

Jaiprakash Associates Ltd., Sector : 128, Noida, Uttar Pradesh – 201 304. PAN No. AABC1562A	Vs.	DCIT, International Taxation Circle, Noida.
--	-----	---

AND

I.T.A. No. 1258/DEL/2020 (A.Y 2013-14)

Jaiprakash Associates Ltd., Sector : 128, Noida, Uttar Pradesh – 201 304. PAN No. AABC1562A	Vs.	DCIT, International Taxation Circle, Noida.
--	-----	---

AND

I.T.A. No. 1259/DEL/2020 (A.Y 2014-15)

Jaiprakash Associates Ltd., Sector : 128, Noida, Uttar Pradesh – 201 304. PAN No. AABC1562A (APPELLANT)	Vs.	DCIT, International Taxation Circle, Noida. (RESPONDENT)
--	-----	--

Assessee by :	Shri Ashwani Kumar Garg, Advocate;
Department by:	Shri Ganga Dhar panda, [CIT] - D. R.;

Date of Hearing	20.12.2022
Date of Pronouncement	13.03.2023

ORDER

PER YOGESH KUMAR U.S., JM

These three appeals are filed by the assessee against separate orders of the Id. Commissioner of Income Tax (Appeals)-2, Noida [hereinafter referred to as CIT (Appeals)], dated 13.03.2020 for assessment year 2012-13 and dated 16.03.2020 for assessment years 2013-14 and 2014-15 respectively.

2. The assessee has raised the following substantive common grounds of appeal (except for the amounts):-

**DISALLOWANCE OF CHARGEABLE SUM PAID TO A
FOREIGN COMPANY WITHOUT DEDUCTION OF TAX**

“1. That the learned CIT (A) has erred in upholding the disallowance, under clause (i) of s. 40(a) of the Act, of business expenditure being the race-promotion fee paid by the appellant-assessee to Formula One World Championship Ltd of UK ("FOWC") without deduction of tax. The disallowance

upheld is to the extent of the chargeable sum, comprised within the race-promotion fee, attributable to the PE of FOWC in India.

2. That in upholding the above disallowance the learned CIT (Appeals) has not appreciated that:

a) The appellant-assessee had a reasonable cause for non deduction of tax from the race-promotion fee paid to the FOWC.

b) The FOWC had been assessed in respect of its PE in India and had paid the tax on its chargeable income comprised within the aforesaid race-promotion fee.

3. That the disallowance of Rs. 501,952,442 upheld by the learned CIT (Appeals) erroneously includes the chargeable sum of Rs. 196,129,776 which relates to the broadcasting revenue assessed in the hands of FOWC. The appellant-assessee was not the payer of the said broadcasting revenue and had not claimed any such expenditure.

4. Therefore, without prejudice to Ground No. 1 & 2 above, the disallowance in the hands of the appellant-assessee cannot exceed the chargeable sum paid to the FOWC which is Rs. 305,822,666 (501,952,442 -196,129,776) only.

**DISALLOWANCE OF LEASE RENT PAID TO A RESIDENT
WITHOUT DEDUCTION OF TAX**

5. *That the learned CIT (A) has erred in upholding the disallowance, under clause (ia) of s. 40(a) of the Act, of business expenditure of Rs. 43,612,876 being the lease rent paid by the appellant-assessee to Yamuna Expressway Industrial Development Authority without deduction of tax.*

6. *That in upholding the above disallowance the learned CIT (Appeals) has ignored that:*

c) The assessing officer in his order passed, under s. 201 of the Act (on a remand by the Hon'ble ITAT) has held that, in respect of the aforesaid lease rent, the appellant-assessee was not deemed to be an assessee in default in terms of the first proviso to s. 201(1) of the Act.

d) Therefore the appellant-assessee was entitled to be deemed as having deducted and paid the tax on the said lease rent in terms of the second proviso to clause (ia) of s. 40(a) of the Act.”

3. The short question arising for consideration in the above appeals for the Assessment Year 2012-13, 2013-14 & 2014-15 is regarding disallowance under Clause (i) of Section 40 (a) in respect of RPC fees paid to Formula One World Championship Ltd. to UK without deducting the tax. It is the specific case of the assessee is that no disallowance could be made on RPC fees since the payee Formula One World Championship Ltd. had already been assessed on relevant income and tax thereon had been paid by Formula One

World Championship Ltd. directly. The assessee further contended that the second proviso to Clause 40a(ia) of the Act is curative and declaratory, therefore, has retrospective effect. The said contention has been turned down during the appellate proceedings. Apart from reiterating the stand of the assessee further contended that in any case the disallowance should be restricted to the chargeable sum comprised in the gross RPC paid (as assessed in the assessment of FOWC). In support of the above contention, the assessee relied on the CBDT Circular No. 3/2015 dated 12/02/2105 followed by Circular dated 26/10/2016 wherein the CBDT has clarified that only chargeable sum paid is liable to be disallowed u/s 40a(ia) of the Act. The CIT(A) is of the opinion that no disallowance could be made in respect of RPC fees for the reason that the relevant income had been declared and assessed in the hands of the payee and tax thereon had been paid. However, the CIT(A) has accepted that disallowance should be restricted to the chargeable sum comprised in the Grossed RPC fess as assessed in the hands of FOWC. The CIT(A) while determining the chargeable sum in the RPC fees with the total income charged in the hands of the FOWC including the chargeable sum in broadcasting revenue as well which was not paid by the assessee. Thus, the CIT(A) directed the disallowance to be restricted to Rs. 501,952,5442/- instead of Rs. 305,822,666/- in Assessment Year 2012-13, Rs. 368,025,412/- instead of Rs. 228,973,487/- in Assessment Year 2013-14 and Rs. 506,415,998/- instead of Rs. 307,349,578/- in Assessment Year 2014-15.

4. We have heard the parties perused the material on record. In our considered opinion, no part of the RPC fee paid by the assessee is liable to be disallowed under clause (i) of s. 40(a) because the second proviso clause (i) of Section 40(a) has been inserted w.e.f. 1.4.2020. The said proviso essentially provides that where the relevant income has been declared by the payee and tax thereon has been paid by him then no disallowance shall be made in the hands of the payer. This proviso is similar to the second proviso to clause (ia) of s. 40(a) which was inserted w.e.f. 1.4.2013. Both these provisos were inserted to remove an anomaly and were therefore curative and declaratory in nature. Hence they had to be given retrospective effect.

5. In view of the above discussion the grounds of the appeal of the assessee deserves to be allowed and the disallowance/addition made by the A.O. which was sustained by the CIT(A) is hereby quashed.

6. In the result, the appeals in ITA Nos. 1257/Del/2020, 1258/Del/2020 & 1259/Del/2020 filed by the assessee are allowed.

Order pronounced in the open court on : **13/03/2023.**

Sd/-
(N. K. BILLAIYA)
ACCOUNTANT MEMBER

Dated : 13/03/2023

MEHTA/R. N, SR. PS

Sd/-
(YOGESH KUMAR U.S.)
JUDICIAL MEMBER

Copy forwarded to :-

1. Appellant
2. Respondent
3. CIT
4. CIT (Appeals)
5. DR: ITAT

ASSISTANT REGISTRAR
ITAT NEW DELHI