

**IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH 'I-1' NEW DELHI**

**BEFORE SHRI ANIL CHATURVEDI, ACCOUNTANT MEMBER
AND
SHRI K. NARASIMHA CHARY, JUDICIAL MEMBER**

ITA No. 3152/Del/2016
Assessment Year: 2009-10

BBC World Service India Private Limited, 5th floor, Hindustan Times house, Kasturba Gandhi Marg,
New Delhi 110001.

PAN No. AADCB2298P

Assessee/Appellant

Vs. DCIT
Circle-2(1),
New Delhi.

Revenue/Respondent

ITA No. 3492/Del/2016
Assessment year: 2009-10

ACIT,
circle 4 (1),
New Delhi

Revenue/Appellant

Vs. BBC World Service India Private Limited,
5th floor,
Hindustan Times house, Kasturba Gandhi Marg,
New Delhi 110001.

PAN No. AACCA3104G

Assessee/Respondent

C.O. No. 275/Del/2016
(IN ITA No. 3492/Del/2016)
Assessment Year: 2009-10

BBC World Service India Private Limited, 5th floor, Hindustan Times house, Kasturba Gandhi Marg,
New Delhi 110001.

PAN No. AADCB2298P

Assessee/Appellant

Vs. ACIT,
circle 4 (1),
New Delhi

Revenue/Respondent

Assessee by Sh. Atul Jain, AR
Ms Priyanka Nagpal, AR
Revenue by Sh. Dheeraj Jain, Sr. DR

Date of hearing: 1/7/2021
Pronouncement on 1/7/2021

ORDER

PER BENCH

ITA No. 3492/del/2016 is filed by Revenue whereas ITA No. 3152/del/2016 and C.O. No. 275/del/2016 are filed by the assessee and all these matters emanate from the order dated 16/3/2016 passed by learned Commissioner of Income Tax (Appeals)-42, New Delhi ("Ld. CIT(A)") in appeal No. 77/15-16/CIT (A)-42 in the case of BBC World Service India Private Limited ("the assessee"), for the assessment year 2009-10.

2. Brief facts of the case, relevant for the disposal of these appeals and cross objections, are that the assessee is a company primarily engaged in the business of producing program content for radio and website (on shortwave and FM frequencies) under contractual agreements with parent and other group of companies; and that the main source of Revenue of the company is derived from its parent and other group companies and also from direct sale of programs, originally created for its parent and other group companies.

3. For the assessment year 2009-10, the assessee filed the return of income on 30/9/2009 declaring an income of Rs. 48,53,220/-, but subsequently on 31/3/2011 revised the same at an income of Rs. 72,92,419/-. Assessment under section 143(3) of the Income Tax Act, 1961 (for short "the Act"), was however, completed at Rs. 4,71,10,092/- by making

addition of Rs. 3, 98, 17, 673/-. Since the assessee got relief in appeal before the Ld. CIT(A), Revenue preferred this appeal, namely, ITA 3492/del/2016.

4. At the outset, it is submitted by the Ld. AR that subsequent to the filing of this appeal pursuant to the rectification application filed by the assessee before the Ld. Transfer Pricing Officer-I (1) New Delhi, stating that the business and support expenses of Rs. 2, 43, 92, 0 21 incurred by the assessee were recovered on cost to cost basis, and, therefore, should have also been included in the operating income while determining the operating profit margin of the assessee. Ld. TPO by order dated 4/7/2013 accepted the contention of the assessee and suggested the addition of Rs. 1,62,57,135/-to the income of the assessee instead of Rs. 3, 98, 17, 673/-.

5. Subsequently the assessee filed an application under section 154 of the Act on 30/4/2013 stating that while making the addition on the issue of transfer pricing adjustment in the assessment order, an amount of Rs. 24, 39, 202 which was already added back by the assessee on account of transfer pricing adjustment in its revised computation of income, was not reduced from the amount of addition on account of transfer pricing adjustment in the assessment order. On verification of record, learned Assessing Officer accepted the same.

6. In view of these rectification orders, the addition has come down from Rs. 3, 98, 17, 673/- to Rs. 1, 38, 17, 933/-.Assessee challenged this addition of Rs. 1, 38, 17, 933/-before the Ld. CIT(A) and was successful. Hence the Revenue carried this matter in appeal before the Tribunal in appeal in ITA No. 3493/del/2016. Since the tax effect involved in the grounds raised by the Revenue in the above appeal was below Rs.50 lakhs, in view of the recent CBDT Circular No.17/2019 dated 8th August, 2019, raising the monetary limit for filing of the appeal by the Revenue before the

Tribunal to Rs.50 lakhs and the subsequent clarification of the CBDT, vide Notification dated 20th August, 2019 stating that the said Circular is applicable even to pending appeals, the appeals filed by the Revenue was held not maintainable on account of low tax effect, and accordingly ITA No. 3493/del/2016 was dismissed by order dated 28/4/2021.

7. In the circumstances, Ld. AR submits that ITA No. 3492 /Del/ 2016 has become infructuous in view of the final disposal of the additions involved for the assessment year 2009-10 subsequent to the rectification order and a dismissal of the Revenue's appeal in ITA No. 3493/del/2016, and, therefore, the same may be dismissed. He further argued that consequently assessee withdraws the C.O. No. 275/del/2016 and ITA No. 3492/del/2016 on the ground that the assessee does not want to press the disposal these 2 matters on merits inasmuch as what remains to be adjudicated in was a very trivial amount of addition, and therefore, the cross objection and the appeal of the assessee may also be dismissed as withdrawn.

8. Ld. DR verified the record and admitted the facts stated by the Ld. AR to be true and correct. In the circumstances we are of the considered opinion that subsequent to the recreation orders and the dismissal of the Revenue's appeal in ITA 3493/del/2016 nothing remains to be considered on the contentions of the Revenue and, therefore, ITA No. 3492/del/2016 has to be dismissed as infructuous. At the same time we do not find anything coming in the way of the assessee to request for the trial of the cross objection and their own appeal. Recording the same, we are of the considered opinion that it is just and necessary to dismiss ITA No. C.O. No and ITA No. 3152/del/2016 also as withdrawn. We order accordingly.

9. In the result, ITA No. 3492/del/2016 is dismissed as infructuous, and CO No. 275/del/2016 and ITA No. 3152/del/2016 are dismissed as withdrawn.

Order pronounced in open court on this the 1st day of July 2021 immediately on conclusion of hearing or virtual mode.

Sd/-
(ANIL CHATURVEDI)
ACCOUNTANT MEMBER

Sd/-
(K. NARASIMHA CHARY)
JUDICIAL MEMBER

Dated: 1/7/2021

Copy forwarded to:

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

Assistant Registrar
ITAT New Delhi