Media Worldwide Ltd — Income Tax Appeal No. 19/2020

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2026:BHC-OS:10649-DB 3.ITXA.19.20.doc IN THE HIGH COURT OF JUDICATURE AT BOMBAY ORDINARY ORIGINAL CIVIL JURISDICTION INCOME TAX APPEAL NO. 19 OF 2020 The Pr. Commissioner of Income Tax-16, Mumbai .. Appellant Versus Media Worldwide Ltd, Mumbai .. Respondent Mr. Suresh Kumar, Advocates for the Appellant. Mr. Dharan Gandhi i/b MINT & Confreres , Advocates for the Respondent. Digitally signed CORAM: B. P. COLABAWALLA & ANJALI by ANJALI TUSHAR TUSHAR ASWALE Date: ASWALE 2026.04.27 12:00:33 +0530 FIRDOSH P. POONIWALLA, JJ. DATE: APRIL 24, 2026 P. C.

1. This Appeal under of the Income-tax Act, 1961 ('the Act') is directed against the order dated 15 th January 2019 passed by the Income Tax Appellate Tribunal, Mumbai Bench, ('Tribunal') in ITA No. 5863/Mum/2017 for Assessment Year 2012-13, whereby the Tribunal dismissed the Revenue's appeal and upheld the order of the Commissioner of Income Tax (Appeals) deleting the disallowance made under of the Act. According to the Revenue, the impugned order gives rise to the following four questions of law:- Page 1 of 15 > APRIL 24, 2026 Aswale ::: Uploaded on - 27/04/2026 ::: Downloaded on - 02/05/2026 06:09:22 ::: > 3.ITXA.19.20.doc > i) Whether on the facts, in the circumstances of the case and as per law, the Hon'ble Tribunal has erred in directing to delete the disallowance rws 194J in respect of 'Channel placement Fees' 'UplinkingFees' & 'BandwidthCharges' and failing to appreciate that the payments made for use/right to use of'process' are 'royalty' as per Explanation 6 to L90: > (vi) hence such payments are covered of the Income-tax Act, 1961. 3.ITXA.19.20.doc without appreciating that is not a charging Section but is a machinery Section and thus the expression "tax deductible at source under Chapter XVII-B" occurring in the said Section has to be understood as tax deductible at source under the appropriate provision of Chapter XVII-B and hence, tax deductible under wrong section of Chapter XVII-B would result into invoking of of the Act."

2. Brief facts of the case are as under: > a) The Respondent-Assessee is engaged in the business of telecasting programmes. In the Assessment Order passed under , the Appellant noted that the Assessee had claimed expenditure towards channel carriage fees/channel placement fees of Rs. 11,65,28,137/-, uplinking charges of Rs. 98,09,816/- and bandwidth charges of Rs. 3,27,14,058/-. According to the Appellant, though tax had been deducted by the Assessee at 2% under , the payments were in the nature of royalty since they were for use or right to use a "process" within the meaning of Explanation 6 to , and therefore, tax ought to have been deducted under at 10%. On this basis, the Appellant held that there was non-compliance with the proper TDS provision and disallowed the aggregate expenditure of Rs. 15,90,52,011/- under . b) The Assessee carried the matter in appeal. By an order dated 5 th June Page 3 of 15 APRIL 24, 2026 Aswale ::: Uploaded on - 27/04/2026 ::: Downloaded on - 02/05/2026 06:09:22 ::: 3.ITXA.19.20.doc 2017, the Commissioner of Income Tax (Appeals) allowed the Assessee's appeal and deleted the disallowance. The Commissioner (Appeals), inter alia, held that this was not a case of non-deduction of tax at source, but, at the highest, a case of lesser or short deduction of tax, and therefore, no disallowance under could be made. c) Being aggrieved, the Revenue preferred an Appeal before the Tribunal.

5. On the other hand, Mr. Gandhi, the learned counsel for the Assessee, submitted that the issue is no longer res integra and that the consistent view of several High Courts is that short deduction of tax does not attract disallowance under . Reliance has been placed on the following decisions: > [2014] 361 ITR 432 (Calcutta) > .) Ltd. [2023] 290 Taxman 490 (Delhi) > (HUF) [2016] 387 ITR 196 (Karnataka) Page 5 of 15 APRIL 24, 2026 Aswale ::: Uploaded on - 27/04/2026 ::: Downloaded on - 02/05/2026 06:09:22 ::: > 3.ITXA.19.20.doc > d) Commissioner of Income-tax, International Taxation v. Samsung Heavy Industries Company Ltd. [2025] 176 taxmann.com 482 (Uttarakhand),

6. He further submitted that even this Court, in [2025] 177 taxmann.com 699 (Bombay), has taken the same view. He also relied upon the decision of the Delhi High Court in case of .) Ltd. [2015] 370 ITR 454 (Delhi) to buttress his argument. He, accordingly, submitted that Questions (iii) and (iv) reproduced above do not give rise to any substantial questions of law.

7. We have heard the learned counsel for the parties and perused the papers. We agree with the submissions made by Mr. Gandhi that the issue, whether short deduction of tax at source would invite consequences under , has been settled by various High Courts, including this Court. The same is elaborated below.

8. In (supra), the Calcutta High Court approved the reasoning of the Tribunal that refers to cases where tax is deductible and such tax has not been deducted or, after deduction, not paid. There is nothing in the Section to treat the Assessee as a defaulter where there is a shortfall in deduction, and that in cases of shortfall due to Page 6 of 15 APRIL 24, 2026 Aswale ::: Uploaded on - 27/04/2026 ::: Downloaded on - 02/05/2026 06:09:22 :::

3. We find no substantial question of law is involved in this case and therefore, we refuse to admit the appeal. Accordingly, the appeal is dismissed."

9. In) (supra), the Karnataka High Court held that may be invoked only in cases of absence of deduction. The that in a case of bona fide wrong impression, if deduction is made at a lesser rate, the same cannot be a ground for disallowance under . The Court specifically observed that once deduction had already been made, the case could not be regarded as one of "no deduction". The relevant extract of is as under: > 6. In our view, as per the decision of the Calcutta High Court, the view taken by the Tribunal is that of the Act may be invoked only in case of there being an absence of deduction. Further, in case of bona fide wrong impression, if the deduction is at a lesser rate, the same cannot be a ground for disallowance by invoking the provisions of . > 7. Examining the matter, we find that there are two angles to the matter: The first is, whether it was a case of `no deduction' or not in the present case. The Page 8 of 15 APRIL 24, 2026 Aswale ::: Uploaded on - 27/04/2026 ::: Downloaded on - 02/05/2026 06:09:22 ::: > 3.ITXA.19.20.doc answer would be in the negative because, the deduction was already made at the rate of 1%. The second angle would be as to whether it was under a bona fide wrong impression that only 1% was deducted instead of 2%. The contention of the assessee was that, having realized that deduction was 2% instead of 1%, the amount of TDS has been paid with interest. Vegetable Products Ltd.■ [1973] 88 ITR 192 (SC) held that when there are divergent views of various non-jurisdictional High Courts on an identical issue, the construction favourable to the Assessee should be adopted. Relevant portion of is brought out hereunder: > "8. In view of the law Hon'ble Supreme Court in the aforesaid case, this Court has no hesitation in upholding the finding returned by learned Income Tax Appellate Tribunal, wherein it has held that of the Income Tax Act, 1961 cannot be

made applicable to short deduction of tax at source and the disallowance made was directed to be deleted. This finding of learned Income Tax Appellate Tribunal is based on the judgment rendered by Hon'ble Calcutta High Court in the case of (supra). Learned Income Tax Appellate Tribunal have negated the submission of the revenue, which relied on the decision of Kerala High Court in the case of PVS Memorial Hospital Ltd.(supra), by relying on the judgment passed by the Hon'ble Apex Court in the case of \ (supra), wherein it was held that when there are divergent views of various non-jurisdictional High Courts on an identical issue, the construction that is favorable to the assessee should be considered. > 9. Learned counsel for the appellant further submitted that the judgment of Hon'ble Kerala High Court has been challenged before the Hon'ble Supreme Court in PVS Memorial Hospital Ltd. v. Commissioner of Income Tax [Special Leave to Appeal No. 26075-26076 of 2016, dated 02-11-2018], the Hon'ble Supreme Court granted leave in the matter and now it has been converted to Civil Appeal No(s). 10915-10916/2018 and, as per the website of Hon'ble   Supreme Court, the case is ripe-up for final hearing and is still pending consideration before the Hon'ble Supreme Court, therefore, the hearing of present Appeal may be deferred till decision in the aforesaid Civil Appeal. Apart from the fact that we are in agreement with the decision of the Calcutta High Court, we also find that with effect from 1st April 2013 a very important proviso [second proviso to 40(a)(ia)] was inserted by the legislature which stipulated that where an assessee fails to deduct the whole or any part of the tax in accordance with the provisions of Chapter XVII-B on any such sum, but is not deemed to be an assessee in default under the first proviso to subSection (1) of , then, for the purpose of sub-clause 40(a)(ia), it shall be deemed that the assessee has deducted and paid the tax on such sum on the date of furnishing of return of income by the payee referred to in the said proviso. For the sake of convenience, the relevant proviso is produced hereunder:- > ..." (emphasis supplied)

14. Thus, even so far as this Court is concerned, the matter stands concluded in favour of the Assessee.

15. We may also usefully refer to the decision of the Delhi High Court in the case of JDS Apparels (P.) Ltd. (supra). Though the controversy there arose in the context of , the Court considered the nature of and held that it is a deterrent and penal provision and therefore requires strict construction. The Court observed that the principle against doubtful penalisation applies not only to criminal statutes but also to provisions creating deterrence and punitive consequences, and that when words are equally capable of more than one construction, the one not inflicting penalty or detriment should be preferred. Relevant paragraphs of the said decision are as under: "17. Another reason why we feel of the Act should not have been invoked in the present case is the principle of doubtful penalization which requires strict construction of penal provisions. The said principle applies not only to criminal statutes but also to provisions which create a deterrence and results in punitive penalty. is a deterrent and a penal provision.

19. In view of the above conclusion, Question Nos. (i) and (ii), which concern the characterisation of the payments as royalty and the applicability of as against , become academic in the facts of the present case and are kept open to be agitated in an appropriate case.

20. No substantial question of law arises. The Appeal is accordingly   dismissed. There shall be no order as to costs.

21. This order will be digitally signed by the Private Secretary/ Personal Assistant of this Court. All concerned will act on production by fax or email of a digitally signed copy of this order. [FIRDOSH P. POONIWALLA, J.] [B. P. COLABAWALLA, J.]