

**IN THE INCOME TAX APPELLATE TRIBUNAL (VIRTUAL COURT),  
'E' BENCH MUMBAI**

**BEFORE SHRI MAHAVIR SINGH, VP**

**&**

**SHRI M.BALAGANESH, AM**

**MA NO.254/Mum/2020  
(Arising out of ITA No.3214/Mum/2014  
(Assessment Year :2009-10)**

|   |     |  |
|---|-----|--|
| M/s. Tata Sky Limited<br>Unit No.301 to 305,<br>3 <sup>rd</sup> Floor, Windsor,<br>Off. CST Road,<br>Kalina, Santacruz (East)<br>Mumbai – 400 098 | Vs. | The Assistant Commissioner<br>of Income –Tax<br>Range-16(1),<br>Aayakar Bhavan<br>Mumbai |
| <b>PAN/GIR No. AAGCS9294M</b>   |     |  |
| <b>(Appellant)</b>  | ..  | <b>(Respondent)</b>  |

|                              |                                   |
|------------------------------|-----------------------------------|
| Assessee by                  | Shri Jehangir Mistri, Sr. Counsel |
| Revenue by                   | Shri Sushilkumar Mishra, AR       |
| <b>Date of Hearing</b>       | <b>11/12/2020</b>                 |
| <b>Date of Pronouncement</b> | <b>05/01/2021</b>                 |
|                              |                                   |

**आदेश / ORDER**

**PER MAHAVIR SINGH (VP):**

By virtue of this Miscellaneous Application, the assessee on a limited aspect seeks to recall the order of this Tribunal on one particular issue alone with regard to upholding the disallowance made u/s.40(a)(ia) of the Act on year end provision for expenses on the ground that while rendering the decision, this Tribunal had not followed the decision rendered by this Tribunal in the case of Mahindra and Mahindra Ltd., in ITA No.7382/Mum/2017 dated 19/06/2020 for the very same issue which

was decided in favour of the assessee. It was pointed out by the Id. Senior Counsel for the assessee that this decision of Mahindra and Mahindra was indeed relied before the Tribunal and is also part of the record, which was not considered by this Tribunal while rendering the decision.

2. We have gone through the records and heard the submissions of both the parties and we find that the decision of Mahindra and Mahindra Ltd., is already on record vide order dated 19/06/2020 for A.Yrs 2011-12, 2012-13 and 2013-14.

3. We find that this Tribunal while disposing off the appeal in ITA No.3214/Mum/2014 for A.Y.2009-10 dated 10/09/2020 in para 14 & 15 of its order had rejected the contentions of the assessee and upheld the disallowance made u/s.40(a)(ia) of the Act. But we find that a contrary view has already been taken by this Tribunal in the case of Mahindra and Mahindra vide its order dated 19/06/2020. Non-following of the said order constitute mistake apparent on record within the meaning of Section 254(2) of the Act. Hence, in order to maintain judicial consistency, we deem it fit and appropriate to modify para 15 of our order dated 10/09/2020 in the case of the assessee before us as under:-

*“15. We find that the issue in dispute has already been addressed by the Co-ordinate Bench of this Tribunal in the case of Mahindra & Mahindra Ltd., in ITA No.7382/Mum/2017 dated 19/06/2020 wherein the very same issue had been disposed off as under:-*

*7.2. We find that the ld. AO had observed that the expenses are liable to TDS and are squarely covered by the provisions of Chapter XVII-B of the Income-tax Act, 1961. The assessee's contention that it is not crediting party account during the year which would have made the payments liable to TDS is not tenable on the ground that once the assessee is debiting profit and loss account, it automatically is crediting the party account based on matching principle. The accounting principles*

*cannot be left to the judgement of the assessee as to what entries it passes in his own books to suit its taxability or otherwise.*

*7.3. This action of the ld. AO was upheld by the ld. DRP. We find that this Tribunal in assessee's own case for the A.Y.2009-10 vide para 23 had deleted the disallowance made u/s.40(a)(ia) of the Act. The copy of the order was placed on record by the ld. AR. The ld. DR submitted that the assessee has not submitted the break-up of Rs.33.78 Crores being year end provision made for various expenses. But we find that the entire break-up had been duly submitted by the assessee before the lower authorities and the same are enclosed in page 234 of the paper book and the figures mentioned thereon are fairly ascertainable and are not mere adhoc provisions. Respectfully following the said decision of the Tribunal in assessee's own case for A.Y.2009-10, we have no hesitation in directing the ld. AO to delete the disallowance u/s. 40(a)(ia) in the sum of Rs.33,78,54,976/-. Accordingly, the concise ground No.5 raised by the assessee is allowed."*

4. Respectfully following the said decision, we direct the ld. AO to delete the disallowance u/s.40(a)(ia) of the Act. Accordingly, the grounds taken by the assessee in this regard are allowed.

5. Para 16 of the order dated 10/09/2020 also stands modified as a consequential effect for A.Y.2010-11 on the same issue.

6. All the other contents of the order dated 10/09/2020 shall remain unchanged.

**7. In the result, Miscellaneous Application of the assessee is allowed.**

Order pronounced on 05/01/2021 by way of proper mentioning in the notice board.

**Sd/-**  
**(M.BALAGANESH)**  
**ACCOUNTANT MEMBER**

**Sd/-**  
**(MAHAVIR SINGH)**  
**VICE PRESIDENT**

Mumbai; Dated 05/01/2021  
KARUNA, sr.ps

**Copy of the Order forwarded to :**

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

//True Copy//

BY ORDER,

(Asstt. Registrar)  
ITAT, Mumbai

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