

**IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH 'SMC-2', NEW DELHI**

BEFORE SHRI J. SUDHAKAR REDDY, ACCOUNTANT MEMBER

**ITA No. 1099/Del/2014
AY: 2010-11**

Dy.CIT, Circle 51(1)
New Delhi

vs. Times Internet Limited
1, World Tower Opp. To Golf Course
DLF Phase V
Gurgaon 122 002

PAN: AABCT 1559 M

(Appellant)

(Respondent)

Appellant by : Sh.Gautam Jain, Adv.
Respondent by : Sh. Raman Kant Garg, Sr.D.R.

ORDER

This is an appeal filed by the Revenue directed against the order of the Ld.CIT(A)-XXX, New Delhi order dt. 18.12.2013 pertaining to the A.Y. 2010-11.

2. The facts are brought out at para 1 of the Ld.ACIT passed u/s 201(1) r.w.s. 201(1A) of the Income Tax Act, 1961 (the Act), which is extracted for ready reference.

“The assessee M/s Times Internet Ltd. (hereinafter referred to as ‘ TIL’) is a wholly owned subsidiary of Bennette Colman & Co.Ltd., the publishers of the Times of India and the Economic Times etc. The TIL is engaged in the business of providing information technology services, internet related services and systems and also owns, operate and host the web portal www.indiatimes.com and provides comprehensive information related to news, entertainment, sports,

health and astrology, life style etc. Besides, e-Commerce in the form of auction of air line tickets and sale of products on line such as books, music, gifts, jewellery etc. are also other major revenue earners of the assessee company.”

2.1. When a customer avails the services of the assessee company, the charges are paid through the credit card by the customer by using Payment Gateway Services of Banks, out of the total transactions value and the balance is remitted to the assessee company. The issue that arises before me, is whether, the amount so retained by the banks, can be termed as “commission”, for the purpose of S.194 H of the Act. The A.O. passed an order u/s 201(1) r.w.s. 201(1A) of the Act for the F.Y. 2009-10 on 22.3.2012 wherein he held that the amount so retained by the bankers, during the course of payments to TIL, by way of Payment Gateway Services is nothing but commission which attracts the provisions of S.194H of the Act. Since the assessee has not deducted tax at source, at the prescribed rates, in accordance with provisions of S.194H of the Act, it was held that the assessee is an assessee in default. On appeal the First Appellate Authority followed the decision of the Mumbai Bench of the Tribunal in the case of ITO vs. Jet Air Ways (India) Ltd. 36 Taxmann 379 (Mumbai) and Tribunal decision in the case of DCIT vs. Vahmagna Retail Pvt.Ltd. ITAT Hyderabad and held that there is no principal and agent relationship between the assessee and the bank and the amounts to the extent retained by the bank, is not commission, but bank charges and not subject to S.194H. He reversed the order of the A.O.

3. Aggrieved, the Revenue is in appeal before us on the following grounds.

4. I have heard Sh. Gautam Jain, the Ld.Counsel for the assessee and Sh. Raman Kant Garg, Ld.Sr.D.R. on behalf of the Revenue.

5. The issue now stands covered in favour of the assessee by the judgement of the Jurisdictional High Court in the case of CIT-II vs. JDS

Apparels Pvt.Ltd. (2015) 53 Taxman.com 139 (Delhi), wherein it was held as follows.

“Section 194 H would not be attracted in present case, as bank 'H' was not acting as an agent of the assessee. Once the payment was made by said bank, it was received and credited to the account of the assessee. In the process, a small fee was deducted by the acquiring bank, i.e. said bank, whose swiping machine was used. On swiping the credit card on the swiping machine, the customer whose credit card was used, got access to the internet gateway of the acquiring bank resulting in the realisation of payment. Subsequently, the acquiring bank realised and recovered the payment from the bank which had issued the credit card. 'H' had not undertaken any act on "behalf" of the assessee. The relationship between 'H' and the assessee was not of an agency but that of two independent parties on principal to principal basis. 'H' was also acting and equally protecting the interest of the customer whose credit card was used in the swiping machines. It is noticeable that the bank in question or their employees were not present at the spot and were not associated with buying or selling of goods as such. Upon swiping the card, the bank made payment of the bill amount to the assessee. Thus, the assessee received the sale consideration. In turn, the bank in question had to collect the amount from the bankers of the credit card holder. The bank had taken the risk and also remained out of pocket for sometime as there would be a time gap between the date of payment and recovery of the amount paid.

The amount retained by the bank is a fee charged by them for having rendered the banking services and cannot be treated as a commission or brokerage.”

6. Respectfully following the Jurisdictional High Court judgement, I uphold the order of the First Appellate Authority and dismiss this appeal by the Revenue.

7. In the result the appeal of the Revenue is dismissed.

Order pronounced in the Open Court on 09th October, 2015.

Sd/-

(J. SUDHAKAR REDDY)
ACCOUNTANT MEMBER

Dated: the 09th October, 2015

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Copy of the Order forwarded to:

1. Appellant;
2. Respondent;
3. CIT;
4. CIT(A);
5. DR;
6. Guard File

By Order

Asst. Registrar, ITAT