

**IN THE INCOME TAX APPELLATE TRIBUNAL
(DELHI BENCH 'C' : NEW DELHI)**

**BEFORE SHRI B.P. JAIN, ACCOUNTANT MEMBER
and
SHRI KULDIP SINGH, JUDICIAL MEMBER**

**ITA No.6471/Del./2015
(ASSESSMENT YEAR : 2012-13)**

DCIT, Circle 19 (1), vs. M/s. Om Pizza & Eats India Pvt.Ltd.,
New Delhi. Shop No.40, 41, & 42,
West Gate Mall,
3rd Floor, Rajouri Garden,
New Delhi - 110 027.

(PAN : AAACO7685C)

(APPELLANT)

(RESPONDENT)

ASSESSEE BY : None

REVENUE BY : Shri Arun Kumar Yadav, Senior DR

Date of Hearing : 30.08.2017

Date of Order : 18.09.2017

ORDER

PER KULDIP SINGH, JUDICIAL MEMBER :

Appellant, Deputy Commissioner of Income-tax, Circle 19 (1), New Delhi (hereinafter referred to as 'the Revenue'), by filing the present appeal sought to set aside the impugned order dated 28.09.2015 passed by the Commissioner of Income-tax (Appeals)-7, New Delhi, for the Assessment Years 2012-13 on the grounds inter alia that :-

“On the facts and the circumstances of the case, the Ld.CIT(A) erred in law in deleting the addition of Rs.44,81,395/- treating the Notification No.56/2012 dated 31.12.2012 effective from 01.01.2013 for the deduction of tax payment to Indian Bank under the Income-tax Act, 1961 as merely of clarificatory in nature.”

2. Briefly stated the facts necessary for adjudication of the controversy at hand are : During the scrutiny proceedings, Assessing Officer noticed that out of total charges of Rs.44,81,395/-, assessee paid commission without deducting TDS on the same. Assessee was called upon to explain as to why the amount of Rs.44,81,395/- claimed as expenses be not disallowed. Assessee claimed the said amount not as commission. Being dissatisfied with the explanation furnished by the assessee, AO proceeded to hold that the assessee company was duty bound to deduct TDS under section 194H of the Income-tax Act, 1961 (for short ‘the Act’) qua payment of commission of Rs.44,81,395/- to the bank and thereby failed to comply with the provisions u/s 40(a)(ia) of the Act. Consequently, the AO after disallowing the amount of Rs.44,81,395/- added the same back to the income of the assessee u/s 40(a)(ia) of the Act.

3. Assessee carried the matter by way of filing appeal before the Id. CIT (A) who has deleted the disallowance of Rs.44,81,395/- by allowing the appeal. Feeling aggrieved, the Revenue has come

up before the Tribunal by way of challenging the impugned order passed by Id. CIT (A).

4. Assessee has not preferred to put in appearance despite issuance of the notice and consequently, we proceeded to decide the present appeal with the assistance of the Id. DR as well as on the basis of documents available on the file.

5. We have heard the Id. Departmental Representative for the revenue to the appeal, gone through the documents relied upon and orders passed by the revenue authorities below in the light of the facts and circumstances of the case.

6. Undisputedly, the AO disallowed the expenses claimed by the assessee to the tune of Rs.44,81,395/- by invoking Notification No.56/2012-Non deduction of TDS on certain cases issued by the CBDT vide F.No.275/53/2012-IT(B)/SO 3069(E) dated 31.12.2012. This is also not in dispute that this Notification is operative w.e.f. 01.01.2013 whereas present appeal qua AY 2012-13.

7. Keeping in view the aforesaid undisputed position of law as per Notification No.56/2012, CIT (A) proceeded to delete the addition made by the AO by relying upon the decision rendered by *ITAT, Mumbai in case of Kotak Securities Limited vs. DCIT*.

8. Assessee in its submissions made before the Id. CIT (A) also relied upon the judgment of Hon'ble Delhi High Court in case cited as *CIT vs. JDS Apparels Private Limited* passed in ITA No.608/2014 dated 18.11.2014 wherein it is held by Hon'ble High Court that charges deducted by Bank for use of Swipe Machines for sales through credit cards is not commission and hence TDS is not deductible and as such, section 194H is not applicable.

9. In view of what has been discussed above and following the decision rendered by Hon'ble Delhi High Court in case cited as *CIT vs. JDS Apparels Private Limited* (supra), we are of the considered view that the assessee was not required to deduct TDS on credit card commission and services charges which is outside the purview of section 194H. Hence, we find no illegality or perversity in the impugned order and consequently present appeal filed by the Revenue is hereby dismissed.

Order pronounced in open court on this 18th day of September, 2017.

Sd/-
(B.P. JAIN)
ACCOUNTANT MEMBER

sd/-
(KULDIP SINGH)
JUDICIAL MEMBER

Dated the 18th day of September, 2017
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Copy forwarded to:

- 1.Appellant
- 2.Respondent
- 3.CIT
- 4.CIT(A)-7, New Delhi.
- 5.CIT(ITAT), New Delhi.

AR, ITAT
NEW DELHI.