

IN THE INCOME TAX APPELLATE TRIBUNAL  
DELHI BENCH 'G': NEW DELHI

BEFORE SHRI G.D. AGRAWAL, VICE PRESIDENT AND  
MS. SUCHITRA KAMBLE, JUDICIAL MEMBER

ITA No.4226/Del/2014  
Assessment Year : 2011-12

Deputy Commissioner of  
Income Tax,  
Circle-51(1),  
New Delhi.

(Appellant)

Vs. M/s Spice Jet Limited,  
319, Udyog Vihar,  
Phase-IV,  
Gurgaon,  
Haryana.  
PAN : AACCR1459F.  
(Respondent)

Appellant by : Shri S.S. Rana, CIT-DR.  
Respondent by : Shri Tarandeep Singh, CA.

Date of hearing : 16.04.2019  
Date of pronouncement : 22.04.2019

ORDER

PER G.D. AGRAWAL, VICE PRESIDENT :-

This appeal by the Revenue for the assessment year 2011-12 is directed against the order of learned CIT(A)-XXX, New Delhi dated 9<sup>th</sup> May, 2014.

2. The Revenue has raised the following grounds :-

*"1. On the facts and in the circumstances of the case as well as in law, the Id.CIT(A) has erred in holding that Passenger Service Fee (PSF) paid by the appellant on behalf of its customers does not attract the provisions of Section 194J of the IT Act, 1961 whereas, the Clarification dated 30-06-2008 issued by the CBDT clearly states that the receipts on account of PSF (Security Component) are taxable as income in the hands of the Airport Operators and it shall be the responsibility of the Airport Operators to*

*account for the Tax Deducted at Source, if any, by the Airlines from the payments on account of PSF.*

*2. On the facts and in the circumstances of the case as well as in law, the Id.CIT(A) has erred in holding that the amounts retained by various banks for credit card commission do not attract the provisions of Section 194H of the Act as the CBDT Notification No.56/2012 dated 31-12-2012 exempting deduction of tax from credit card commission came into force w.e.f. 01-01-2013 and, therefore, the deduction of tax at source was required to be made for the period before 01-01-2013."*

3. We have heard the arguments of both the sides and perused the material placed before us. We find that both the above grounds are squarely covered in favour of the assessee by the decision of ITAT in assessee's own case for assessment year 2012-13 vide ITA No.6103/Del/2015. With regard to ground No.1, after detailed discussion, the ITAT concluded as under :-

*"5.6 From the above decided precedents, it is clear that the issue in dispute is now no more res integra. In the case of Jet Airways (supra) it was claimed by the department that payment of PSF attracted TDS liability u/s 194-I of the Act and in the instant case it is held by the AO that payment of PSF attracted TDS liability u/s 194J of the Act. However, this too, in our considered view would not make any difference. As is clear from the findings recorded by the Coordinate Bench in the case of Jet Airways (supra) which have been upheld by the Hon'ble Bombay High Court, PSF cannot be considered to be a payment made by the assessee airline. PSF is a payment made by the passenger which is only routed through the assessee airline. It is undisputed that the amount handed over by the assessee airline to the Airport Operators has also not been claimed as expenditure by the assessee in its books of account. The Hon'ble Bombay High Court has further held that PSF is a statutory levy and the assessee airline is only acting as a conduit between the embarking passengers and the Central Government Agency. Clearly therefore, even the provisions of section 194J of the Act would not apply. Respectfully following decision of Jet*

*Airways (supra) it is held that assessee was not required to deduct TDS u/s 194J on payment of PSF.”*

4. Respectfully following the above decision of ITAT in assessee's own case, we uphold the order of learned CIT(A) on this point and reject ground No.1 of the Revenue's appeal.

5. With regard to ground No.2, the ITAT held as under :-

*“6.4 We have carefully considered the facts of the case and the submissions made by the rival parties. We find that the issue in dispute stands fully covered by the decision of the Hon'ble Jurisdictional High Court in the case of JDS Apparel (supra) wherein the Hon'ble High court has held as under :-*

*“15. Applying the above cited case law to the factual matrix of the present case, we feel that Section 194H of the Act would not be attracted. HDFC was not acting as an agent of the respondent-assessee. Once the payment was made by HDFC, it was received and credited to the account of the respondent-assessee. In the process, a small fee was deducted by the acquiring bank, i.e. the 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. HDFC had not undertaken any act on "behalf" of the respondent-assessee. The relationship between HDFC and the respondent-assessee was not of an agency but that of two independent parties on principal to principal basis. HDFC 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 respondent-assessee. Thus, the respondent 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.*

*16. 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 paid in course of use of any services by a person acting on behalf of another for buying or selling of goods. The intention of the legislature is to include and treat commission or brokerage paid when a third person interacts between the seller and the buyer as an agent and thereby renders services in the course of buying and/or selling of goods. This happens when there is a middleman or an agent who interacts on behalf of one of the parties, helps the buyer/seller to meet, or participates in the negotiations or transactions resulting in the contract for buying and selling of goods. Thus, the requirement of an agent and principal relationship. This is the exact purport and the rationale behind the provision. The bank in question is not concerned with buying or selling of goods or even with the reason and cause as to why the card was swiped. It is not bothered or concerned with the quality, price, nature, quantum etc. of the goods bought/sold. The bank merely provides banking services in the form of payment and subsequently collects the payment. The amount punched in the swiping machine is credited to the account of the retailer by the acquiring bank, i.e. HDFC in this case, after retaining a small portion of the same as their charges. The banking services cannot be covered and treated as services rendered by an agent for the principal during the course of buying or selling of goods as the banker does not render any service in the nature of agency.”*

*6.5 The issue involved in present appeal being identical to that decided by the Hon'ble Jurisdictional High Court, respectfully following the verdict of M/s JDS Apparel (supra) it is held that the assessee was not required to deduct TDS on charges retained by Bank / credit card agencies out of the sale consideration of tickets booked through credit / debit cards. It is held that provision of section 194H are not attracted. As a result, grounds 2 to 2.3 are dismissed.”*

6. Since the facts as well as the legal position are identical, the above finding of the ITAT would be squarely applicable to the year under appeal. We, therefore, respectfully following the same, uphold the order of the learned CIT(A) on this point and reject ground No.2 of the Revenue's appeal.

7. In the result, the appeal of the Revenue is dismissed.  
Decision pronounced in the open Court on 22.04.2019.

Sd/-  
**(SUCHITRA KAMBLE)**  
JUDICIAL MEMBER

Sd/-  
**(G.D. AGRAWAL)**  
VICE PRESIDENT

VK.

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1. Appellant : **Deputy Commissioner of Income Tax,  
Circle-51(1), New Delhi.**
2. Respondent : **M/s Spice Jet Limited,  
319, Udyog Vihar, Phase-IV, Gurgaon, Haryana.**
3. CIT
4. CIT(A)
5. DR, ITAT

Assistant Registrar