आयकर अपीलीय अधिकरण "F" न्यायपीठ मुंबई में।

IN THE INCOME TAX APPELLATE TRIBUNAL "F" BENCH, MUMBAI

BEFORE SHRI C.N PRASAD, JUDICIAL MEMBER
AND SHRI RAMIT KOCHAR, ACCOUNTANT MEMBER

आयकर अपील सं./I.T.A. No.6705/Mum/2016

(**निर्धारण वर्ष /** Assessment Year: 2012-13)

ACIT-9(3)(2), 418, 4th Floor, Aayakar Bhavan, Mumbai-400020	**बनाम**/ v.	M/s. Future Value Retail Ltd., Knowledge House, Shyam Nagar, Off Jogeshwari Vikhroli Link Road, Jogeshwari (E), Mumbai-400060
स्थायी लेखा सं./PAN: AAECP3041P		
(अपीलार्थी **/Appellant**)	..	(प्रत्यर्थी / **Respondent**)

Revenue by:	Shri. Sushil Kumar Poddar (DR)
Assessee by:	Ms. Dinkle Hariya

सुनवाई की तारीख **/Date of Hearing : 12.06.2019**

घोषणा की तारीख **/Date of Pronouncement : 04.07.2019**

आदेश / ORDER

PER RAMIT KOCHAR, Accountant Member:

This appeal, filed by Revenue, being ITA No. 6705/Mum/2016, is directed against appellate order dated 23.08.2016, passed by learned Commissioner of Income Tax (Appeals)-16,Mumbai (hereinafter called "the CIT(A)") in ITA no. CIT(A)/ I.T.305/DCIT-9(3)(2)/2015-16, for assessment year 2012-13, the appellate proceedings had arisen before learned CIT(A) from assessment order dated 29.03.2015 passed by learned Assessing Officer (hereinafter called "the AO") u/s 143(3) of the Income-tax Act, 1961 (hereinafter called "the Act") for AY 2012-13.

2. The grounds of appeal raised by Revenue in memo of appeal filed with Income-Tax Appellate Tribunal, Mumbai (hereinafter called "the tribunal") read as under:-

> *"i) "Whether on the facts and in the circumstances of the case and in law, the Ld. CIT(A) erred in directing the Assessing Officer to recompute the disallowance u/s.14A read with Rule 8D by taking into consideration the actual indirect expenses, without appreciating the fact that the AO has properly recorded his satisfaction for invoking the provisions of rule 8D and therefore since Rule 8D is invoked, the disallowance has to be worked out as per the formula prescribed therein and there is no scope for any deviation thereform?"*
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> *ii) "Whether on the facts and in the circumstances of the case and in law, the learned CIT(A) erred in deleting the disallowance of Rs.34,62,22,786/- under section 40(a)(ia) of the IT Act on account of not deducting the TDS on credit card commission charged by bank on credit card transactions?"*
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> *iii) "Whether on the facts and in the circumstances of the case and in law, the learned CIT(A) erred in holding that there is no relationship of a Principal and Commission Agent between the assessee and the acquired bank, without appreciating the fact that the acquirer bank, without appreciating the fact that the acquirer bank acts as a conduit or middleman between the assessee and the issuing bank for credit card processing services*
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> *iv) Whether on the facts and in the circumstances of the case and in law, the learned CIT(A) erred in holding that there must be a Principal and Commission Agent relationship between the assessee and acquirer bank to be a commission u/s.194H, by relying on the decision of the Hon'ble ITAT, Mumbai in the case of SKOL Breweries Ltd Vs. ACIT(ITA No. 6175/Mum/2011), without appreciating that in the case cited supra, it was held that Section 194H talks about the payment to a recipient which is the income by the Hon'ble ITAT the way of commission or brokerage and no finding has been given therein by the Hon'ble ITAT that the relationship between the payer and the payee must necessarily be of a principal and agent, for the applicability of Section 194H?"*

v) "Whether on the facts and in the circumstances of the case and in law, the learned CIT(A) erred in holding that the payment made to the bank for credit card services is bank charges and not commission and therefore the provisions of Section 194H are not applicable to such payments, without appreciating that in the assessee's case the bank charges has the character of commission?"

vi) "Whether on the facts and in the circumstances of the case and in law, the learned CIT(A) erred in holding that the payment made by the assessee to the acquirer bank as credit commission is not commission within the meaning the Section 194H and thus not liable for tax deduction at source, without appreciating that commission of any kind is covered within the scope of Section 194H and no exception has been provided therein?"

vii) "Whether on the facts and in the circumstances of the case and in law, the learned CIT(A) erred in not treating payment for credit card processing services as 'fees for technical services' u/s. 194J and thus not liable for deduction of tax at source relying on the Hon'ble Madras High Court's decision in the case of Skycell Communications Ltd. Vs. DCIT[2001] 251 ITR 53 (Mad) without appreciating the distinguishing fact that the system of credit card processing is not a simple and standard facility provided by the acquirer bank to all those willing to avail it for a fee?"

viii) Whether on the facts and in the circumstances of the case and in law. the learned CIT(A) erred in holding that if any technology or machine is developed by human beings and put to operation on out-mode without involving much human intervention, then it cannot be treated as a technical service u/s. 194J of the Act, without appreciating that such systems necessarily involve human intervention?"

ix) "Whether on the facts and in the circumstances of the case and in law, the learned CIT(A) erred in deleting the disallowance of Rs.6,76,46,117/- under section 40(a)(ia) of the IT Act on account of not deducting the TDS on cash pick up services?"

The appellant prays that the order of the CIT(A) on the above ground be set aside and that of the ACIT 9(3)(2) be restored.

The appellate craves leave to amend or alter any grounds or add a new ground which may be necessary."

3. The brief facts of the case are that the assessee is engaged in the business of readymade garments and other products.

3.2 During the course of assessment proceeding conducted by the AO u/s 143(3) read with Section 143(2) of the 1961 Act, on perusal of P&L account of the assessee for the year under consideration, it was observed by the AO that the assessee had claimed credit card charges of Rs. 34,36,22,786/- under head 'Other expenses' and on which the assessee had not deducted Income-tax at source under the provisions of Chapter XVII-B of the 1961 Act keeping in view provisions of Section 194H of the 1961 Act . The AO was of the view that since assessee has not deducted income-tax at source on these payments made towards credit card charges u/s 194H of the 1961 Act , thus these credit card charges to the tune of Rs. 34,36,22,786/- cannot be allowed keeping in view provisions of Section 40(a)(ia) r.w.s. 194H of the 1961 Act , vide assessment order dated 29.03.2015 passed u/s 143(3) of the 1961 Act, by holding as under:-

"*4.2 The submission made by the assessee has been carefully considered but not found acceptable. It should not be out of place here to understand the process of the online transactions / trading popularly known as 'e-commerce' / 'online shopping'. The online fund transfer system is a complex system and it Involve lot of players and advanced technology. Credit card transaction happens in a two- stage process consisting of authorization and settlement as involved as the system sounds, obtaining an authorization for a transaction is just the first step. Authorizations must be settled before sales can be deposited into business's bank account. This is important because different fees are incurred at each stage, and a failure (or partial failure) in either step can result in increased costs and/or credit card sales not being deposited. The key players Involved in authorization and settlement are:*

- *Cardholder- A cardholder is someone who obtains a bankcard (credit or debit), from a card Issuing bank. They*

then present that card to merchants as payment for goods or services.

- *Merchant - Technically, a merchant is any business engaged in the sale of goods or services. But, only merchants that accept bankcards as a form of payment are pertinent to our explanation. So with that said, a merchant is any business that maintains a merchant account that enables them to accept credit or debit cards as payment from customers (cardholders) for goods or services provided.*

- *Acquiring Bank (Merchant Bank) - An acquiring bank Is a registered member of the card associations (Visa and MasterCard), An acquiring bank is often referred to as a merchant bank because they contract with merchants to create and maintain accounts that allow the business to accept credit and debit cards, (i.e. merchant accounts). Acquiring banks provide merchants with equipment and software to accept cards, promotional materials, customer service and other necessary aspects involved in card acceptance. The acquiring bank also deposits funds from credit card sales into a merchant's account.*

Interestingly enough, many merchants don't recognize their acquiring bank as the primary provider of their merchant account. Acquiring banks are playing an increasingly hands-off role as the bankcard system evolves. Acquiring banks often enlist the help of third-party independent sales organizations (ISO) and membership service providers (MSP) to conduct and monitor the day-to-day activities of their merchant accounts.

- *Issuing Bank (Cardholder Bank) - An issuing bank issues credit cards to consumers. The issuing bank is also a member of the card associations (Visa and MasterCard). Issuing banks pay acquiring banks for purchases that their cardholders make. It is then the cardholder's responsibility to repay their issuing bank under the terms of their credit card agreement.*

- *Card Associations (Visa and MasterCard) - Visa and MasterCard aren't banks and they don't issue credit cards or merchant accounts. Instead, they act as a custodian and clearing house for their respective card brand. They also function as the governing body of a community of financial Institutions, ISOs and MSPs that work together in association to support credit card processing and electronic payments. Hence the name, "card associations." The primary responsibilities of the Card Association are to*

govern the members of their associations, Including interchange fees and qualification guidelines, act as the arbiter between Issuing and acquiring banks, maintain and Improve the card network and their brand, and, of course, make a profit. That last one has become even more important now that Visa and MasterCard are public companies. Visa uses their Visanet network to transmit data between association members, and MasterCard uses their Bank net network.

- *ISO/MSP; The entity that solicits merchants on behalf of an Acquiring Bank for payment card acceptance and enables card payments from customers. Acquirer's generally hold responsibility for providing customer service, merchant-level support, merchant-Level compliance with Association rules and underwriting of merchant accounts. (NOTE: to make matters extremely confusing, although the ISO/MSP channel was created by the acquiring banks to penetrate the small-to-medium level merchant market, to assume that dealing with a bank is the best route to "eliminate middlemen" is not a good Idea due to the fact that most banks also act as agents for the acquiring banks). .*

- *Terminal / Payment Gateway: The physical or virtual device used by the merchant to communicate information to the Acquirer's Front-End Network. In the case of a Payment Gateway, It can be defined as an e-commerce application service provider service that authorizes payments for merchants. It is the virtual equivalent of a physical point-of-sale terminal located In most retail outlets. Payment gateways interface with a merchant's billing system and pass that data to a Front-End Authorization Network.*

- *Front-End Network: The platform that the credit card terminal / gateway communicates with when approving a transaction. The front-end is responsible for the authorization and capture portion of a credit card transaction. Additional front-end platform interconnections may be required to support AO1 and debit transactions.*

- *Back-End Network:- The platform that takes captured transactions from the Front-End Network and settles them through the interchange system. The backend generates daily ACH files for merchant settlement. Other functions typically handed on the back-end include chargeback handling, retrieval request and monthly statements.*

4.2.1 The online fund transfer is a Two-Part Process and can be briefly explained as under:-

Processing a payment card transaction involves two stages;

> Authorization, where an electronic request is sent through various parties to either approve or decline the transaction; and Clearing and Settlement, where all parties settle their accounts and get paid.

> Authorization:

1. Cardholder presents payment card as payment at Merchant Point-of-Sale

2. Merchant enters card into a physical Point-of-Sale Terminal or submits a credit card transaction to a Payment Gateway on behalf of a customer via secure connection from a web site, retail location, MOTO center or a wireless device.

3. Payment Gateway receives the secure transaction information and passes it via a secure connection to the Merchant Acquirer's Front-End Processor

4. The Merchant Acquirer's Front-End Processor submits the transaction to the Association Network (a network of financial entities that communicate to manage the processing, clearing and settlement of credit card transactions)

5. The Association Network routes the transaction to the customer's Credit Card issuer.

6. The Credit Card issuer approves or declines the transaction and passes the transaction results back through the Association Network

7. The Association Network relays the transaction results to the Merchant Acquirer's Front-End Processor

8. The Merchant Acquirer's Front-End Processor relays the transaction results back to the Payment Gateway I Point-of-Sale Terminal

9. The Payment Gateway stores the transaction results and sends them to Merchant

10. Merchant receives the authorization response and completes the transaction accordingly

> Merchant Settlement and Funding:

1. Merchant deposits the transaction receipt with the Acquirer via settlement batch

2. Captured authorizations are passed from the Front-End Network to the Back-End Network for Settlement

3. The Back-End Network generates ACH files for merchant settlement and sends them to the Acquiring Bank who funds the Merchant Account

4. The Acquiring Bank submits settlement files to the Issuing Banks for reimbursement via the Interchange Network

5. Issuer posts the transaction to the Cardholder account and sends the Cardholder a monthly statement

6. Cardholder receives statement and pays Issuer

4.2.2 As explained supra, the said transaction is in the nature of the commission for providing the complex services by using the sophisticated professional skills and technology under an agreement. Therefore, the provisions of section 194-H of the Income-tax Act, 1961, are attracted. For the sake of convenience the same is reproduced as under;-

"Any person, not being an individual or a Hindu Undivided family, who is responsible for paying, on or after the 1st day of June, 2001, to a resident, any income by way of commission (not being insurance commission referred to in section 194D) or brokerage, shall, at the time of credit of such income to the account of the payee or at the time of payment of such income In cash or by the issue of a cheque or draft or by any other mode, whichever is earlier, deduct income-tax thereon at the rate of ten per cent,"

4.2.3 In the case of the assessee, the abovementioned Key Players gets full amount from the customer through credit cards and remit the amount to the assessee's account after deducting their commission. This is a different mode of payment in which the assessee is not making any payment but the service provider itself deduct the commission from the amount payable. This mode of payment between the assessee and the Banks is clearly covered by the provisions of section 194H which says that payment "by any other mode". There is no doubt that the Banks provide credit card facilities to the assessee company and for that commission Is charged by them, but there was no bar on the assessee to deduct TDS on such payments / expenses debited in the Profit & Loss Account

Therefore, provisions of section 194H of the Act is clearly attracted to the transactions between the Banks and the assessee for charging commission on providing credit card services. The assessee is liable to deduct tax on the payment of commission (one mode is to send debit note to the concerned Bank after depositing TDS amount to the Government Account), which assessee did not do. According to section 40(a) (ia) of the Act, any payment of commission on which no TDS has been deducted is not allowed as deduction under the head 'Profits & Gains of Business or Profession'.

4.2.4 The AR of the assessee relied upon the order of the Hon'ble ITAT, Jaipur in the case of Gems Paradise Limited v ACIT, order of the Hon'ble ITAT, Hyderabad on the case of DCIT vs. Vah Magna Retail Pvt. Ltd., order of the Hon'ble ITAT, Bangalore in the case of Tata Teleservices Limited v DCIT and order of the Hon'ble ITAT Mumbai in the case of Income Tax Officer (TDS) vs. M/s Jet Airways (India) Limited. However, the above mentioned orders passed by the Hon'ble Tribunals are not binding upon the Assessing Officer, as these orders have not been accepted by the department. On the same issue, appeals are pending at various stages and the issue has not reached to the finality. Keeping in view the .facts mentioned above, the commission on credit cards of Rs. 34,36,22,786/- on which no TDS has been deducted is hereby disallowed u/s 40(a)(ia) of the Income Tax Act."

4. Aggrieved by an assessment order dated 29.03.2015 passed by AO u/s 143(3) of the 1961 Act , the assessee filed first appeal with Ld. CIT(A) who was pleased to delete the additions made by the AO by relying upon decision of Mumbai Tribunal in the case of ITO(TDS) v. Jet Airways (India) Ltd., in ITA no. 7439,7440 & 7441/Mum/2010 vide appellate order dated 17.07.2013 , by holding as under:-

" *6.2.1 Vide this ground the appellant has agitated against disallowance of Rs.34,36,22,786/- u/s.40(1)(ia) for non deduction of tax at source on bank credit card charges. During the course of appellate proceedings a written submission was filed which find place in para 5 of this order. It was submitted by the Appellant that the payments on account of utilization of credit card facility is in the nature of bank charges and not in the nature of commission within the meaning of sec. 194H of the Act.*

6.2.2 I have considered the AO's order, contentions of the appellant and the materials available on record. The Hon'ble ITAT Mumbai in the case of ITO(TDS) v jet Airways (India) Ltd. [IT Appeal Nos. 7439,7440 & 7441 (Mum) 2010] dated 17/07/2013 where proceedings were initiated u/s 201(1)/201(1A) of the Act in connection with the applicability of TDS on the amounts retained by the banks in respect of the air tickets booked through credit cards. The appellant during the course of proceedings stated that the provisions of section 194H of the Act are not applicable on the above mentioned amounts retained by the banks as it was in the nature of discounting in consideration of immediate payment made by the banks to the assessee. However, the AO held that such a payment made for the use of the credit card, internet payment gateway to enable the assessee to collect the payments made by the customers to it for orders placed through facility by the said customers is squarely covered by the definition of "commission or brokerage" given in explanation (i) below the third proviso to section 194H of the Act.

6.2.3 Further, it is also pertinent to mention that identical issue in Appellant's own case under appeal no. CIT(A)-16-Addl.CIT-8(1)/IT-207/2013-14 was there in the previous year pertaining to AY 2011-12 and my Ld. predecessor had allowed the claim of the Appellant vide order dated 09.03.2015. The relevant part of said order are reproduced below:

"The ITAT, Mumbai noted that similar issue has been considered by the Jaipur bench of the Tribunal in the case of Gems Paradise ITA No. 746/JP/20n (AY2008-09) dated 02/02/2012 and the Tribunal held that the provisions of section 194H of the Act are not applicable as the banks make payments to assessee after deducting certain fees as per the terms and conditions in the credit card and it is not a commission but a fee deducted by the banks. The said issue was again considered by the Jaipur Bench of the Tribunal in the case of Bhandari Jewellers ITA No. 745/JP/2011 (AY-2008-09) dated 02/02/2012 wherein it was also held that no TDS is required to be deducted on the fees charged by the banks on credit card transactions, further, Hyderabad Bench of the Tribunal in the case of DCIT v. Vah Magna Retail (P) Ltd. In ITA No,905/Hyd/ 2011 (AY2007-08) dated 10/04/2012 has held that " Even though the definition of the term 'Commission or Brokerage' used in the said section is an inclusive definition , it is clear that liability to make TDS under the said section arises only when a person acts on behalf of another

person. In the case of commission retained by the credit card companies however, it cannot be said that the bank acts on behalf of the merchant establishment or that even the merchant establishment conducts the transaction for the bank. The sale made on the basis of a credit card is clearly a transaction of the merchants establishment only and the credit card company only facilitates the electronic payment, for a certain charge. The commission retained by the credit card company is therefore in the nature of normal bank charges and not in the nature of commission / brokerage for acting on behalf of the merchant establishment. Accordingly , payments made to the banks on account of utilization of credit card facilities would be in the nature of bank charges and not in the nature of commission within the meaning of section 194H of the Act and hence no TDS is required to be deducted u/s 194H of the Act.

Respectfully following the jurisdictional Mumbai ITAT decision as above, the addition made u/s 40(a)(ia) is deleted.

6.2.4 In the instant case, the facts are peri materia same with the facts in appellant's own case for A.Y.2011-12 which had been decided by my ld. predecessor. In view of the foregoing discussion, I have no reason to deviate from the findings given by my ld. Predecessor. Therefore, ground No.2 raised by the appellant is allowed."

5. Aggrieved by appellate order dated 23.08.2016 passed by learned CIT(A), the Revenue has filed an appeal before the tribunal and this issue of disallowance u/s 40(a)(ia) read with Section 194H of the 1961 Act is raised by Revenue in memo of appeal filed with tribunal vide ground number (ii) to (viii). The Ld. CIT-DR opened the argument and fairly submitted before the Bench that this issue is squarely covered by decision of Mumbai-tribunal in the case of Jet Airways India Ltd.(supra). The Ld. Counsel for the assessee also submitted that the issue is covered by decision of coordinate benches of the tribunal in the case of Jet Airways India Ltd.(supra). Further, it is also brought to our notices by learned counsel for the assessee that Mumbai-tribunal in assessee's own case for AY 2011-12 in ITA no. 3968/Mum/2015 AY 2011-12 vide appellate order dated 31.05.2017 has now adjudicated this issue in favour of the assessee.The said

appellate order is filed by the assessee which is placed in the file. Our attention was also drawn by learned counsel for the assessee to Notification No. 56/2012 (F.No. 275/53/2012-IT(B), dated 31.12.2012, wherein Central Government has notified that no deduction of income-tax at source under Chapter XVII of the 1961 Act shall be made , inter-alia, on credit card or debit card commission for transactions between the merchant establishment and acquirer bank in case such payment is made by a person to a bank listed in Second Schedule to Reserve Bank of India Act, 1934 , excluding a foreign bank. The aforesaid notification has come into force from 01.01.2013.The learned CIT-DR did not brought to notice of the Bench any contrary decision of Hon'ble Superior Courts or any distinguishing feature/facts in the impugned assessment year under consideration vis-a-vis facts in immediately preceding assessment year 2011-12 which is adjudicated by tribunal in favour of the assessee.

6. We have considered rival contentions and perused the material on record including cited case laws. We have observed that assessee is engaged in the business of Readymade garments and other products. We have observed that the assessee has debited to its P&L account an amount of Rs. 34,36,22,786/- towards credit card charges which have been deducted by Banks on credit card transaction. We have observed that assessee has not deducted any income-tax at source on these credit card charges under Chapter XVII-B of the 1961 Act by invoking provisions of Section 194H . We have observed that the AO had invoked provisions of section 194H r.w.s. 40(a)(ia) of the 1961 Act and consequently disallowances were made of these credit card charges claimed by the assessee. We have observed that Ld. CIT(A) deleted the additions made by the AO towards disallowance of credit card charges by relying on the decision of coordinate benches of tribunal in the case of Jet Airways India Ltd. (supra) and also by following the decision of learned CIT(A) in assessee's own case for AY 2011-12. Presently , we are concerned with AY 2012-13. We have also observed that

Coordinate Benches of Mumbai-tribunal in assessee's own case for immediately preceding year i.e. AY 2011-12 has decided this issue in favour of the assessee and deleted additions by holding that no income-tax was deductible at source on credit card charges u/s 194H of the 1961 Act and additions as were made by AO by invoking provisions of Section 40(a)(ia) read with Section 194H stood deleted and the appellate order passed by Ld. CIT(A) stood confirmed/upheld by Mumbai-tribunal in assessee's own case in ITA no. 3968/Mum/2015 vide orders dated 31.05.2017 for AY 2011-12, by holding as under:-

> *" 4. In so far as the first issue is concerned, the Assessing Officer noted that assessee had debited an expenditure of Rs.24,64,25,637/- in the P&L Account on account of credit card charges. On being asked to explain, assessee explained that it is engaged in the business of sale of readymade garments and other products and it receives payments from customers through credit cards. The aforesaid expenditure reflects the charges paid to the banks for collecting payments and is on account of service fees/ discount/ merchant discount rate/ commission, etc. The Assessing Officer was of the view that such charges are in the nature of 'commission', for which the requisite tax is required to be deducted at source under section 194H of the Act. Since the assessee company has not deducted the requisite tax at source, the expenditure was liable to be disallowed under section 40(a)(ia) of the Act. Hence, a disallowance of Rs.24,64,25,637/-/- The CIT(A) has since set-aside the disallowance by making the following discussion:-*
>
> > *"3.2.11 The AO's order, the contentions of the appellant and the materials on record have been considered. In the Mumbai ITAT decision in the ITO(TDS) v Jet Airways (India) Ld. [IT Appeal Nos. 7439,7440 & 7441 (Mum) 2010] dated 17/07/2013, proceedings were initiated u/s 201(1)/201(lA) of the Act in connection with the applicability of TDS on amounts retained by the banks in respect of the air tickets booked through credit cards. The Assessee during the course of proceedings stated that the provisions of section 194H of the Act are not applicable on the above mentioned amounts retained by the banks is in the nature of discounting in*

consideration of immediate payment made by the banks to the assessee. However, the AO held that such a payment made for the use of the credit card, internet payment gateway to enable the assessee to collect the payments made by the customers to it for orders placed through facility by the customers to it for orders placed through facility by the said customers is squarely covered by the definition of "commission or brokerage" given in explanation (i) below the third proviso to section 194H of the Act.

The ITAT, Mumbai noted that similar issue has been considered by the Jaipur bench of the Tribunal in the case of Gems Paradise ITA No. 746/JP/2011 (AY2008-09) dated 02/.02/2012 and the Tribunal held that the provisions of section 194H of the Act are not applicable as the banks make payments to assessee after deducting certain fees as per the terms and conditions in the credit card and it is not a commission but a fee deducted by the banks. The said issue was again considered by the Jaipur Bench of the Tribunal in the case of Bhandari Jewellers ITA No.745/JP/2011 (AY-2008-09) dated 02/02/2012 wherein it was also held that no TDS is required to be deducted on the fees charged by the banks on credit card transactions. Further, Hyderabad Bench of the Tribunal in the case of DCIT v. Vah Magna Retail (P) Ltd. In ITA No.905/Hyd/2011 (AY=2007-08) dated 10/04/2012 has held that "Even though the definition of the term 'Commission or Brokerage' used in the said section is an inclusive definition, it is clear that liability to make TDS under the said section arises only when a person acts on behalf of another person. In the case of commission retained by the credit card companies however, it cannot be said that the bank acts on behalf of the merchant establishment or that even the merchant establishment conducts the transaction for the bank. The sale made on the basis of a credit card is clearly a transaction of the merchants establishment only and the credit card company only facilitates the electronic payment, for a certain charge. The commission retained by the credit card company is therefore in the nature of

normal bank charges and not in the nature of commission/ brokerage for acting on behalf of the merchant establishment. Accordingly, payments made to the banks on account of utilization of credit card facilities would be in the nature of bank charges and not in the nature of commission within the meaning of section 194H of the Act and hence no TDS is required to be deducted u/s 194H of the Act. Respectfully following the jurisdictional Mumbai ITAT decision as above, the addition made u/s 40(a)(ia) is deleted."

5. Before us, it was a common point between the parties that the issue in question is directly covered by the decision of the Mumbai Tribunal in the case of Jet Airways (India) Ltd.(supra),which has been followed by the CIT(A). It was also a common point between the parties that the said decision of the Tribunal continues to hold the field and the same has not been altered by any higher authority. Ostensibly, our co-ordinate bench, in the case of Jet Airways(India) Ltd. (supra) has concluded that credit card charges paid to the collecting banks would not fall within the meaning of the expressions 'commission or brokerage' as understood for the purposes of section 194H of the Act, therefore, no amount of tax is deductible at source on such payments under section 194H of the Act. In this view of the matter, we hereby affirm the decision of the CIT(A) in deleting the impugned addition. Thus, on this aspect Revenue fails."

6.2 We have also noted that Central Government has issued notification number 56/2012 [F.No. 275/53/ 2012-IT(B)] dated 31.12.2012 wherein Central Government has itself stipulated that no deduction of income-tax at source under Chapter XVII of the 1961 Act shall be made , inter-alia, on credit card or debit card commission for transactions between the merchant establishment and acquirer bank in case such payment is made by a person to a bank listed in Second Schedule to Reserve Bank of India Act, 1934 , excluding a foreign bank. The aforesaid notification has come into force from 01.01.2013, which is reproduced hereunder:-

" SECTION 197A OF THE INCOME-TAX ACT, 1961 - DEDUCTION OF TAX AT SOURCE - NO DEDUCTION IN CERTAIN CASES - SPECIFIED PAYMENT UNDER SECTION 197A(1F)

NOTIFICATION NO. 56/2012[F.NO.275/53/2012-IT(B)], DATED 31-12-2012

In exercise of the powers conferred by sub-section (1F) of section 197A of the Income-tax Act, 1961 (43 of 1961), the Central Government hereby notifies that no deduction of tax under Chapter XVII of the said Act shall be made on the payments of the nature specified below, in case such payment is made by a person to a bank listed in the Second Schedule to the Reserve Bank of India Act, 1934 (2 of 1934), excluding a foreign bank, namely:-

(i) bank guarantee commission;

(ii) cash management service charges;

(iii) depository charges on maintenance of DEMAT accounts;

(iv) charges for warehousing services for commodities;

(v) underwriting service charges;

(vi) clearing charges (MICR charges);

(vii) credit card or debit card commission for transaction between the merchant establishment and acquirer bank.

2. This notification shall come into force from the 1st day of January, 2013.

[F. NO. 275/53/2012-IT(B)]

6.2.1. The aforesaid notification issued on 31-12-2012 by Central Government was later superseded by another notification issued on 17.06.2016 , which is reproduced hereunder:

"MINISTRY OF FINANCE
(Department of Revenue)
(CENTRAL BOARD OF DIRECT TAXES)
NOTIFICATION

New Delhi, the Dated: 17th June, 2016
Notification No. 47/2016
INCOME TAX

S.O. 2143(E)*.—In exercise of the powers conferred by sub-section (1F) of section 197A of the Income-tax Act, 1961 (43 of 1961) and in supersession of the notification of the Government of India, Ministry of Finance (Department of Revenue) number S.O. 3069 (E) dated 31st December, 2012, published in the Gazette of India, Extraordinary, Part II, Section 3, Sub-section (ii), the Central Government hereby notifies that no deduction of tax under Chapter XVII of the said Act shall be made on the payments of the nature specified below, in case such payment is made by a person to a bank listed in the Second Schedule to the Reserve Bank of India Act, 1934 (2 of 1934), excluding a foreign bank, or to any payment systems company authorised by the Reserve Bank of India under Sub-section (2) of Section 4 of the Payment and Settlement Systems Act, 2007 (51 of 2007), namely :-*

(i) bank guarantee commission;

(ii) cash management service charges;

(iii) depository charges on maintenance of DEMAT accounts;

(iv) charges for warehousing services for commodities;

(v) underwriting service charges;

(vi) clearing charges (MICR charges) including interchange fee or any other similar charges by whatever name called charged at the time of settlement or for clearing activities under the Payment and Settlement Systems Act, 2007;

(vii) credit card or debit card commission for transaction between merchant establishment and acquirer bank.

2. This notification shall come into force from the date of its publication in the Official Gazette.

[Notification No. 47/2016/ F. No. 275/53/2012 – IT(B)]"

6.3 We have also noted that Delhi-tribunal in ITA no. 5451 to 5456/Del/2015 vide common order dated 31.10.2017 in the case of Addl. CIT(TDS) Jaypee Agra Vikas Limited & Ors. had held that no income-tax is required to be deducted at source under Chapter XVII-B of the 1961 Act on guarantee commissions paid to Indian Banks.

6.4 We have also noted that Hon'ble Delhi High Court in the case of CIT-II v. JDS Apparels Private Limited reported in (2015) 370 ITR

454(Del. HC) vide judgment dated 18.11.2014 has held that no income-tax is required to be deducted at source u/s 194H on credit card commissions paid to bank on payments received from customers who have made purchases through credit card, by holding as under:

> ***"5.*** *As noticed above, the Tribunal has held that Section 194H of the Act is not applicable.*
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> ***6.*** *Section 194H of the Act reads as under:—*
>
> *'Commission or brokerage.*
>
> *194H. Any person, not being an individual or a Hindu undivided family, who is responsible for paying, on or after the 1st day of June, 2001, to a resident, any income by way of commission (not being insurance commission referred to in section 194D) or brokerage, shall, at the time of credit of such income to the account of the payee or at the time of payment of such income in cash or by the issue of a cheque or draft or by any other mode, whichever is earlier, deduct income-tax thereon at the rate of ten per cent :*
>
> *Provided that no deduction shall be made under this section in a case where the amount of such income or, as the case may be, the aggregate of the amounts of such income credited or paid or likely to be credited or paid during the financial year to the account of, or to, the payee, does not exceed five thousand rupees :*
>
> *Provided further that an individual or a Hindu undivided family, whose total sales, gross receipts or turnover from the business or profession carried on by him exceed the monetary limits specified under clause (a) or clause (b) of section 44AB during the financial year immediately preceding the financial year in which such commission or brokerage is credited or paid, shall be liable to deduct income-tax under this section:*
>
> *Provided also that no deduction shall be made under this section on any commission or brokerage payable by Bharat Sanchar Nigam Limited or Mahanagar Telephone Nigam Limited to their public call office franchisees.*
>
> *Explanation. - For the purposes of this section,—*
>
> *(i) "commission or brokerage" includes any payment received or receivable, directly or indirectly, by a person acting on behalf of another person for services rendered (not being professional services) or for any services in the course of buying or selling of goods or in*

relation to any transaction relating to any asset, valuable article or thing, not being securities;

(ii) the expression "professional services" means services rendered by a person in the course of carrying on a legal, medical, engineering or architectural profession or the profession of accountancy or technical consultancy or interior decoration or such other profession as is notified by the Board for the purposes of section 44AA

(iii) the expression "securities" shall have the meaning assigned to it in clause (h) of section 2 of the Securities Contracts (Regulation) Act, 1956 (42 of 1956) ;

(iv) where any income is credited to any account, whether called "Suspense account" or by any other name, in the books of account of the person liable to pay such income, such crediting shall be deemed to be credit of such income to the account of the payee and the provisions of this section shall apply accordingly.'

7. *Section 194H of the Act applies to income by way of commission or brokerage excluding insurance commission referred to in Section 194D of the Act. Tax at source is to be deducted at the time of credit of such income to the account of the payee or at the time of payment of such income in cash or by way of cheque/draft or any other mode. The explanation clause (i) states that for the purpose of this section, commission or brokerage includes any payment received or receivable directly or indirectly by a person acting on behalf of another person, (i) for services rendered, not being in the nature of professional services; (ii) any service rendered in the course of buying or selling of goods; and, (iii) in relation to any transaction relating to any asset, valuable article or thing, not being securities. The expression 'securities' has been defined clause (iii) to the Explanation.*

8. *The High Court of Gujarat in Ahmedabad Stamp Vendors Association v. Union of India [2002] 257 ITR 202/124 Taxman 628 examined clause (i) of the explanation and whether it would be applicable to persons carrying on the business of stamp vendors who purchase stamps from the government treasury and sell them to the public. The Gujarat High Court drew a distinction between a contract of sale and a contract of agency by which an agent is authorized to buy or sell on behalf of the principal. In a case of agency, the agent is not the owner of the property and does not sell the same of his own accord but as per the directions and instructions of the principal, who is the owner of the property. The profit and loss is that of the principal, and what is paid to the agent is the commission or brokerage. The expressions "commission" and "discount" were distinguished after making reference to the definitions in the Black's Law Dictionary. The expression "discount", it was observed, is an allowance or*

deduction made from the gross sale on any account whatsoever. A "deduction" normally represents a reduction in the original price or a debt such as in case of securities (e.g. treasury bills), which are issued below the face value and are redeemed at the face value. Commission, it was held, is a reward paid to an agent as well as to a salesman, executor, trustee, broker or bailee and is calculated as a percentage of the amount of the transaction or on the profit of the principal. It is a fee paid to an agent or an employee for generating a piece of business or performing a service. In such cases, normally, there exists a fiduciary duty, which has to be discharged by the person to whom commission is paid. The following excerpt from the decision of the Bombay High in Harihar Cotton Processing Factory v. CIT [1960] 39 ITR 594 was referred to with approval:—

> *'The expression "commission" has no technical meaning but both in legal and commercial acceptation of the term it has definite signification and is understood as an allowance for service or labour in discharging certain duties such as for instance of an agent, factor, broker or any other person who manages the affairs or undertakes to do some work or renders some service to another. Mostly it is a percentage on price or value of upon the amount of money involved in a transaction. It can be for a variety of services and is of the nature of recompense or reward for such services. "Rebate", on the other hand, is a remission or a payment back and of the nature of a deduction from the gross amount. It is sometimes spoken of as a discount or a draw-back. The dictionary meaning of the term includes a refund to the purchaser of a thing or commodity of a portion of the price paid by him. It is not confined to a transaction of sale and includes any deduction or discount from a stipulated payment, charge or rate. It need not necessarily be taken out in advance of payment but may be handed back to the payer after he has paid the stipulated sum. The repayment need not be immediate. It can be made later and in case of persons who have continuous dealings with one another it is nothing unusual to do so.'*

Importantly, the Gujarat High Court held that there should be an element of agency in all the three situations as envisaged in clause (i) of the Explanation to Section 194H of the Act.

***9.** On appeal before the Supreme Court, the decision was upheld by a short order, which is reported as Ahmedabad Stamp Vendors Association (supra) observing that the stamp vendors*

had purchased stamps in bulk and had received a cash discount. The Supreme Court concurred with the judgment of the High Court that the transaction was of sale and Section 194H of the Act had no application. Thus, holding that a contract of agency did not exist.

10. *Similar view has been expressed by the Kerala High Court in Kerala State Stamp Vendors Association v. Office of the Accountant General [2006] 282 ITR 7/150 Taxman 30 wherein it held:—*

> *"No doubt, payment of commission or brokerage in relation to sale or purchase of goods also would attract deduction of tax at source under section 194H of the Act. However, such situation arises only when there is involvement of services of a third party on payment other than the seller and the purchaser of goods or when the recipient of the benefit markets goods as "agent" of the owner and not as independent dealer."*

11. *Allahabad High Court in Chief Treasury Officer v. Union of India [2013] 355 ITR 484/[2014] 220 Taxman 403/[2013] 37 taxmann.com 391 has held that the words "by a person acting on behalf of another person" imply element of agency and must be present in all such services or transactions in order to fall within the expression "commission" and "brokerage". Reference was made to definition of the term "agent" in the Indian Contract Act and the implication thereof and it was observed that the contract between a principal and an agent primarily is a contract of employment to bring about a legal relationship with a third party and the agent either actually or by law is held to be authorized or employed by the first i.e. the principal, whom he represents. Representative character and derivative authority are distinguishing features of an agent. It was accordingly held that provisions of Sections 194H of the Act were not attracted in the case of stamp vendors.*

12. *The expressions "commission" or "brokerage" are words of general and common parlance used both commercially and by the common man on the street. Clause (i) expressly seeks to define the expression "commission" or "brokerage" but states that it will include payments received or receivable, directly or indirectly by a person acting on behalf of another if they fall in the three categories. A definition may be exhaustive or restrictive of its common meaning or may be an extensive one. Indeed, there are decisions which observe that use of the word "includes" in the clause can show legislative intent to enlarge the meaning of the words or phrases occurring so as to not only mean and comprehend such things as they signify according to their nature and import, but also things which the interpretation clause declares that they shall include. (see CIT v. Taj Mahal*

Hotel [1971] 3 SCC 550). But, this may not always be the case and in certain cases, the expression "includes" has been construed as "equivalent to" and, therefore, given a narrower meaning (see South Gujarat Roofing Tiles Manufacturers Association v. State of Gujarat AIR 1977 SC 90). Thus, the word "includes" can be used in the sense of the word "means". The definition clause in such cases is treated as an exhaustive one (see Reserve Bank of India v. Peerless General Finance and Investment Co. Ltd. [1987] 1 SCC 424). Thus, in a particular context the word "includes" when used, may only mean "comprise of" or "consist of".

13. *It is apparent from the decision of the Supreme Court in the case of Ahmedabad Stamp Vendors Association (supra) that clause (i) of the Explanation to Section 194H of the Act has been read as exhaustive and not as expansive. This is the reason why the Supreme Court in the short order drew distinction between a transaction of sale and a contract of agency and also between discount and commission/brokerage. Otherwise, the expression "any service rendered in the course of buying or selling of goods" possibly would have encompassed and included the "discount" given to the stamp vendors, who render service during the course of buying and selling of goods, i.e. the stamp papers.*

14. *Contention could be raised that payment received or receivable directly or indirectly for any services in course of buying or selling of goods need not arise out of a contract of agency or from a relationship of a principal and an agent. The said contention has to be rejected in view of the aforesaid judgments, which positively hold that the three separate conditions when tax at source is required to be deducted would only apply provided the recipient is acting on behalf of another, i.e. relationship of a principal and an agent exists and not otherwise. This interpretation has been consistent and uniformly applied while interpreting clause (i) of the Explanation to Section 194H of the Act. Appropriate in this regard would be to refer to the decision of the High Court of Delhi in CIT v. Idea Cellular Ltd. [2010] 325 ITR 148/189 Taxman 118 wherein Explanation clause (i) to Section 194H of the Act had come up for consideration and on interpretation it was held that it would apply only if payment was received or receivable directly or indirectly by a person acting on behalf of another person for (i) services rendered (not being professional) and (ii) for any services in the course of buying or selling of goods or in relation to any transaction relating to an asset, valuable article or thing. The judgment records that the counsel for both the parties, i.e. the Revenue and the assessee, had agreed that the element of agency was to be established in all the aforesaid circumstances (see page 156 placitum 9 of the ITR citation). Thus, this contention if raised would not stand judicial scrutiny on the principles of*

consistency and certainty. Even otherwise, the view expounded and accepted is plausible, besides being reasonable.

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.

17. *Another reason why we feel Section 40(a)(ia) 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. Section 40(a)(ia) is a deterrent and a penal provision. It has the effect of penalising the assessee, who has failed to deduct tax at source and acts to the detriment of the assessee's property and other economic interests. It operates and inflicts hardship and deprivation, by disallowing expenditure actually incurred and treating it as disallowed. The Explanation, therefore, requires a strict construction and the principle against doubtful penalization would come into play. The detriment in the present case, as is noticeable, would include initiation of proceedings for imposition of penalty for concealment, as was directed by the Assessing Officer in the present case. The aforesaid principle requires that a person should not be subjected to any sort of detriment unless the obligation is clearly imposed. When the words are equally capable of more than one construction, the one not inflicting the penalty or deterrent may be preferred. In Maxwell's The Interpretation of Statutes, 12th edition (1969) it has been observed:—*

> *"The strict construction of penal statutes seems to manifest itself in four ways: in the requirement of express language for the creation of an offence; in interpreting strictly words setting out the elements of an offence; in requiring the fulfilment to the letter of statutory conditions precedent to the infliction of punishment; and in insisting on the strict observance of technical provisions concerning criminal procedure and jurisdiction."*

18. *The aforesaid principles and interpretations can apply to taxing statutes. In the present case we further feel the said principle should be applied as HDFC would necessarily have acted as per law and it is not the case of the Revenue that the bank had not paid taxes on their income. It is not a case of loss of revenue as such or a case where the recipient did not pay their taxes.*

19. *In these circumstances, we do not find any merit in the present appeal and the same is dismissed."*

6.5 We did not find any reason or justification to deviate from decision taken by co-ordinate Bench of the tribunal vide appellate order dated 31.05.2017 passed by Mumbai-tribunal in assessee's own case for immediately preceding year viz. AY 2011-12 vide ITA no. 3968/Mum/2015 , on this issue as the factual matrix remains the same in this year also. No distinguishing features are brought to our notice by learned CIT-Dr in this year under consideration before us vis-a-vis immediately preceding year. Thus, we decide this issue in favour of the assessee by confirming the appellate order passed by Ld. CIT(A) by Respectfully following the decision of the Mumbai-tribunal in assessee's own case for AY 2011-12 and holds that no income-tax was required to be deducted at source u/s 194H on credit card charges paid by assessee to Banks on payments received from customers on purchases made through credit card. We also note that it is also not the grievance of the Revenue that these credit card charges were paid by assessee to foreign banks or to Indian Banks who are not listed in Second Schedule to RBI Act, 1934 , in contravention of aforesaid notifications issued by Central Government. The learned CIT-DR as well learned counsel for the assessee did not pointed out any other judicial precedent of Hon'ble Superior Courts taking a contrary view. We are guided by the decision of Hon'ble Supreme Court in the case of Radhasoami Satsang v. CIT reported in (1992) 193 ITR 321(SC) so as to maintain consistency and judicial discipline by following preceding year decision of tribunal. The revenue fails on this issue which was raised by Revenue vide Ground no. ii to viii in memo of appeal filed with tribunal. We order accordingly.

7. The next issue raised by Revenue in memo of appeal vide ground number (ix) concerns itself with deletion of disallowance of Rs. 6,76,46,117/- by learned CIT(A) , wherein additions were earlier made by AO to the income of the assessee by invoking provisions of Section 40(a)(ia) of the 1961 Act for non deduction of income-tax at source by

assessee under Chapter XVII-B on payments made by assessee to Banks towards cash pick up charges which stood disallowed by AO . The AO during course of assessment proceedings observed from Tax Audit Report u/s 44AB vide clause 17(f) that tax-auditors have reported an amount of Rs. 6,78,10,485/- as inadmissible u/s 40(a)(ia) of the 1961 Act . The AO observed that the assessee has only disallowed and added back Rs. 1,64,368/- to income of the assessee which are expenses other than cash pick up charges while filing its return of income with Revenue. The AO made additions to the income of the assessee by disallowing cash pick up charges u/s 40(a)(ia) of the 1961 Act for failure to deduct income-tax at source on these payments made by assessee for services received for cash pick up from a contractor, vide assessment order dated 29.03.3015 passed by AO u/s 143(3) of the 1961 Act.

8. The assessee being aggrieved by an assessment framed by AO vide assessment order dated 29.03.2015 passed u/s 143(3) of the 1961 Act, filed first appeal before learned CIT(A). The assessee has claimed before learned CIT(A) that cash pick up facility or cash management services is an standard as well ancillary services offered by Banks to all its customers. It is up-to customers to avail these facilities at certain cost or not. There is no separate contract or agreement with the customers for such facilities. The assessee also submitted before learned CIT(A) that very nature of both these charges viz. charges for cash pick up (or also called as cash management services) and credit card charges are similar and only difference being the manner in which bank have made these facilities available to the customers. The learned CIT(A) after considering the submissions of the assessee was pleased to grant relief to the assessee by following the ratio of decision of Mumbai-tribunal in the case of ITO(TDS) v. Jet Airways(supra), vide appellate order dated 23.08.2016 by holding as under:-

> *" 6.45 I have perused the submissions made by the Appellant in response to Ground No.2 wherein the applicability of TDS on credit card charges has been*

thoroughly discussed. I find that the decision of the Mumbai ITAT Bench in the ITO(TDS) v jet Airways (India) Ld. [IT Appeal Nos. 7439,7440 & 7441 (Mum) 2010] dated 17/07/2013, can be safely applied in case of applicability of TDS on 'Cash Pick Charges', The relevant extract of the said decision is given as follows:

"Proceedings were initiated u/s 201(1)/201(1A) of the Act in connection with the applicability of TDS on amounts retained by the banks in respect of the air tickets booked through credit cards. The Appellant during the course of proceedings stated that the provisions of section 194H of the Act are not applicable on the above mentioned amounts retained by the banks is in the nature of discounting in consideration of immediate payment made by the banks to the assessee. However, the AO held that such a payment made for the use of the credit card, internet payment gateway to enable the assessee to collect the payments made by the customers to it for orders placed through facility by the said customers is squarely covered by the definition of " commission or brokerage "given in explanation (i) below the third proviso to section 194H of the Act. The ITAT, Mumbai noted that similar issue has been considered by the Jaipur bench of the Tribunal in the case of Gems Paradise ITA No. 746/JP/2011 (AY2008-Q9) dated 02/02/2012 and the Tribunal held that the provisions of section 194H of the Act are not applicable as the banks make payments to assessee after deducting certain fees as per the terms and conditions in the credit card and it is not a commission but a fee deducted by the banks. The said issue was again considered by the Jaipur Bench of the Tribunal in the case of Bhandari Jewellers ITA No. 745/JP/2011 (AY-2008-09) dated 02/02/2012 wherein it was also held that no TDS is required to be deducted on the fees charged by the banks on credit card transactions, further, Hyderabad Bench of the Tribunal in the case of DCIT v. Vah Magna Retail (P) Ltd. In ITA No.905/Hyd/2011 (AY=2007-Q8) dated 10/04/2012 has held that " Even though the definition of the term 'Commission or Brokerage' used in the said section is an inclusive definition, it is clear that liability to make TDS under the said section arises only when a person acts on behalf of another person. In the case of commission retained by the credit card companies however, it cannot be said that the bank acts on behalf of the merchant establishment or that even the merchant establishment conducts the transaction for the bank. The sale made on the basis of a credit card is clearly a transaction of the merchants establishment only and the credit card

company only facilitates the electronic payment, for a certain charge. The commission retained by the credit card company is therefore in the nature of normal bank charges and not in the nature of commission/brokerage for acting on behalf of the merchant establishment. Accordingly, payments made to the banks on account of utilization of credit card facilities would be in the nature of bank charges and not in the nature of commission within the meaning of section 194H of the Act and hence no TDS is required to be deducted u/s 194H of the Act."

6.4.6 Further, the Hon'ble ITAT "B" Bench in the matter of M.P. No.07/Bang/2012 (in ITA No.94/Bang/2011) noted that:

"24. The National Litigation Policy expressly stated that the Government must cease to be a compulsive litigant. The philosophy, that the matters should be left to the Courts for ultimate decision is to be discarded and the easy approach that 'let the Court decide', must be eschewed and condemned. The Revenue has not applied its mind in this direction. No attempt is made to reduce the pendency of the litigation by filtering frivolous and vexatious matters from meritorious ones and said cases are withdrawn. The only measure taken for reducing the litigation is, by raising the monetary limit. However, as the same is made prospective, it had no application to the pending cases. Therefore, the said Instruction No. 3/11 do not fulfil the requirement prescribed by the National Litigation Policy. It only partially satisfies the requirement in respect of future litigation. Under the aforesaid instruction, the crucial date is the date of filing of the appeal. It is that date when the tax effect is less than the monetary limit prescribed, the Revenue is precluded from filing such appeals. Though the date of filing of the appeal may be the criteria, that by itself would not provide a rationale sufficient to distinguish between pending cases and cases to be filed in future. The earlier monetary limit was fixed in the year 2005. So it is after six years, the monetary limit is enhanced. If only the instruction No. 3/11 had been made applicable to the pending cases also, as laid down in the National Litigation Policy, the object of the policy would have been fulfilled. One of the ways of giving effect to the said policy is to make that instruction applicable retrospectively to all pending appeals as on the date of the circular. It would substantially serve the object of the policy.

25. It is in this context, the question arises, when the instruction expressly states that benefit of the said policy

is prospective, still can the Courts place a construction on such instruction so as to make it retrospective. In this context, the Apex Court in the case of CCE v. Mysore Electrical Industries Ltd., [2006] 204 ELT 517 (SC) dealing with the question how a beneficial circular is to be construed, has approached this question in the following manner. At paragraph 13 of the judgment, it is stated that the learned Counsel further submitted that the circular being oppressive and against the respondent, has to apply only prospectively and cannot be applied retrospectively. In other words, a beneficial circular has to be applied prospectively. Thus, when the circular is against the assessee they have a right to claim the enforcement of the same prospectively. It is further submitted that for the period in question, trade notices had been issued classifying the circuit breakers under Heading No. 85.35 or 85.36. When the approved classification was proposed to be revised to reclassify the Single Panel Circuit Breakers under Heading No. 85.37 of the tariff, such re-classification can take effect only prospectively from the date of communication of the show cause notice proposing re-classification.

26. Following this judgement, the Apex Court in the case of SUCHITRA COMPONENTS LTD. V. COMMISSIONER OF CENTRAL EXCISE, GUNTUR (2007) 208 ELT 321 (SC), held as under:

" The point raised by the learned Counsel for the appellant is covered by the recent judgment of this court in Civil Appeal no. 4488 of 2005, Commissioner of Central Excise. Bangalore v. M/s. Mysore Electricals Industries Ltd. reported in 2006 M.P. No.7 /Bang/ 12 (204) E.L.T. 517 (S.C.). In the said judgment, this Court held that a beneficial circular has to be applied retrospectively while oppressive circular has to be applied prospectively. Thus, when the circular is against, the assessee, they have right to claim enforcement of the same prospectively".

27, In the instant case, the instruction No. 3/11 is more beneficial than Instruction No. 2/05. If instruction No.3/11 is also made applicable to the pending appeals before this Court, it would grant relief to the assessee. Apart from granting relief to the assessee, if number of appeals pending before this Court are disposed of on the basis of the said circular, the precious time which would be saved by this Court could be better utilized for deciding disputes where tax effect is enormous. That apart, the duration, an appeal takes in this Court would be reduced as desired by the National Litigation Policy."

6.4.7 The Appellant has argued that "the notification u/s 197A(1F) issued by the CBDT granting exemption from TDS on payment of certain categories including cash management services, vide Press Information Bureau, Government of India, dated 4th January 2013 to mitigate compliance burden on businesses who are using the financial services offered by banks is relevant to the instant case and that the assessment order u/s 143(3) of the I.T. Act for the Assessment Year 2012-13 was passed on 29th March 2015 which is much after the date of said notification.

6.4.8,I am of the opinion that, when a clarificatory notification issued by the CBDT which specifically stipulates that payment towards "Cash Management Services" can be made without TDS, was already before the ld. A.O., then the said addition was unwarranted. Moreover, it is pointed out that the 'cash pick up charges' is similar to the nature of credit card charges and drawing similarities from the judgment of Hon'ble ITAT bench, Mumbai in the case of Jet Airways (India) Limited (supra), also keeping in view the judgment pronounced by the Hon'ble Bombay High Court in the case of 'East India Hotels Ltd V. CBDT [2009] 179 Taxman 17', and forgoing discussion; this ground of appeal of the appellant is allowed."

9. Aggrieved by an appellate order dated 23.08.2016 passed by learned CIT(A) granting relief to assessee on disallowances earlier made by AO of charges paid to Bank for cash pick up facility , Revenue has filed an appeal before tribunal. Similar contentions are raised by learned counsel for the assessee as well by learned CIT-DR as were raised in preceding issue of disallowance of credit card charges.

10. We have heard both the rival parties and perused the material on record including cited case laws. We have observed that Central Government has issued notification no. 56/2012 dated 31.12.2012 (F.No. 275/53/2012-IT(B)) , wherein cash management services charges are also covered as an exemption from deduction of income-tax at source under Chapter XVII of the 1961 Act in case such payments are made by a person to a bank listed in Second Schedule to the RBI Act, 1934 , excluding a foreign bank. The aforesaid notification issued on 31-12-2012 by Central Government was later

superseded by another notification issued on 17.06.2016 . We have elaborately discussed these notifications in preceding para's of this order while adjudicating disallowance of credit card charges. We are of the view that charges for cash pick up (or also called as cash management services) paid by assessee to Banks are analogous to credit card charges so far as requirements of Chapter XVII-B of the 1961 Act is concerned . We have adjudicated in preceding para's of this order issue of allowability of credit card charges on which no income-tax was deducted at source under Chapter XVII-B of the 1961 Act . Our decision while adjudicating disallowance of credit card charges in preceding para's of this order shall apply mutatis mutandis to the disallowance of charges for cash pick up facility(or also called as cash management services) paid by assessee to banks for availing these services . Thus this issue being covered by ground no. ix raised by Revenue in its appeal filed with tribunal is effectively decided in favour of the assessee. The Revenue fails on this ground.We order accordingly.

11. The next issue raised by Revenue vide ground number (i) in memo of appeal filed with tribunal concerns itself with deletion by learned CIT(A) of disallowance of expenditure of Rs. 51,66,864/- made by AO u/s. 14A of the 1961 Act read with Rule 8D of the Income-tax Rules, 1962 . The assessee did not made any disallowance of expenditure incurred for earning of an exempt income u/s 14A of the 1961 Act while filing its return of income with Revenue. The assessee claimed before AO that it did not earn any exempt income during the year under consideration. The investments made by assessee at beginning of the year was Rs. 9.99 crores and also investments as at the end of the year was Rs. 9.99 crores. Out of total investments held as above, the assessee had invested Rs. 9.74 crores i.e. 97.4% in a company namely Future Freshfoods Limited which is a company promoted by assessee which is 100% subsidiary of assessee company. The AO after considering submissions of the assesssee rejected the

contentions of the assessee that no expenditure was incurred in relation to earning of an exempt income and made disallowance of expenditure incurred in relation to earning of an exempt income by invoking provisions of Section 14A of the 1961 Act read with Rule 8D of the 1962 Rules , vide assessment order dated 29.03.2015 passed by AO u/s 143(3) of the 1961 Act, which disallowance was computed by AO as under:-

5.8 *Accordingly, the amount disallowable as per the formula prescribed vide Notification No. 45/ 2008 dated 24.03.2008, is worked out as under:*

S.N.	*Particulars*	*Amount (Rs.)*	*Amount (Rs.)*
1	*Amount of expenses directly related to the income*		. -
A	*Amount of interest expenses other than 1 (A)*	*2,50,06,00,000*	
B1	*Investments as on 01-04-11*	*9,99,00,000*	
B2	*Investments as on 31-03-12*	*9,99,00,000*	
B	*Average value of investment [B = (Bl+B2)/2]*	*9,99,00,000*	
C1	*Assets as on 01-04-11*	*46,95,77,00,000*	
C2	*Assets as on 31-03-12*	*60,08,77,00,000*	
C	*Average of total assets [C=(C1+C2)/2]*	*53,52,27,00,000*	
2	*Attributable indirect interest expenses [A*B/C]*		*46,47,364*
3	*1/2% of the average value of investment*		*499,500*
	Disallowance under section 14a(1+2+3)		*51,66,864*

5.9 Thus, as per the above computation, the disallowance us/ 14A read with Rule 8D is determined at Rs. 51,66,864/-. The amount of Rs. 51,66,864/- is also added to the book profit as per clause (f) to Explanation 1 below section 115JB (2) of the Act."

12. Aggrieved by an assessment framed by AO u/s 143(3) vide assessment order dated 29.03.2015, the assessee filed first appeal with Ld. CIT(A), who was pleased to grant relief to the assessee after noting, firstly that the assessee has not received/earned any exempt income during previous year relevant to impugned assessment year , secondly because the assessee had made investments out of it is own interest free funds available with it and thirdly because the assessee was granted relief by learned CIT(A) on similar facts for immediately preceding year viz. AY 2011-12, vide appellate order dated 23.08.2016 passed by learned CIT(A) for AY 2012-13.

13. The matter has now reached tribunal at the behest of Revenue who is aggrieved by appellate order passed by learned CIT(A) granting relief to the assessee .At the outset contention has been raised by Ld. Counsel for the assessee that assessee has not earned any exempt income during the year under consideration. The learned counsel for the assessee relied upon decision of Hon'ble Delhi High Court in the case of Cheminvest Limited v. CIT reported in (2015) 378 ITR 0033(Del.), wherein Hon'ble Delhi High Court has held that in case no exempt income is received by assessee, no disallowance of expenses u/s 14A are warranted. It was also submitted by learned counsel for the assessee that the issue is squarely covered in favour of the assessee by decision of Hon'ble Bombay High Court in the case of PCIT v. Ballarpur Industries Limited in ITA No. 51 of 2016, vide judgment dated 13.10.2016, wherein Hon'ble Bombay High Court after considering the decision of Hon'ble Delhi High Court in the case of Cheminvest Limited(supra) held that no disallowance of expenses u/s 14A are warranted in case no exempt income is received by the tax-payer during the relevant period. It is also brought to our notice that the tribunal in the case of group company in the case of DCIT v. Future Market Networks Ltd., in ITA no. 5234/Mum/2017 , vide order dated 30.01.2019 of which one of us being Accountant Member was part of the Division Bench has decided the issue in favour of the tax-

payer by holding that if no dividend income is received, no disallowance of expenditure u/s 14A are warranted. The assessee has also placed its audited financial statements for the year ended 31st March 2012 on record before the tribunal, which is placed in file.

13.2 The Ld. CIT DR on the other hand submitted that it is admitted position that no exempt income was received by the assessee but it was submitted that Ld. CIT-DR has deleted additions u/s 14A also on the ground of strategic investment being made by the assessee which issue/proposition is no more res-integra , as it is now decided by Hon'ble Supreme Court in favour of Revenue in the case of Maxopp Investment Ltd. v. CIT reported in (2018) 402 ITR 640(SC).

13.3 The Ld. counsel for assessee submitted in rejoinder that Mumbai-tribunal in assessee's own case in DCIT v. Future Value Retail Limited in ITA no. 3968/Mum/2015 for immediately preceding year viz. AY 2011-12 vide order dated 31.05.2017 had deleted disallowance of interest expenditure u/s 14A read with Rule 8D(2)(ii) of the I962 Rules as the assessee had its own interest free funds available with it which far exceeded investments and presumption will apply that assessee made investments in securities capable of yielding exempt income out of own interest free funds available with it, by holding as under:-

> *" 6. In so far as the second issue is concerned, the same relates to disallowance made under section 14A of the Act, which has been worked out by the Assessing Officer by applying Rule 8D(2) of the Income Tax Rules,1962 (in short 'the Rules'). In terms of the said formula, the Assessing Officer worked out a disallowance out of interest expenditure of Rs.23,31,350/- under Rule 8D(2)(ii) of the Rules and out of overhead expenses at Rs.2,55,750/- under Rule 8D(2)(iii) of the Rules, thus totalling Rs.25,87,100/-.*
>
> *7. Before the CIT(A), assessee contended that though it had not received any dividend income in this year, yet a suo-motu disallowance of Rs.2,55,750/- was offered towards section 14A of the Act. With regard to the disallowance out of interest expenditure, assessee made varied submissions, which, inter-alia, included an*

assertion that the total own non-interest bearing funds were in excess of the investments made during the year under consideration, and thus, no interest expenditure was attributable to such investments. Therefore, it was contended that no interest expenditure can be subjected to disallowance under section 14A of the Act. The CIT(A) accepted the aforesaid plea and has recorded a finding that the own non-interest bearing funds of the assessee are sufficient to cover the investment in the tax free securities , therefore, following the judgment of the Hon'ble Bombay High Court in the case of CIT v. Reliance Utilities and Power Ltd., 313 ITR 340(Bom), it has to be inferred that the investments have been made out of interest free funds available with the assessee. In this background, the CIT(A) deleted the disallowance made out of interest expenditure of Rs.23,31,350/- and retained the disallowance of Rs.2,55,750/- suo-motu made by the assessee. Against such a decision of the CIT(A), Revenue is in appeal before the Tribunal.

8. At the time of hearing, the Ld. Departmental Representative has not controverted the factual finding of the CIT(A) to the effect that the own non-interest bearing funds are enough to cover the investments made in the tax free securities, thus, leading to a presumption that such investments are out of interest free funds. Notably, in para 5.10 of the order the CIT(A) notes that the total own funds of the assessee are to the tune of Rs.1100.86 crores, while the investments in tax free securities was only to the tune of Rs.9.99 crores, which clearly show that the non-interest bearing funds are enough to cover the investments. This fact-position clearly shows that the rationale explained in the case of Reliance Utilities & Power Ltd. (supra) by the Hon'ble Bombay High Court is attracted and it is to be presumed that the interest expenditure is not relatable to such investments. Such presumption has also been held to be applicable in the context of section 14A of the Act by the Hon'ble Bombay High Court in the case of CIT vs. HDFC Bank Ltd., 366 ITR 505(Bom) and in the case of HDFC Bank Ltd. vs. DCIT,383 ITR 529 (Bom). Therefore, under these circumstances, we affirm the order of the CIT(A) deleting the disallowance made by the Assessing Officer under section 14A of the Act out of the interest expenditure. Thus, on this aspect also, Revenue fails."

14. We have considered rival contentions and perused the material on record including cited case laws. We have observed that assessee has investments of Rs. 9.99 crores as at 31.03.2011 and also

investments as at 31.03.2012 were at Rs. 9.99 crores. The assessee has placed its audited financial statements on record . The factum of aforesaid investments held by assessee is emerging from orders of authorities below as well financial statements which are placed on records by assessee. The assessee has not suo moto made any disallowance of expenditure incurred in relation to earning of an exempt income u/s 14A of the 1961 Act. Out of investments of Rs. 9.99 crores held by assessee as at 31.03.2012, the assessee has made strategic investments of Rs. 9.74 crores in its 100% subsidiary company namely M/s Future Freshfoods Limited. The assessee has rightly not pressed its contentions before the Bench as was earlier taken before authorities below that no disallowances of expenditure u/s 14A can be made in case of strategic investments , keeping in view decision of Hon'ble Supreme Court in the case of Maxopp Investment Limited(supra) . Thus, so far as plea of non applicability of provisions of Section 14A on strategic investments made by assessee , the said plea stands dismissed in view of decision of Hon'ble Supreme Court in the case of Maxopp Investments Limited(supra).

14.2 The assessee has undisputedly not earned any exempt income during the year under consideration. Even learned CIT-DR also admitted this position before us. Perusal of the audited financial statements for the year ended 31.03.2012 , will reveal that interest free own funds comprising of share capital and reserves were to the tune of Rs. 1161.48 crores as at 31.03.2012, while the same were to tune of Rs. 1100.86 crores as at 31.03.2011. The investments are at Rs. 9.99 crores as at 31.03.2012 and also at same level as at 31.03.2011. The factum of availability of own interest free funds available with assessee and also investments made by assessee are also emerging from orders of authorities below . The AO being not satisfied with the contentions of the assessee has made disallowance of expenditure incurred in relation to earning of an exempt income by invoking provisions of Section 14A of the 1961 Act read with Rule 8D of the

1962 Rules , to the tune of Rs. 51,66,864/. We have observed that disallowance of interest expenses to the tune of Rs. 46,67,364/- was made by AO u/s. 14A of the 1961 Act r.w.r. 8D2(ii) of the 1962 Rules . We have observed that the assessee's own interest free funds available with it were to the tune of Rs. 1161.48 crores as at 31.03.2012, while the same were to tune of Rs. 1100.86 crores as at 31.03.2011. The investments held by assessee in securities capable of yielding exempt income are only to the tune of Rs. 9.99 crores as at 31.03.2012 as well as at 31.03.2011. The availability of interest free own funds available with assessee far exceeded its investments which were to the tune of Rs.9.99 crores. The Revenue has not demonstrated that the assessee utilised interest bearing funds to make aforesaid investments. In the absence thereof, presumption will apply that the assessee invested its own interest free funds to make investments in securities capable of yielding an exempt income. Revenue is not able to rebut the said presumption. Under similar factual matrix prevailing in AY 2011-12, the tribunal in assessee's own case for immediately preceding year i.e. AY 2011-12 has deleted the additions made u/s 14A read with Rule 8D(2)(ii) of the 1962 Rules, by holding as under:

> *" 6. In so far as the second issue is concerned, the same relates to disallowance made under section 14A of the Act, which has been worked out by the Assessing Officer by applying Rule 8D(2) of the Income Tax Rules,1962 (in short 'the Rules'). In terms of the said formula, the Assessing Officer worked out a disallowance out of interest expenditure of Rs.23,31,350/- under Rule 8D(2)(ii) of the Rules and out of overhead expenses at Rs.2,55,750/- under Rule 8D(2)(iii) of the Rules, thus totalling Rs.25,87,100/-.*
>
> *7. Before the CIT(A), assessee contended that though it had not received any dividend income in this year, yet a suo-motu disallowance of Rs.2,55,750/- was offered towards section 14A of the Act. With regard to the disallowance out of interest expenditure, assessee made varied submissions, which, inter-alia, included an assertion that the total own non-interest bearing funds were in excess of the investments made during the year under consideration, and thus, no interest expenditure*

was attributable to such investments. Therefore, it was contended that no interest expenditure can be subjected to disallowance under section 14A of the Act. The CIT(A) accepted the aforesaid plea and has recorded a finding that the own non-interest bearing funds of the assessee are sufficient to cover the investment in the tax free securities , therefore, following the judgment of the Hon'ble Bombay High Court in the case of CIT v. Reliance Utilities and Power Ltd., 313 ITR 340(Bom), it has to be inferred that the investments have been made out of interest free funds available with the assessee. In this background, the CIT(A) deleted the disallowance made out of interest expenditure of Rs.23,31,350/- and retained the disallowance of Rs.2,55,750/- suo-motu made by the assessee. Against such a decision of the CIT(A), Revenue is in appeal before the Tribunal.

8. At the time of hearing, the Ld. Departmental Representative has not controverted the factual finding of the CIT(A) to the effect that the own non-interest bearing funds are enough to cover the investments made in the tax free securities, thus, leading to a presumption that such investments are out of interest free funds. Notably, in para 5.10 of the order the CIT(A) notes that the total own funds of the assessee are to the tune of Rs.1100.86 crores, while the investments in tax free securities was only to the tune of Rs.9.99 crores, which clearly show that the non-interest bearing funds are enough to cover the investments. This fact-position clearly shows that the rationale explained in the case of Reliance Utilities & Power Ltd. (supra) by the Hon'ble Bombay High Court is attracted and it is to be presumed that the interest expenditure is not relatable to such investments. Such presumption has also been held to be applicable in the context of section 14A of the Act by the Hon'ble Bombay High Court in the case of CIT vs. HDFC Bank Ltd., 366 ITR 505(Bom) and in the case of HDFC Bank Ltd. vs. DCIT,383 ITR 529 (Bom). Therefore, under these circumstances, we affirm the order of the CIT(A) deleting the disallowance made by the Assessing Officer under section 14A of the Act out of the interest expenditure. Thus, on this aspect also, Revenue fails."

14.3 The decision of Hon'ble Bombay High Court in the case of CIT v. Reliance Utilities and Power Limited (2009) 313 ITR 340(Bom.) and CIT v. HDFC Bank Limited reported in (2014) 366 ITR 505(Bom. HC) supports the case of assessee. Thus in view of aforesaid judicial precedence's and also by Respectfully following the decision of

Mumbai-tribunal in assessee's own case for AY 2011-12, we order deletion of additions of Rs. 46,67,364/- made by the AO u/s 14A of the 1961 Act read with Rule 8D(2)(ii) of the 1962 Rules and decision of learned CIT(A) in deleting aforesaid additions stands affirmed for the reasons cited by us in this order. We order accordingly.

14.4 Further, we have observed that admittedly assessee has not received any exempt income during the year under consideration and hence no disallowance u/s 14A of the 1961 Act are warranted keeping in view ratio of decision of Hon'ble Delhi High Court in the case of Cheminvest Limited(supra) and of Hon'ble Bombay High Court in the case of Ballarpur Industries Limited(supra). We have further noted that Hon'ble Delhi High Court in the case of CIT v. GVK Project and Technical Services Limited in ITA no. 246 of 2018 vide judgment dated 28.05.2018 reported in (2019) 106 taxmann.com 180(Del.HC) has held that no disallowance u/s 14A are warranted when no exempt income are received by tax-payer, by holding as under:

> " **1.** The Revenue's appeal is with respect to the disallowance made by the Assessing Officer ('AO') under Section 14A of the Income-tax Act, 1961 (hereafter 'the Act'). The AO had proceeded to calculate the disallowance based upon the investments made by the assessee. The CIT(A) and the Income Tax Appellate Tribunal (ITAT) allowed the assessee's appeals by following the ruling in *Cheminvest Ltd.* v. *CIT* [2015] 61 taxmann.com 118/234 Taxman 761/378 ITR 33 (Delhi); the Court had then held that in the absence of any exempt income disallowance was impermissible. For the relevant Assessment Year (2013-14), concededly, the assessee did not report any exempt income. Consequently, no substantial question of law arises; the appeal is therefore dismissed alongwith the pending application.
>
> The revenue fails in this ground."

14.5 The Revenue filed an SLP against the aforesaid judgment of Hon'ble Delhi High Court with Hon'ble Supreme Court in PCIT v. GVK Project and Technical Services Limited reported in (2019) 106 taxmann.com 181(SC) , which stood dismissed on 3rd May 2019. Thus, Respectfully following the aforesaid judicial precedents, we hold that no additions by way of disallowance of expenses incurred in

relation to earning of an exempt income are warranted u/s 14A of the 1961 Act read with Rule 8D(2)(iii) of the 1961 Act as assessee has admittedly not earned any exempt income during the year under consideration and hence we order deletion of additions as were made by the AO u/s. 14A of the 1961 Act read with Rule 8D(2)(iii) of the 1962 Rules and uphold the appellate order passed by learned CIT(A) on this issue for reasons cited by us in this order. This disposes ground number (i) raised by Revenue in memo of appeal filed with tribunal which stands dismissed. We order accordingly.

15. In the result, the appeal of the Revenue in ITA no.6705/Mum/2016 for AY 2012-13 stand dismissed.

Order pronounced in the open court on 04.07.2019.

आदेश की घोषणा खुले न्यायालय में दिनांकः 04.07.2019 को की गई

Sd/-	Sd/-
(C.N PRASAD)	(RAMIT KOCHAR)
JUDICIAL MEMBER	ACCOUNTANT MEMBER

Mumbai, dated: 04.07.2019

Nishant Verma
Sr. Private Secretary

copy to…

1. The appellant
2. The Respondent
3. The CIT(A) – Concerned, Mumbai
4. The CIT- Concerned, Mumbai
5. The DR Bench,
6. Master File

// Tue copy//

BY ORDER

DY/ASSTT. REGISTRAR
ITAT, MUMBAI