



ITA No.6724/Mum/2018  
Bob Financial Solutions Ltd  
Assessment Year :2015-16

**आयकर अपीलीय अधिकरण “बी” न्यायपीठ मुंबई में।**  
**IN THE INCOME TAX APPELLATE TRIBUNAL**  
**“B” BENCH, MUMBAI**

**माननीय श्री महावीर सिंह, उपाध्यक्ष एवं**  
**माननीय श्री मनोज कुमार अग्रवाल, लेखा सदस्य के समक्ष।**  
**BEFORE HON’BLE SHRI MAHAVIR SINGH, VP AND**  
**HON’BLE SHRI MANOJ KUMAR AGGARWAL, AM**

आयकर अपील सं./ I.T.A. No.6724/Mum/2018  
(निर्धारण वर्ष / Assessment Year: 2015-16)

<b>Bob Financial Solutions Limited</b> 2 <sup>nd</sup> Floor, Baroda House S.V. Road, Jogeshwari West Mumbai- 400 062.	<b>बनाम/</b> Vs.	<b>DCIT-Circle-2(1)(1)</b> 561, 5 <sup>th</sup> Floor Aaykar Bhavan, M.K. Road Mumbai- 400 020.
स्थायी लेखा सं./जी आइ आर सं./PAN/GIR No. <b>AAACB-1989-L</b>		
(पीलार्थी/ <b>Appellant</b> )	:	(प्रत्यर्थी / <b>Respondent</b> )

<b>Assessee by</b>	:	Shri Kishor C. Dalal-Ld.AR
<b>Revenue by</b>	:	Ms. Kavita P. Kaushik-Ld. DR

सुनवाई की तारीख/ <b>Date of Hearing</b>	:	03/02/2020
घोषणा की तारीख / <b>Date of Pronouncement</b>	:	05/02/2020

**आदेश / ORDER**

**Manoj Kumar Aggarwal (Accountant Member)**

1. Aforesaid appeal by assessee for Assessment Year [in short referred to as ‘AY’] 2015-16 contest the order of Ld. Commissioner of Income-Tax (Appeals)-4 , Mumbai, [in short referred to as ‘CIT(A)’], Appeal No. CIT(A)-4/IT-203/DCIT-2(1)(1)/2017-18, dated 06/09/2018 on following grounds of appeal: -



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*On the facts & circumstances of the case and in law learned Assessing Officer erred in disallowing TDS paid on license fees on visa card as per agreement with visa card of Rs.5505877/- and CIT(A) erred in confirming the same.”*

As evident, the sole issue that arises for our consideration is disallowance of TDS paid on license fees on VISA cards for Rs.55.05 Lacs under the terms of agreement.

2. The Ld. Authorized Representative for Assessee (AR), at the outset, submitted that the issue stood squarely covered in assessee's favor by the following decisions of this Tribunal in assessee's own case for various years: -

- i) ITA Nos.4882,2475,6527/Mum/2010 for AYs 2003-04 to 2005-06 common order dated 20/06/2012
- ii) ITA No.7660/Mum/2011 for AY 2008-09 order dated 05/04/2013
- iii) ITA No.1436 & 1437/Mum/2015 for AYs 2010-11 & 2011-12, order dated 22/07/2016
- iv) ITA No.4485, 4297/Mum/2017 for AY 2012-13 order dated 07/05/2019

The Ld. DR although relied on the stand of lower authorities but could not controvert the fact that the issue has already been delved upon by Tribunal in assessee's own case for earlier years. The Ld. DR submitted that Ld. CIT(A) has distinguished the factual matrix in this year.

3. Briefly stated, the assessee was assessed u/s 143(3) on 18/12/2017 wherein it transpired that the assessee claimed expenses towards non-reimbursable TDS for VISA Card and Mastercard. Although the assessee defended the same by drawing attention to the favorable orders of earlier years, however, disregarding the same, Ld. AO disallowed the same.



4. Before Ld. CIT(A), the assessee reiterated that in terms of respective agreements with VISA Card and Master Card, it agreed to pay service charges & license fees without deduction of tax and took over as well as discharged the TDS liability of its licensors. The assessee submitted the copies of agreement entered into with VISA Card and Master Card. However, Ld. CIT(A) opined that although the agreement with Master Card contained specific stipulation regarding assessee's liability to pay taxes / TDS in respect of service charges paid by it but there was nothing of this sort in the agreement with VISA cards. The Article-11 of agreement with VISA card mandated assessee to provide proof of payment of taxes and nothing more. This article did not make the payment of taxes as assessee's liabilities and therefore, these facts were not clearly brought out on record in earlier years. Therefore, distinguishing the factual matrix of earlier years, Ld. CIT(A) confirmed disallowance of TDS paid on VISA cards and deleted disallowance of TDS paid on Master Cards. Aggrieved, the assessee is under further appeal before us.

5. After careful consideration of factual matrix as enumerated hereinabove, we find the dispute to be in narrow compass. We find that primary reason to confirm the disallowance on VISA card is the fact that the terms of Master Card and VISA cards have been found to be at variance. As noted by Ld. CIT(A), Article-11 of agreement with VISA cards mandated assessee to provide proof of payment of taxes and nothing more and there were no specific stipulations that the payment of the same would constitute assessee's liability. However, the fact that whether the said expenditure was reimbursable by VISA or not, was not



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brought on record. The answer to the same would be vital to clinch the issue in proper perspective. Obviously, if the expenditure was non-reimbursable in nature and it was borne by the assessee himself, the same would certainly become assessee's liability and hence an allowable expenditure as held in earlier years. On the contrary, if the expenditure was reimbursable in nature, it would materially alter the assessee's claim of deduction. The submissions made by Ld. AR also do not throw much light on this fact and the observation made by Ld. CIT(A) has remained unaddressed. Therefore, with a view to bring on record clear facts and to dispel the concerns raised by Ld. DR, we restore the matter back to the file of Ld. CIT(A) with a direction to ascertain the correct facts. The assessee is directed to provide the requisite details / information. Needless to add that, if the expenditure was non-reimbursable in nature, the same would be an allowable deduction otherwise not.

6. The appeal stands allowed for statistical purposes.

*Order pronounced in the open court on 05<sup>th</sup> February, 2020.*

**Sd/-**  
**(Mahavir Singh)**  
उपाध्यक्ष / **Vice President**

**Sd/-**  
**(Manoj Kumar Aggarwal)**  
लेखा सदस्य / **Accountant Member**

मुंबई Mumbai; दिनांक Dated : 05/02/2020  
Sr.PS, Jaisy Varghese

**आदेशकीप्रतिलिपिअग्रेषित/Copy of the Order forwarded to :**

1. अपीलार्थी/ The Appellant
2. प्रत्यर्थी/ The Respondent



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3. आयकरआयुक्त(अपील) / The CIT(A)
4. आयकरआयुक्त/ CIT– concerned
5. विभागीयप्रतिनिधि, आयकरअपीलीयअधिकरण, मुंबई/ DR, ITAT, Mumbai
6. गार्डफाईल / Guard File

आदेशानुसार/ BY ORDER,

उप/सहायक पंजीकार (Dy./Asstt.Registrar)  
आयकरअपीलीयअधिकरण, मुंबई / ITAT, Mumbai.