

**IN THE INCOME TAX APPELLATE TRIBUNAL  
HYDERABAD BENCHES "B" : HYDERABAD**

**BEFORE SMT. P. MADHAVI DEVI, JUDICIAL MEMBER  
AND  
SHRI A. MOHAN ALANKAMONY, ACCOUNTANT MEMBER**

**I.T.A. No. 2372/HYD/2018**  
Assessment Year: 2015-16

Asst. Commissioner of Income-  
tax, Circle – 2(2), Hyderabad.

Vs Head Infotech India Pvt.  
Ltd., Hyderabad.

PAN – AABCH 6629 L

(Appellant)

(Respondent)

For Revenue : Shri Rajat Mitra  
For Assessee : Shri Pawan Kumar Chakrapani

Date of Hearing : 15-09-2020  
Date of Pronouncement : 29-09-2020

**ORDER**

**PER Smt. P. MADHAVI DEVI, J.M. :**

This is Revenue's appeal for the AY2015-16 against the order of the Commissioner of Income Tax (Appeals) - 2, Hyderabad, dated 14-11-2018. The grounds raised by the revenue are as under:

*1. Whether on the facts and circumstances of the case, the CIT(A) is correct in law in deleting the disallowance u/s 40(a)(ia) even though the payment was done without deducting TDS ?*

*2. Whether, on the facts and circumstances of the case, the CIT(A) is correct in law in deleting the disallowance u/s 40(a)(ia) even though the payment was made to payment gateway companies which are not covered under the Notification No. 56/2012, dated 31/12/2012.*

*3. Any other ground that may be urged during the course of appellate proceedings.”*

2. Brief facts of the case are that the assessee-company which is in the business of developing and running online game on its own web portal [www.ace2three.com](http://www.ace2three.com), filed its return of income on 30/09/2015 declaring total income of Rs. 67,36,51,110/- for the AY 2015-16. The return of income was selected for scrutiny under CASS. During the course of assessment proceedings u/s 143(3) of the IT Act, the AO observed that the assessee had debited Rs. 6,35,90,429/- under the head “payment to Gateways”. The assessee vide its letter dated 08/09/2017 explained the same and as to why TDS was not deducted from the said payments. It was submitted that Rs. 6,35,90,429/- represents aggregate of the service charges retained by the Gateways from the amounts paid by the customers for enabling them to play online games in the portal of the company. He submitted that the terms and conditions under which the Gateway has rendered services to the customers were invariably recorded in the agreements between the company and the respective Gateways, which establish that the company, on the one hand, and Gateways on the other hand, were

independent parties in their respective fields and, therefore, there was no necessity of deducting any TDS u/s 194H of the Act.

2.1 The AO, however, was not convinced with the assessee's submissions and held that the commission retained by the Gateways is the commission paid by the assessee to the Gateways and that the assessee was required to deduct tax at source at 30%. For failure to do so, he disallowed 30% of the payment of Rs. 6,21,71,195/- (after excluding payment to Axis Bank, which is exempt from TDS) and brought to tax Rs. 1,86,51,359/- being 30% of Rs. 6,21,71,195/-.

3. Aggrieved, the assessee preferred an appeal before the CIT(A), who deleted the disallowance made by the AO u/s 40(a)(ia) of the Act, and against the relief granted by the CIT(A), the revenue is in appeal before us.

4. This case was taken up for hearing on 15/09/2020 through video conferencing and both the parties were heard.

5. The Id. DR supported the order of the AO and submitted that the payment retained by the Gateways was, in fact, commission paid by the assessee to Gateways and, therefore, the provisions of section 194H are applicable and the assessee ought to have

deducted tax at source under the said section and for failure to do so, the provisions of section 40(a)(ia) has been rightly invoked by the AO. He, therefore, prayed for restoration of the assessment order on this issue.

6. The Id. Counsel for the assessee relied upon the order of CIT(A) and submitted that the assessee hosts online games and when the customers make payments through banking Gateways by way of credit or debit card of the relevant banks ( which are referred to as Gateways) and while transferring money to the assessee's account, banks invariably retain service charges. It is submitted that service charges collected by the Banks/Gateways cannot be considered as commission paid by the assessee and, therefore, provisions of section 194H are not applicable. He submitted that the CIT(A), in assessee's own case for AY 2013-14 and 2014-15, had considered the issue at length and had held that provisions of section 194H are not applicable and the decision in the said years has been followed by him in the AY under consideration. He submitted that the CIT(A) has also recorded that the Gateways have offered the payment retained by them in their respective returns of income and, therefore, no disallowance u/s 40(a)(ia) is to be made.

7. Having regard to the rival submissions and after perusing the material on record, we find that the CIT(A) has followed the decisions of the coordinate benches of this Tribunal wherein it has been held that the “sale made on the basis of a credit card” is the transaction of the merchant establishment and that the credit company only facilitates the electronic payment for a certain charge and the commission retained by the credit card company is therefore in the nature of normal banking charges and not in the nature of commission/brokerage for acting on behalf of the merchant establishment. The Id. DR has not been able to rebut the decisions of the Tribunal with any decision of the appellate forums to the contrary. Therefore, we do not find any reason to interfere with the order of CIT(A) in deleting the disallowance made by the AO u/s 40(a)(ia) of the Act. Thus, upholding the same, we dismiss the grounds raised by the revenue on this issue. Further, it is also noticed that the Gateways have offered the income to tax in their hands in their respective returns of income. Therefore, the proviso to section 40(a)(ia) is applicable and for this reason also, the disallowance cannot be sustained.

8. In the result, appeal of the revenue is dismissed.

*Order pronounced in the open court on 29<sup>th</sup> September, 2020*

**Sd/-  
( A. MOHAN ALANKAMONY )  
ACCOUNTANT MEMBER**

**Sd/-  
( P. MADHAVI DEVI )  
JUDICIAL MEMBER**

Hyderabad, Dated: 29<sup>th</sup> September, 2020

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*Copy to :*

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- 3. CIT(Appeals) - 2, Hyderabad.*
- 4. The Pr.CIT - 2, Hyderabad.*
- 5. D.R. ITAT, Hyderabad.*
- 6. Guard File.*