

IN THE INCOME TAX APPELLATE TRIBUNAL  
“H” Bench, Mumbai  
Before S/Shri B.R. Baskaran (AM) & C.N. Prasad (JM)

I.T.A. No. 6684/Mum/2014  
(Assessment Year 2010-11)

ITO (OSD)(TDS)-1(1) Room No. 809 K.G. Mittal Ayurvedic Hospital Building Charni Road Mumbai-400 002.	Vs.	M/s. Hotel Leela Venture Limited The Leela Kempinski Sahar, Andheri East Mumbai-400 059.
(Appellant)		(Respondent)

PAN No. AAACH3167J

Assessee by	Ms. Neha Barve
Department by	Shri Ranadhir Gupta
Date of Hearing	01.6.2016
Date of Pronouncement	01.6.2016

ORDER

Per B.R. Baskaran, AM :-

The appeal filed by the Revenue is directed against the order dated 28.8.2014 passed by learned CIT(A)-12, Mumbai and it relates to A.Y. 2010-11.

2. Facts relating to the appeal are that the Assessing Officer raised demand u/s. 201(1) and charged interest u/s. 201(1A) of the Act on the reasoning that the assessee did not deduct tax at source from the charges paid by the assessee to the bank for using credit card facilities. Learned CIT(A) deleted the addition by following the decision rendered by the Coordinate Bench of the ITAT in the case of Jet Airways (India) Ltd. (ITA Nos. 7439, 7440 & 7441/Mum/2010 dated 17.7.2013).

3. Aggrieved, the Revenue filed this appeal before us.

4. We have heard the parties and perused the record. We have already noticed that learned CIT(A) has deleted the demand raised upon the assessee

by following the decision rendered by the Tribunal. For the sake of convenience we extract below observations made by the learned CIT(A) :-

5.1 *I have considered the averments made in the impugned order and also the written as well as oral submissions of the learned A.R. of the appellant and also the judicial pronouncements relied upon by the learned A.R. It immensely transpires that the issue in dispute is squarely covered by the decision of the Hon'ble ITAT, Mumbai in the case of Kotak Securities Ltd. in ITA No.6657/Mum/2011. The issue in dispute is also squarely covered by the decision of the Hon'ble ITAT, Hyderabad in the **case of Vah Magna Retail Private Limited. The relevant portion of the** said judgement is reproduced hereunder;*

*"4. We heard the Learned Departmental Representative and perused the orders of the lower authorities and other material on record Assessee is a company engaged in the business of direct retail trading in consumer goods. Assessee claimed deduction of Rs.16,34,000 on account of commission paid to the credit card companies, which has been disallowed by the assessing officer in terms of S.40(a)(ia) on account of the failure of the assessee to deduct tax at source in terms of S.194H of the Act, while making the said commission payments. It was the contention of the assessee before the lower authorities that the assessee only receives the payment form the bank/credit card companies concerned, after deduction of commission thereon, and thus, this is only in the nature of a post facto accounting and does not involve any payment or crediting of the account of the banks or any other account before such payment by the assessee. Considering these submission of the assessee, the CIT(A) accepted the claim of the assessee for deduction of the amount of Rs. 16,34,000 on the following reasoning- "*

*"9.8 On going through the nature of transactions, I find considerable merit in the contention of the appellant that commission paid to the credit card companies cannot be considered as falling within the purview of S.194H. Even though the definition of the term "commission or brokerage" used in the said section is an inclusive definition, it is clear that the 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 merchant's 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, concluding that there was no requirement for making TDS on the 'Commission retained by the credit card companies, the disallowance of Rs.16,34,000 is deleted....*

- 5.2 *Similar stand has also been taken by the Hon'ble Mumbai ITAT in the case of **Jet Airways (India) Limited [vide order dated 17.07.2013 in ITA No. 7439, 7440 and 7441/Mum [2010]** wherein the Hon'ble Tribunal has held as under;*

*'Similar issue has been considered by the Jaipur Bench of the Tribunal in the case of Gems Paradise ITA No. 746/JP/2011 (AY-2008-09) dated 2.2.2012 and the Tribunal held that the provisions of section 194H of the Act are not applicable as the banks make payments to the 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 held that no TDS is required to be deducted on the fees charged by the bank on credit card transactions.'*

- 5.3 *Further, it is significant to mention here that similar issue as to applicability of TDS provisions on credit card collection charges arose for adjudication in the appellant's own case before the ld.CIT(A)-17, Mumbai (having jurisdiction over appeals against regular assessments of the appellant) wherein it is seen that the issue in dispute on similar set of facts has been decided in favour of the appellant, thereby holding that the provisions of Section 194H of the Act do not apply to credit card collection charges. For ease of reference, the concluding paragraph of the above referred order dated 01.10.2013 passed by the learned CIT(A)-17, Mumbai in the appellant's case for the same assessment year i.e. A.Y . 2010-11 is reproduced hereunder;*

- "2.3.1 I have carefully considered the submissions and contention of the Id. A.R. of the appellant and also carefully gone through the facts and explanation given by the Id. A.R. of the appellant as well as the Id. A.O. I find that similar issue came up for consideration of my Id predecessor in the appellant's own case for A.Y. 2009-10 in appeal No.CIT(A)- 17/ 1T270/2011-12 dated 21.01.2013, who allowed the appeal on this issue, has held as under.-
- "6.3 In view of the above, it is clear that the collection charges collected by the banks for making payments to merchant establishment are not within the purview of TD5. In the instant case, the facts are similar to the aforesaid case and, therefore, following the above decision, the addition made by the A. O. is deleted Hence, the ground of appeal of the appellant is allowed"
- 2.3.2 Facts remaining the same as explained by the appellant, I have no reason to differ from the findings of my Id predecessor, following the order, this ground of appeal of the appellant is allowed"
- 5.4 Further, it is significant to mention here that similar issue arose for adjudication in the case of **Cleartrip Travel Services Private Limited** for A.Y. 2011-12 before the Id.CIT(A)-14, Mumbai (having original jurisdiction over TDS Appeals) wherein it is seen that the issue in dispute on similar set of facts has been decided in favour of that assessee. For ease of reference, the concluding paragraph of the above referred order of the learned CIT(A)-14, Mumbai is reproduced hereunder;
- 3.4 The facts remaining the same, respectfully following the decision of the Hon'ble ITAT, cited supra, it is held that no TDS is payable on credit card charges u/s.194H. Therefore, it is held that the assessee was not required to deduct TDS u/s.194H. Hence the assessee cannot be considered to be assessee in default u/s.201(1). Therefore, the addition made u/s 201(1)/201(1A) of Rs. 2,37,93,967/- stands deleted"
- 5.5 Having regard to all the above judicial pronouncements of different Benches of Hon'ble Tribunal, including that of the jurisdictional ITAT, and also decision of the Id.CIT(A)-14, Mumbai (having original jurisdiction over TDS appeals) and also the Id.CIT(A)-17, Mumbai (having original jurisdiction over the quantum appeals in the appellant's case), the action of the instant A.O. cannot be approved and, therefore, the grounds of appeal so raised by the appellant deserve to be allowed and are done so. Thus, the grounds of appeal stand allowed.

5. Since learned CIT(A) has followed the decision rendered by the Coordinate Bench on identical issue, we do not find any reason to interfere with his order. Further, we notice that the Hon'ble Delhi High Court has also held in the case of JDS Apparels (P) Ltd (ITA No.608/2014 dated 18.11.14 that there is no TDS liability in respect of payments made to banks for using credit card swiping machines Accordingly we uphold the same.

6. In the result, appeal filed by the Revenue is dismissed.

Order has been pronounced in the Open Court on 01.6.2016.

Sd/-  
(C.N. PRASAD)  
JUDICIAL MEMBER

Sd/-  
(B.R.BASKARAN)  
ACCOUNTANT MEMBER

Mumbai; Dated : 01/6/2016

Copy of the Order forwarded to :

1. The Appellant
2. The Respondent
3. The CIT(A)
4. CIT
5. DR, ITAT, Mumbai
6. Guard File.

//True Copy//

BY ORDER,

(Dy./Asstt. Registrar)  
ITAT, Mumbai

PS