

IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCHES : D : NEW DELHI

BEFORE SHRI G.D. AGRAWAL, HON'BLE VICE PRESIDENT
AND
SHRI A.D. JAIN, JUDICIAL MEMBER

ITA No.5467/Del/2012
Assessment Year : 2009-10

JDS Apparels Ltd.,
J-21A, Central Market,
Lajpat Nagar,
New Delhi.

Vs. ACIT,
Circle-4(1),
New Delhi.

PAN : AABCJ3946J

(Appellant)

(Respondent)

Assessee By : Shri V.K. Gureja, CA
Department By : Shri S.N. Bhatia, DR

ORDER

PER A.D. JAIN, JUDICIAL MEMBER:

This is Assessee's appeal for Assessment Year 2009-10 against the order dated 22.08.2012, passed by the Ld. CIT(A)-VIII, New Delhi, contending that the Ld. CIT (A) has erred in treating the credit card charges recovered by HDFC Bank from the assessee as commission subject to TDS provisions u/s 194H of the Act, thereby wrongly sustaining the addition of ₹ 44,65,654/- made by the Assessing Officer u/s 40(a)(ia).

2. The assessee is engaged in the business of trading of readymade garments. For the year under consideration, the Assessing Officer disallowed payment of ₹ 44,65,654/- made by the assessee to HDFC Bank towards credit card commission/discount, on which, TDS, though deductible as per Section

194H of the Act, was not deducted. The disallowance was made u/s 40(a)(ia) of the Act. The Ld. CIT (A) confirmed this disallowance.

3. The Id. Counsel for the assessee contended that the Ld. CIT (A) has wrongly held the payment to be commission paid for rendering services for recovery of bill amount, failing to consider that the acquiring bank does not render any service for recovery of bill amount to the retail merchant, i.e., the assessee; that the transaction is in the nature of 'bill purchase' by the credit card acquiring bank after deducting a specified percentage from the bill amount; hence, the buyers are never the debtors of the retail merchant, as the acquiring bank, after purchasing the bills, recovers the payment on its own account; that therefore, the entire risk pertaining to the payments made through credit cards rests with the acquiring bank only; and that as such, the transaction between retail merchants and the credit card acquiring bank is on a principal-to-principal basis. The Id. Counsel for the assessee has placed reliance on 'Income-tax Officer (TDS)-2(1) vs. Jet Airways (India) Ltd.', 36 taxmann.com 379 (Mumbai-Trib); Order dated 10.04.2012 passed by the Hyderabad Bench of the Tribunal in ITA No.905/Hyd/2011, for Assessment Year 2007-08, in the case of 'Dy. Commissioner of Income-tax, Hyderabad vs. M/s Vah Magna Retail (P) Ltd., Hyderabad (copy is placed on record); and Order dated 27.11.2012, passed by the Bangalore Bench of the Tribunal in the case 'Tata Teleservices Ltd. vs. DCIT (TDS)' in appeal Nos.308 to 310 & 393 to 396 (Bang.) of 2011, 1014 to 1021 & 1285 to 1290 (Bang) of 2012, for Assessment Years 2005-06 to 2008-09 (copy is placed on record).

4. The Ld. DR, on the other hand, has placed strong reliance on the impugned order, contending that HDFC Bank Ltd., as rightly observed by the Ld. CIT (A), while making payment to the assessee, had deducted commission on the transactions; that the said commission had been paid to the bank for rendering services for the recovery of the bill amount to the assessee; that this shows that the bank was acting as an agent of the assessee for the purposes of recovery of payment, for which, it was being

paid commission/discount; that since the relationship between the assessee and the bank was that of a principal and agent, for which, commission/discount was deducted obviously, TDS was liable to be deducted on the commission/discount under the provisions of Section 194H of the Act, @ 10%; and that the assessee having failed to do so, the addition correctly made by the Assessing Officer u/s 40 (a)(ia) of the Act, was rightly confirmed by the Ld. CIT (A).

5. We have heard the parties and have perused the record. The facts are not disputed. The issue is as to whether the payment in question can be termed as commission paid for rendering services by the bank to the assessee for the recovery of the bill amount and so, whether TDS was deductible thereon u/s 194H and whether non-compliance thereof has rightly resulted in the addition of the amount u/s 40(a)(ia) of the Act.

6. The matter stands squarely covered by 'Jet Airways (India) Ltd.' (supra), wherein it has been held, under similar circumstances that payments to banks for utilization of credit card facilities are in the nature of bank charges and not commission and, therefore, no tax is deductible at source u/s 194H. No decision to the contrary has been brought to our notice by the department. Now, once no tax is deductible at source u/s 194H of the Act on the payment made to bank for utilization of credit card facility and such payment is in the nature of bank charges, obviously, the provisions of Section 40(a)(ia) of the Act do not get attracted. That being so, the addition, being unsustainable in law, is hereby deleted.

7. In the result, the appeal filed by the assessee is allowed.

The order pronounced in the open court on 07.02.2014.

Sd/-

[G.D. AGRAWAL]
VICE PRESIDENT

Sd/-

[A.D. JAIN]
JUDICIAL MEMBER

Dated, 07th February, 2014.

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Copy forwarded to:

1. Appellant
2. Respondent
3. CIT
4. CIT (A)
5. DR, ITAT

AR, ITAT, NEW DELHI.