

Payment gateway charges paid by Make My Trip to banks couldn't be treated as commission to attract TDS u/s 194H

Summary – The High Court of Delhi in a recent case of Make My Trip India (P.) Ltd., (the Assessee) held that where assessee, which was selling travel products, paid fees to banks for providing payment gateway facility, same could not be treated as commission or brokerage; hence, not liable to tax under section 194H

Facts

- The assessee was engaged in business of selling its travel products to the customers through the website makemytrip.com. The payment gateway was provided by four banks viz., HDFC, ICICI, Citibank and American Express to the assessee. The net price after deduction of facility charges by the payment gateway was automatically credited to the bank account of the merchant. The amount retained by the payment gateway facility provider included the charges for the facility of secured payment gateway and the charges of VISA/Mastercard.
- The Assessing Officer disallowed the payment of Rs. 12.52 crores made by the assessee to the Banks towards charges for providing the payment gateway facility in accordance to section 40(a)(ia) since according to the Assessing Officer, the said payment was in nature of commission paid to the banks from which TDS under section 194H ought to have been deducted.
- On appeal, the Commissioner (Appeals) partly allowed the assessee's claim reducing the disallowance to Rs. 8.38 crores and accepted the assessee's submission that payment gateway charges paid to American Express and Citi Bank were not subject to TDS and, therefore, section 40(a)(ia) was not applicable to such payments. However, the Commissioner (Appeals) treated the payments made to HDFC and ICICI towards payment gateway charges as commission and held that from said payments TDS was required to be deducted by the assessee under section 194H while making payment.
- On second appeal, the Tribunal held that the payment charges were in nature of fees for banking services and not 'commission' or 'brokerage' and thus no TDS was deductible from the said charges under section 194H.
- On the revenue's appeal to the High Court:

Held

- The decision in *CIT v. JDS Apparels (P.) Ltd.* [\[2015\] 53 taxmann.com 139/370 ITR 454 \(Delhi\)](#) holds that in a similar kind of transaction, the amount retained by the bank is a fee charged for having rendered 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 Tribunal has in the instant case, rightly held that the services provided by the payment gateway is

such that the charges collected by it has to be necessarily treated as fees and not as a commission. The payment in fact is made by one principal to another and it is only being facilitated by the payment gateway by providing a service.

- Further, the Central Government, by Notification SO No. 3069(E), dated 31-12-2012 has notified that no TDS shall be made on the following payments to the banks listed in the Second Schedule to the Reserve Bank of India Act:
 - (i) Bank guarantee commission;
 - (ii) Cash management services 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.
- The above notification was referred to in the order of the Commissioner (Appeals) but not discussed. The assessee is right in contending that by virtue of the above notification no TDS is deductible from payments made towards 'credit card or debit card commission for transaction between the merchant establishment and the acquirer bank'. This applies to the charges paid to the banks for providing payment gateway in the instant case.
- In that view of the matter, the Tribunal has not committed any error in deleting the addition of Rs. 12.52 crore made by the Assessing Officer under section 40(a)(ia) [as further reduced by the Commissioner (Appeals)] on account of non-deduction of TDS from the payment gateway charges paid to the banks.
- As a result, the appeal is to be dismissed.