R.M. AMBERKAR
(Private Secretary)

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
O.O.C.J.

INCOME TAX APPEAL NO. 1491 OF 2017

Commissioner of Income Tax (TDS)-1 .. Appellant

Versus

M/s. Air India Charters Ltd .. Respondent

....

- Mr. Suresh Kumar a/w Ms. Sumandevi Yadav for the Appellant
- Mr. Ashok J. Pandit for the Respondent

....

CORAM : UJJAL BHUYAN &
MILIND N. JADHAV, JJ.

DATE : FEBRUARY 4, 2020.

P.C.:

1. Heard Mr. Suresh Kumar, learned standing counsel, revenue for the appellant and Mr. Ashok Pandit, learned counsel for the respondent - assessee.

2. This appeal under Section 260A of the Income Tax Act, 1961 (**"the Act"** for short) is preferred by the revenue against the order dated 4.11.2016 passed by the Income Tax Appellate Tribunal, Mumbai "A" Bench, Mumbai (**"Tribunal"** for short) in Income Tax Appeal No. 1458/Mum/2015 for the assessment year 2010-11.

3. The following two questions have been proposed as substantial questions of law:-

(i) Whether on the facts and in the circumstances of the case and in law, the Tribunal was justified in upholding the order of the CIT(A) and holding that the amount retained by a bank / credit card agency out of the sale consideration through credit cards is not covered under the definition of "commission or brokerage" given in the Explanation (i) to Section 194H of the Act and the assessee was not liable to deduct tax at source under Section 194H in respect of this amount?

(ii) Whether on the facts and in the circumstances of the case and in law, the Tribunal was justified in upholding the order of the CIT(A) that there was lack of principal and agent relationship between the assessee and the bank / credit card agencies?

4. Mr. Kumar, learned standing counsel fairly submits that this Court in **CIT Vs. Jet Airways (India) Ltd**[1] has answered the two questions in favour of the assessee and against the revenue. In the said decision, this Court vide affirming the similar findings returned by the Tribunal held that amount retained by a bank / credit card agency out of the sale consideration of tickets booked through credit cards is not covered under the definition of 'commission' or 'brokerage'

1 Income Tax Appeal No. 628 of 2018 decided on 23.4.2019

given in explanation (i) to Section 194H of the Act and in such circumstances, assessee is not liable to deduct tax at source under Section 194H in respect of this amount.

5. In the light of the above, the appeal filed by the revenue is dismissed. However, there shall be no order as to cost.

[MILIND N. JADHAV, J.] **[UJJAL BHUYAN, J.]**

Ravindra M. Amberkar

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