IN THE INCOME TAX APPELLATE TRIBUNAL
"SMC" BENCH: MUMBAI

BEFORE SHRI R.S. PADVEKAR, JUDICIAL MEMBER

ITA No.3014/Mum/2011
(Assessment year: 2005-06)

Great Escape Travels Pvt. Ltd.,
Cambata Building, 5th Floor,
East Wing, Churchgate,
Mumbai -400 020 .... Appellant

Vs

Income-tax Officer -1(1)-4,
Mumbai .... Respondent

PAN: **AAAHK 3212 N**

Appellant by:	Shri Vijay Mehta
Respondent by:	Shri Atiq Ahmad
Date of Hearing:	09.04.2012
Date of Pronouncement:	12.04.2012

O R D E R

R.S. PADVEKAR, JM:

In this appeal the assessee has challenged the impugned order of the Ld. CIT (A)-I, Mumbai dated 30.11.2010 for the A.Y. 2005-06. The issue in controversy is disallowance of ₹ 9,63,428/- u/s.40(a) for not deducting the tax at source.

2. Briefly stated the facts are as under. The A.O. has observed that the assessee has received a sum of ₹ 6,18,013/- as processing and service charges. The assessee has also paid ₹ 9,63,428/- as processing and service charges to credit companies. In the opinion of the A.O. the assessee has made the payment to the credit card companies for availing technical services and hence, the assessee should have deducted the tax at source from the said amount. The A.O. made the disallowance of the entire amount of ₹ 9,63,428/- by invoking the provisions of sec.40(a) of the Income-tax Act. The Ld. CIT (A) confirmed the action of the A.O. following the decision in the assessee's own case for the A.Y. 2004-05.

3. I have heard the parties. I find that the identical issue has been considered by the Tribunal in assessee's own case for the A.Ys. 2004-05 and 2006-07 being ITA Nos.5903 and 5904/Mum/2010 order dated 28.12.2011 and has restored the issue to the file of the A.O. The operative part of the order reads as under:

> *"7. We have considered the rival contention and carefully perused the relevant material on record. There is no dispute that for the years prior to the assessment years under consideration as well as for the subsequent assessment years, the assessee has produced certificates u/s.195(3) obtained by the City Bank which is credit card agency and therefore no such disallowance was made by the AO on this account. It is pertinent to note that when for all other years the certificates was issued by the department u/s.195(3) as this amount is not subjected to the deduction of tax then in the interests of justice, the assessee may be given one more opportunity to produce the certificate obtained u/s.195(3) in this respect. Accordingly, the matter, for both the assessment years is set aside to the file of the AO for verification and examination of the certificates issued u/s.195(3) to be produced by the assessee and then decide the issue as per law after providing reasonable opportunity of being heard to the assessee. Grounds taken by the assessee are therefore, allowed for statistical purposes."*

4. I, accordingly, this year also restore the issue to the file of the A.O. on the same directions which are given by the Tribunal in the A.Y. 2004-05 and 2006-07.

5. In the result, assessee's appeal is allowed for statistical purposes.

Order pronounced in the open court on this day of 12th April, 2012.

Sd/-
(R.S. PADVEKAR)
JUDICIAL MEMBER

Mumbai, Date: **12th April, 2012**

Copy to:-
1) The Appellant.
2) The Respondent.
3) The CIT (A)-1, Mumbai.
4) The CIT -1, Mumbai.
5) The D.R. "SMC" Bench, Mumbai.

By Order

/ / True Copy / /

Asstt. Registrar
I.T.A.T., Mumbai

*Chavan