

IN THE INCOME TAX APPELLATE TRIBUNAL, BENCH “E”, MUMBAI
BEFORE SHRI R. C. SHARMA, ACCOUNTANT MEMBER AND
SHRI PAWAN SINGH, JUDICIAL MEMBER
ITA No.2850/Mum/2014 (Assessment Year- 2010-11)

Samurai Securities Pvt Ltd, 303/306, Raheja Chambers Free Press Journal Marg, Nariman Point, Mumbai-400021 PAN:AAGCS7809C	Vs.	ITO (OSD) -3(2), Charni Road Mumbai
(Appellant)		(Respondent)

Assessee represented by – None

Revenue Represented by-- Sh. V. Justine –DR

Date of hearing: 18.10.2017

Date of Order: 18.10.2017

Order Under Section 254(1) of Income Tax Act

PER PAWAN SINGH, JUDICIAL MEMBER:

1. This appeal by assessee under section 253 of income tax act is directed against the order of Commissioner (Appeals) - 14, Mumbai dated 06.02.2014 for assessment year 2010-11. The assessee has raised following grounds of appeal;

(i) *The assessing officer erred in raising the demand of Rs. 5,79,196/-(including interest of Rs. 1,53,317/-) for non-deposit of TDSs on transaction charges and the learned Commissioner of income tax (Appeals) erred in confirming the demand raised by assessing officer under section 201(1)/(201)(1A).*

2. Brief facts of the case are that information received from National Stock Exchange that during the financial year 2009-10 the assessee has paid transaction charges, however the assessee has not deducted tax thereon as

per the provisions of section 194J of the Income tax Act 1961. The ITO (TDS) on the basis of decision of Bombay High Court in case of Kotak Securities Ltd held that tax is deductible under section 194J on the payment of transaction charges to Exchange. The assessee was asked to furnish detail of transaction charges and the tax deducted thereon. No response was received from the assessee. The ITO (TDS) considering the transaction charges being fee for technical services to National Stock Exchange of India and further interest is also payable under section 201(1)/201(1A) passed the order against the assessee. The assessing officer /ITO(TDS) worked out the liability of Rs. 4,25,880/- and Rs.1,53,317/- on account of interest from 1 April 2009 to 31 March 2012 @ 1% per month vide order dated 31 March 2012. On appeal before Commissioner (Appeals) the action of assessing officer /ITO (TDS) was confirmed. Thus, further aggrieved by the order of CIT(A) the assessing has filed present appeal before us.

3. None appeared on behalf of assessee when the case was called for hearing. Despite waiting for sufficient time and passover. None is appearing on behalf of assessee from last several dates' despite service of notice through registered post. When none appeared on behalf of assessee we left no option except to hear the ld. DR for revenue and to proceed on the basis of material available on record to decide the appeal accordingly. The learned DR for the revenue supported the order of authorities below

and argued that the assessee has not cooperated either before the assessing officer/ ITO (TDS) or before Commissioner (Appeals). The assessee has not come forward to substantiate his claim raised in the present appeal. The learned DR argued that the appeal of the assessee be dismissed.

4. We have considered the submission of learned DR for the revenue and perused the material available on record. The ITO (TDS) passed the order under section 201(1)/ 201(1A) on the basis of the decision of Mumbai High Court in CIT Vs Kotak Securities [15 Taxman 77] wherein it was held that tax at source is deductible at source under section 194J, on the payment of transaction charges to exchanges. We have noted that subsequent to the order of Bombay High Court, the Hon'ble Apex Court in case of CIT Vs Kotak Securities Ltd [2016] 67 taxmann.com 356 (SC) held that the services made available by Bombay Stock Exchange [BSE Online Trading (BOLT) System] for which transaction charges are paid by members of BSE are common services and that every member of Stock Exchange is necessarily required to avail of such services to carry out trading in securities in Stock Exchange; such services do not amount to 'technical services' provided by Stock Exchange, not being services specifically sought for by user or consumer and, therefore, no TDS is liable to be deduct under section 194J on payments made for such services. Considering the facts that the Id CIT(A) was not having the

benefit of decision of the Hon'ble Apex Court, while passing the impugned order, the appeal is restored to the file of LD CIT(A) to verify the fact and pass the order in accordance with law. Needless to say that the assessee be given opportunity before passing the order. Hence, the ground of appeal raised by assessee is allowed for statistical purpose.

5. In the result the appeal of the assessee is allowed for statistical purpose.

Order pronounced in the Open Court on 18.10.2017

Sd/-
R.C.SHARMA
ACCOUNTANT MEMBER
MUMBAI, DATED: 18.10.2017

Sd/-
PAWAN SINGH
JUDICIAL MEMBER

Copy of the order forwarded to:

1. *The Assessee;*
2. *The Revenue;*
3. *The CIT(A);*
4. *The CIT, Mumbai City concerned;*
5. *The DR, ITAT, Mumbai;*
6. *Guard file.*

sk
Private Secretary

By Order

(Dy./Asstt.Registrar)

ITAT, Mumbai