

**IN THE INCOME TAX APPELLATE TRIBUNAL 'F' BENCH, MUMBAI  
BEFORE SHRI B.R. BASKARAN, AM AND SHRI RAVISH SOOD, JM**

आयकर अपील सं./ I.T.A. No. 142/Mum/2016  
(निर्धारण वर्ष / Assessment Year: 2009-10)

DCIT 4(2)(1), Room No. 642, 6 <sup>th</sup> Floor, Aaykar Bhawan, M.K Road, Mumbai, - 400 020	<b>बनाम/ Vs.</b>	M/s Vibrant Securities Pvt. Ltd. 103-A, Poddar Chambers, S.A. Brelvi Road, Fort, Mumbai.
स्थायीलेखासं ./जीआइआरसं ./ <b>PAN/GIR No. AABCV8287E</b>		
<b>(अपीलार्थी/Appellant)</b>	<b>:</b>	<b>(प्रत्यर्थी / Respondent)</b>

अपीलार्थी की ओर से/ <b>Appellant by</b>	<b>:</b>	Ms. Pooja Swaroop, D.R.
प्रत्यर्थी की ओर से/ <b>Respondent by</b>	<b>:</b>	Shri Dharmesh Shah, A.R.

सुनवाई की तारीख/ <b>Date of Hearing</b>	<b>:</b>	24/10/2017
घोषणा की तारीख / <b>Date of Pronouncement</b>	<b>:</b>	25/10/2017

**आदेश / ORDER**

**PER RAVISH SOOD, JUDICIAL MEMBER**

The present appeal is directed against the order passed by the Commissioner of Income Tax-9, Mumbai, dated 01.10.2015 , which in itself is directed against the order passed by the A.O under Sec. 143(3) r.w Sec. 254 of the Income Tax, 1961 (for short 'Act'),

dated 24.01.2014. The assessee had assailed the order of the CIT(A) by raising before us the following grounds of appeal:-

*“1. On the facts and in the circumstances of the case, the Ld. CIT(A) erred in allowing the appeal of the assessee relying on the decision of the ITAT in the assessee's case for A.Y. 2009-10 in spite of the fact that the decision of Tribunal for A.Y. 2009-10 is itself contradictory in view of the decision of Hon'ble Jurisdictional High Court in the case of Kotak Securities Ltd. Where non deduction of TDS on payment of transaction charges has been held as bonafide for A.Y. 2005-06 only.*

*2. On the facts and in the circumstances of the case, the Ld. CIT(A) erred in allowing the appeal of the assessee on the issue of non-deduction of TDS on the transaction charges which comes under the purview of fees for technical services as per the provisions of Sec. 194J and it has also been held by the Hon'ble Jurisdictional High Court in the case of Kotak Securities Ltd that the payment of transaction charges are covered as per provisions of 194J of the act.*

*3. The appellant craves leave to amend or alter any ground or add a new ground which may be necessary.”*

**2.** Briefly stated, the facts of the case are that the assessee company which is engaged in the business of Share Broking as a member of Bombay Stock Exchange and National Stock Exchange had filed its return of income for A.Y. 2007-08 on 15.11.2007, declaring total income of Rs. 80,70,021. The case of the assessee was taken up for scrutiny assessment under Sec. 143(2). The A.O. being of the view that the assessee had failed to deduct tax at source on transaction charges of Rs. 36,52,820/-, therein disallowed the same under Sec.

40(a)(ia), and after deliberating on certain other issues assessed the income of the assessee at Rs. 1,35,97,610/- under Sec. 143(3), vide his order dated 23.11.2009. That on appeal the disallowance/additions made by the A.O (including the disallowance of Rs. 36,52,820/-) was deleted by the CIT(A). The revenue assailed the order of the CIT(A) before the Tribunal, which vide its order passed in ITA No. 6465/Mum/2010, dated. 29.06.2012, following the judgment of the **Hon'ble High Court of Bombay** in the case of **CIT Vs. Kotak Securities Limited (2012) 340 ITR 333 (Bom)** decided the issue in the favour of the revenue. The assessee filed a 'Miscellaneous application' before the Tribunal, marked as M.A No. 167/Mum/2012 on the ground that as it was under a *bonafide belief* as regards its statutory obligation of deducting tax at source on the transaction charges, therefore, the aforesaid disallowance of Rs. 36,52,820/- in all fairness may be deleted. The Tribunal, viz. ITAT 'C' bench, vide its order dated. 12.10.2012 allowed the miscellaneous application and in the backdrop of the aforesaid contention of the assessee, therein restored the matter to the file of the A.O. However, the A.O in the course of the set aside proceedings rejected the claim of the assessee for allowing of the aforesaid amount of Rs. 36,52,820/- and assessed the income of the assessee at Rs. 1,25,37,840/- vide his order passed under Sec. 143(3), dated. 24.01.2014. The assessee assailed the order of the A.O before the CIT(A), wherein the latter observed that the Tribunal while disposing of the assesses own appeal for A.Y. 2009-10, marked as ITA No. 7158/Mum/2012, dated. 22.04.2015, had deleted the addition/disallowance of Transaction charges made under Sec. 40(a)(ia) for non-deduction of tax at source, by observing as under:

*“We have heard both the parties and the contentions have carefully been considered. Keeping in view the sequence of dates which have been reproduced above, we are of the opinion that according*

*to the facts of the case, the relevant portion of the decision of the Hon'ble Bombay High Court in the case of CIT vs. Kotak Securities Ltd. (supra) which is reproduced in the order would be applicable and disallowance deserves to be deleted. Similarly, disallowance also deserves to be deleted on the ground of applicability of Special Bench decision in the case of Merilyn Shipping & Transports (supra), which has been consistently followed by the Mumbai Tribunal and the relevant portion from the order in the case of M/s Kedia Share & Stock Brokers has already been reproduced.”*

The CIT(A) following the aforesaid order of the Tribunal in the assesses own case for A.Y. 2009-10, therein deleted the disallowance of Rs. 36,52,820/- (supra) made by the A.O on the same issue under Sec. 40(a)(ia) in the hands of the assessee during the year under consideration.

**3.** The revenue being aggrieved with the order of the CIT(A) vacating the disallowance/addition of Rs. 36,52,820/- made by the A.O under Sec. 40(a)(ia), had carried the matter in appeal before us. The ld. Department Representative (for short 'D.R') at the very outset submitted that the CIT(A) while disposing of the present appeal of the assessee had gravely erred in following the order of the Tribunal in the case of the assessee for A.Y. 2009-10. The ld. D.R in order to drive home her aforesaid contention therein averred that the **Hon'ble High Court** while disposing of the appeal in the case of **CIT Vs. Kotak Securities Limited (2012) 340 ITR 333 (Bom)**, which pertained to A.Y. 2005-06, had in unequivocal terms held that though the transaction charges paid by the assessee to the stock exchange constituted 'fees for technical services' and as such it was obligatory on the part of the assessee to have deducted tax at source under Sec.

194J of the Act, but however, since both the Revenue and the assessee were under the *bona fide* belief for nearly a decade that tax was not deductible at source on payment of transaction charges, therefore, no fault could be found with the assessee in not deducting the tax at source in the assessment year in question, viz. A.Y. 2005-06, and consequently the disallowance made by the AO under s. 40(a)(ia) in respect of the transaction charges could not be sustained. It was submitted by the ld. D.R that the observations of the Hon'ble High Court while exonerating the assessee on the ground of *bonafide belief* from the aforesaid default, were only in context of A.Y. 2005-06, and thus the assessee could not be allowed to take the benefit of the same for the year under consideration, viz. A.Y. 2007-08. Per Contra, the ld. Authorised representative for the assessee submitted that the aforesaid contention of the revenue did not hold the ground any more, as the judgment of the **Hon'ble High Court of Bombay** in the case of **CIT Vs. Kotak Securities Limited (2012) 340 ITR 333 (Bom)** therein holding that 'transaction charges' fell within the sweep of 'fees for technical services', therein making it obligatory for the assessee to deduct tax at source in terms of Sec. 194J, had been reversed by the **Hon'ble Supreme Court** in the case of **CIT Vs. Kotak Securities Limited. (2016) 383 ITR 0001 (SC)**. It was submitted by the ld. A.R that the Hon'ble Apex Court had held that as 'transaction charges' paid to Stock Exchange by its members were not for 'technical services', but for the facilities provided by Stock Exchange, therefore, no tax on such payments was required to be deducted at source under Sec. 194J. The ld. A.R in the backdrop of his aforesaid contention submitted that now when the 'transaction charges' are not to be held as 'fees for technical services', therefore, no disallowance under Sec. 40(a)(ia) for failure to deduct tax at source under Sec. 194J could have been made by the A.O. Thus, it was submitted by the ld. A.R that as

the appeal of the revenue was devoid of any force, therefore, the same may be dismissed.

**4.** We have heard the authorised representatives for both the parties, perused the orders of the lower authorities and the material available on record. We are of the considered view that after the judgment of the **Hon'ble Supreme Court** in the case of **CIT Vs. Kotak Securities Limited. (2016) 383 ITR 0001 (SC)**, the issue as to whether 'transaction charges' fall within the sweep of 'fees for technical services', or not, had been settled once and for all and is no more found to be *res integra*. We find that the Hon'ble Apex Court deliberating at length on the issue under consideration, had therein concluded that 'transaction charges' being in the nature of charges paid by a stock broker for facilities provided by the Stock exchange, thus, the same cannot be characterised as 'fees for technical services', and observed as under:

*"...we hold that the view taken by the Bombay High court that the transaction charges paid to the Bombay Stock Exchange by its members are for 'technical services' rendered is not an appropriate view. Such charges, really, are in the nature of payments made for facilities provided by the Stock Exchange. No TDS on such payments would, therefore, be deductible under Section 194J of the Act."*

Thus, in the backdrop of the aforesaid settled position of law, we are of the considered view that now when the 'transaction charges' paid by the assessee to the Stock exchange cannot be held as 'fees for technical services', therefore, no disallowance of the aforesaid amount would be called for in the hands of the assessee under Sec. 40(a)(ia). We thus, in the backdrop of our aforesaid observations and reasoning uphold the order of the CIT(A) and conclude that no disallowance under Sec. 40(a)(ia) of the 'transaction charges' of Rs. 36,52,820/- was called for in the hands of the assessee. The **Grounds of appeal Nos. 1 to 3** are dismissed.

5. The appeal of the revenue is dismissed, in terms of our aforesaid observations.

6. Order pronounced in the open court on 25/10/2017.

**Sd/-**

(B.R.BASKARAN)  
ACCOUNTANT MEMBER

मुंबई Mumbai; दिनांक 25.10.2017

**Sd/-**

(RAVISH SOOD)  
JUDICIAL MEMBER

**आदेश की प्रतिलिपि अग्रेषित/Copy of the Order forwarded to :**

1. अपीलार्थी / The Appellant
2. प्रत्यर्थी / The Respondent.
3. आयकर आयुक्त(अपील) / The CIT(A)-
4. आयकर आयुक्त / CIT
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, मुंबई /  
DR, ITAT, Mumbai
6. गार्ड फाईल / Guard file.

सत्यापित प्रति //True Copy//

आदेशानुसार/ BY ORDER,

उप/सहायक पंजीकार (Dy./Asstt. Registrar)  
आयकर अपीलीय अधिकरण, मुंबई / ITAT,  
Mumbai