

**आयकर अपीलीय अधिकरण, अहमदाबाद न्यायपीठ 'B' अहमदाबाद ।**

**IN THE INCOME TAX APPELLATE TRIBUNAL  
"B" BENCH, AHMEDABAD**

**BEFORE SHRI PRADIP KUMAR KEDIA, ACCOUNTANT MEMBER  
& SHRI MAHAVIR PRASAD, JUDICIAL MEMEBR**

आयकर अपील सं./I.T.A. No. 759/Ahd/2016

(निर्धारण वर्ष / Assessment Year : 2010-11)

<b>Canon Capital And Finance Ltd.</b> 204, Sarap, Navjivan Press Lane, Ashram Road, Ahmedabad-380009	<b>बनाम/</b> Vs.	<b>Jt. Comm. of Income Tax</b> Range-3, Pratyaksh Kar Bhavan, Ambawadi, Ahmedabad-380015
<b>स्थायी लेखा सं./जीआइआर सं./PAN/GIR No. : AAACC6315P</b>		
(अपीलार्थी /Appellant)	..	(प्रत्यर्थी / Respondent)

अपीलार्थी ओर से /Appellant by :	Shri Jaimin Shah, A.R.
प्रत्यर्थी की ओर से / Respondent by :	Shri Mudit Nagpal, Sr.D.R.

सुनवाई की तारीख / Date of Hearing	05/09/2018
घोषणा की तारीख /Date of Pronouncement	25/09/2018

**आदेश/ORDER**

**PER PRADIP KUMAR KEDIA - AM:**

The captioned appeal has been filed at the instance of the assessee against the order of the CIT(A)-10, Ahmedabad ('CIT(A)' in short), dated 13.01.2016 arising in the assessment order dated 04.03.2013 passed by the Assessing Officer (AO) under s. 143(3) of the Income Tax Act, 1961 (the Act) concerning assessment year 2010-11.

2. The grounds of appeal raised by the assessee reads as under:-

- “1. That the learned IT(A) has erred both in law and on the facts by not allowing set-off of speculation losses of A.Y. 2003-04 of Rs.7,451/-.
2. That the learned IT(A) has erred in law on the facts by disallowances of following expenses U/s40(a)(ia) of the IT. 1961.

(a) Transaction charges	Rs.4,79,857/-
(b) Annual subscription charges	Rs.1,00,000/-
(c) Professional charges	Rs. 23,316/-
(d) NSE non-settlement charges	Rs. 16,171/-
3. That the appellant has paid all the expenses during the year under consideration and the expenditures are genuine, which has not been doubted by the Assessing Officer as well as the CIT(A) but disallowed the same by applying Sec. 40(a)(ia) of the Act is bad in law and illegal and requires to be deleted.”

3. Ground No.1 involves set off of speculation losses. Owing to the smallness of the amount involved, the learned AR for the assessee fairly submitted that he does not intend to press the grievance. Ground No.1 is accordingly dismissed as not pressed.

4. Ground No.2 concerns disallowance of various expenses by invoking Section 40(a)(ia) of the Act alleging non deduction of tax at source.

4.1 First disallowance relates to expenses on account of transaction charges amounting to Rs.4,79,857/- paid to the Stock Exchanges.

4.2 It is the case on behalf of the assessee that the transaction charges paid to the Stock Exchange is not susceptible to provisions of Section 194J of the Act and therefore no obligation for deduction of tax at source can be foisted upon the assessee. Secondly, the Revenue has not presumably suffered at all owing to the fact the Stock Exchange (deductee) has discharged its tax liability for the assessment year in question.

4.3 As relied upon on behalf of the assessee, the issue is no longer *res integra* and issue is squarely covered in favour of the assessee by the decision of the Hon'ble Supreme Court in the case of CIT vs. Kotak Securities Ltd. [2016] 383 ITR 1 (SC). Identical issue has been

adjudicated in favour of the assessee by co-ordinate bench in the case of Fiduciary Share & Stock P. Ltd. vs. ACIT 159 ITD 554 (Mum.) In parity, the disallowance under s.40(a)(ia) of the Act towards transaction charges requires to be deleted. The AO is directed accordingly to delete the disallowance.

4.4 Second issue relates to annual subscription charges paid to the Stock Exchange amounting to Rs.1 Lakh.

4.5 The learned AR for the assessee pointed out that the payment made to the Stock Exchange is not in the nature of managerial or professional charges and therefore TDS is not liable to be deducted. In tune with the principles laid down by the Hon'ble Supreme Court in the case of Kotak Securities Ltd. (supra) and having regard to the fact that the Stock Exchange, presumably, has discharged its tax obligations on such receipts of annual subscription charges, we find merit in non-applicability of Section 40(a)(ia) of the Act of such payments. Accordingly, the AO is directed to cancel the disallowance of Rs.1 Lakh on this score.

4.6 The assessee has also agitated disallowance of Rs.16,171/- paid to NSE for charges paid towards breach of settlement obligations in respect of certain transactions carried on behalf of its constituents from time-to-time. It is contended on behalf of the assessee that such charges towards late or short amount of settlement is not any kind of professional charges or managerial services. The payment is made to the Stock Exchange on violation of certain contractual obligations and the assessee has not received any services on payment of such amount. We find merit in the contentions raised on behalf of the assessee. The payment made to the Stock Exchange towards breach of contractual obligations cannot be termed to be any kind of service for invocation of provisions of Section 194J/194C of the Act. In any event, the Stock Exchange has, presumably, met its tax obligation of such

collections from the broker-assessee. Therefore, in parity with the view taken for other items, no disallowance under s.40(a)(ia) of the Act is called for. The AO is accordingly directed to delete the disallowance on this score.

4.7 Next issue concerns disallowance of Rs.23,316/- incurred towards professional charges for non-deduction of TDS. The learned AR for the assessee in the course of hearing fairly submitted that he does not intend to press this part of ground no.2 of its appeal. Consequently, the disallowance under s.40(a)(ia) of the Act towards professional charges amounting to Rs.23,316/- is dismissed.

5. Ground No.2 is accordingly allowed in part.

6. In the result, the appeal of the assessee is partly allowed.

**This Order pronounced in Open Court on 25/09/2018**

Sd/-  
(MAHAVIR PRASAD)  
JUDICIAL MEMBER  
Ahmedabad: Dated 25/09/2018

Sd/-  
(PRADIP KUMAR KEDIA)  
ACCOUNTANT MEMBER

*S. K. SINHA*

**आदेश की प्रतिलिपि अद्येषित / Copy of Order Forwarded to:-**

1. राजस्व / Revenue
2. आवेदक / Assessee
3. संबंधित आयकर आयुक्त / Concerned CIT
4. आयकर आयुक्त- अपील / CIT (A)
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, अहमदाबाद /  
DR, ITAT, Ahmedabad
6. गार्ड फाइल / Guard file.

By order/आदेश से,

उप/सहायक पंजीकार  
आयकर अपीलीय अधिकरण, अहमदाबाद ।