IN THE INCOME TAX APPELLATE TRIBUNAL
SURAT BENCH, SURAT

BEFORE SHRI SANDEEP GOSAIN, JUDICIAL MEMBER
AND SHRI O.P.MEENA, ACCOUNTANT MEMBER

आ.अ.सं./I.T.A No.1566/AHD/2013
निर्धारणवर्ष/Assessment Year: 2009-10

M/s. R. Wadiwala Securities Pvt. Ltd., 9/2003-04, Limda Chowk Main Road, Surat-395 003. **[PAN: AAJPT 4629 F]**	V.	Income Tax Officer, Ward-4(1), Surat.
अपीलार्थी / Appellant		**प्रत्यर्थी/Respondent**

निर्धारितीकीओरसे /Assessee by	Shri Manish J. Shah, Advocate
राजस्वकीओरसे /Revenue by	Ms. Anupama Singla, Sr. DR

सुनवाईकीतारीख/ Date of hearing:	12.02.2020
उद्घोषणाकीतारीख/Pronouncement on:	12.02.2020

आदेश /O R D E R

PER O.P.MEENA, AM:

1. This appeal filed by the Assessee is directed against the order of Commissioner of Income-Tax (Appeals)-II, Surat [in short "the CIT(A)"] dated 28-03-2013, for the assessment year 2009-10.

2. Ground No.1 is general in nature and does not require our adjudication.

3. Ground No.2 & 3 relates to confirming addition of Rs.42,15,347/- on account of brokerage refund a/c. to the client.

4. Succinct facts of the cases are that the assessee is a share and stock broker and member of Bombay Stock Exchange and National Stock Exchange. The AO noticed that the assessee has outstanding receivable from Shri Jignesh Saraiya, a customer of assessee, amounting to Rs.90,43,982/- out of which Rs.47,41,272/- was written off as bad debt but Rs.42,15,347/-

was adjusted against the brokerage refund given back to Shri Jignesh Saraiya and claimed as expenditure. The AO was of the view that once the income was accrued, it cannot be surrendered or refunded to claim it as expenditure. Hence, the same was disallowed and added to total income.

5. Being aggrieved, the assessee carried the matter before the ld. CIT(A). However, CIT(A) observed that there is no provision under the Income Tax Act to allow such sum of other persons as expenditure. Hence, the addition made by the AO came to be sustained.

6. Being aggrieved, the assessee filed this appeal before this Tribunal. The ld. counsel submitted that the case of the assessee is covered by the decision of ITAT in the case of assessee in ITA No.1061/AHD/2011 for AY.2007-08 and In ITA No.1293/AHD/2011 for AY.2007-08, wherein appeal filed by the Revenue against the order of CIT(A) was dismissed. The Tribunal has dismissed the Revenue appeal by sustaining the deletion of disallowance of 'Vatav Kasar' expenses. Since, the facts are identical; hence, the claim of the assessee is allowable.

7. *Per contra,* the ld. Sr. DR relied on the order of the lower authorities.

8. We have heard the rival submissions and perused the relevant material available on record. We find that the issue is squarely covered by the ITAT decision in the appellant's own case for AY.2007-08, wherein Para 10 to 14 of ITAT has held as under:-

> *10. Assessee is a company stated to be engaged in the business of shares and stock broker and is a member of National Stock Exchange. Assessee filed its return of income for A.Y. 2007-08 on 30-10-2007 declaring total income of Rs.1,16,19,7707-. The case was selected for scrutiny and thereafter assessment was framed u/s. 143(3) vide order dated 26-11-2009 and the total income was declared at Rs.1,16,19,7707. Aggrieved by the*

order of AO, assessee carried the matter before Ld. CIT(A). Ld. CIT(A) vide order dated 12-01-2011 allowed the appeal of the assessee. Aggrieved by the aforesaid order of Ld. CIT(A), Revenue is now in appeal before us and raised the following effective ground:-

> *"1. On the facts and circumstances of the case and in Law, the Ld. CIT(A), Surat has erred in allowing the addition made by way of disallowance of "vatav kasar" expenses of the I.T. Act, of Rs. 15,00,000/-"*

11. During the course of assessment proceedings, AO noticed that assessee has debited a sum of Rs. 15,93,4877- under the head "vatav kasar". On perusing the details submitted by the assessee, AO noticed that assessee had received brokerage which was returned back to some of the clients. AO also noticed that the brokerage that was returned was on case to case basis and there was no fixed percentage or rate. He also noticed that in case of four parties listed at page 2 of the order, assessee had earned brokerage and the brokerage was also returned back and the amount of brokerage returned back was claimed as expenditure. AO was therefore of the view that the expenditure of Rs.5 lacs debited to "vatav kasar" was not admissible expenditure. He accordingly disallowed the same. Aggrieved by the order of AO, Assessee carried the matter before Ld. CIT(A). Ld. CIT(A) after considering the submissions of the assessee deleted the addition by holding as under:-

> *"/ have gone through the facts of the case. The A.O. made the addition primarily for the reason that once having earned the brokerage there was no provision for refund and therefore the expenditure by way of refund of brokerage was inadmissible. The A.O. was also of the opinion that the expense was not reasonable in that the discount was not allowed at fixed rates. The appellant's A.R. has argued that the transaction of refunding brokerage has not been doubted, i.e. expense has been incurred. Once, it is established that expenditure has been incurred for the purpose of business the reasonableness of the expenditure cannot be questioned by the A.O. It has also been their contention that even if the expenditure is incurred voluntarily but for the benefit of the business, it is to be allowed as a deduction. I find that the appellant has been able to show that his policy of not charging lower brokerages upfront across the board but to*

13. Before us, Ld. DR took us through the findings and observations made by the AO in the assessment order and supported the order of AO. Ld. AR on the other hand reiterated the submissions made before the AO and Ld. CIT(A) and further submitted that assessee during the period had earned brokerage in excess of Rs.2 crore and "vatav kasar" was in respect of four persons. He further submitted that all the four persons were its clients, they were income tax assessee and assessee had also filed their confirmation, PAN no and addresses. He therefore submitted that

assessee had fully justified in claiming the expenses. He thus supported the order of Ld. CIT(A).

14. We have heard the rival submissions and perused the material on record. We find that Ld. CIT(A) while deleting the addition has given a finding that the policy of the assessee of allowing discount by way of refund to the clients who gave huge volume of business)was a sound 'and the expenditure was incurred for the purpose of business. He further held that the genuineness of the expenditure has not doubted by Revenue. Before us, Revenue has not brought any material on record to controvert the findings of Ld. CIT(A). We therefore find no reason to interfere with the order of Ld. CIT(A) and thus this ground of Revenue is dismissed."

11. Therefore, respectfully following the above order of Tribunal in the assessee's own case, we allowed the appeal of the assessee.

12. Ground No.4 to 6 relates to confirming addition for TDS not deductible transaction charges due to non-deduction TDS u/s.194 of the Act.

13. The AO found that the assessee has paid transaction charges to BSE/NSE amounting to Rs.26,16,038/- during the year and no deduction TDS on the transaction charges paid to BSE/NSE made which constituted fees for technical services u/s.194J of the Act. Therefore, the same was allowed u/s.40(a)(ai) of the Act.

14. Being aggrieved, the assessee carried the matter before the ld. CIT(A), wherein it was submitted that out of total amount of transaction charges of Rs.26,60,038/-, the amount of Rs.7,40,996/- relates to share Stamp Duty expenses and remaining amount of Rs.18,75,042/- is pertained to transaction charges paid to BSE/NSE. Considering these facts, the CIT(A)had deleted the disallowance of Rs.7,40,996/- being genuine business expenses. However, with regard to transaction charges of Rs.18,75,042/- paid to BSE/NSE, the CIT(A) observed that this issue is same covered the fees for technical services u/s.194J of the Act. The CIT(A) also observed that the

appellant cannot take shelter of the judgement of Hon'ble Bombay High Court in the case of Kotak Securities dated 21-10-2011, as this decision pertains to assessment year 2006-07. Accordingly, the addition to the extent of Rs.18,75,042/- was confirmed.

15. Being aggrieved, the assessee filed this appeal before this Tribunal. The ld. counsel submitted that the issue is covered in favour of the decision of Hon'ble Supreme Court in the case of CIT v. Kotak Securities (2016) 383 ITR 1 (SC). Wherein in Para 9, the Hon'ble Supreme Court held that the transaction charges paid by the assessee to BSE for online trading (BOLT) system are common service that every member of Stock Exchange is unnecessarily required to avail of to carry out trading in securities and the same are not covered as technical services within the meaning of explanation 2 of Section 9(1) (vii) of the Act.

16. Per contra, the ld. Sr. DR relied on the order of lower authorities.

17. We have heard the rival submissions and perused the relevant material available on record. We find that the issue of transaction charges paid to BSE/NSE by the assessee is stands covered by the decision of Hon'ble Supreme Court in the case of CIT v. Kotak Securities (supra), wherein Para 9 to 11 held as under:-

> *9. There is yet another aspect of the matter which, in our considered view, would require a specific notice. The service made available by the Bombay Stock Exchange [BSE Online Trading (BOLT) System] for which the charges in question had been paid by the appellant-assessee are common services that every member of the Stock Exchange is necessarily required to avail of to carry out trading in securities in the Stock Exchange. The view taken by the High Court that a member of the Stock Exchange has an option of trading through an alternative mode is not correct. A member who wants to conduct his daily business in the Stock Exchange has no option but to avail of such services. Each and every transaction by a member involves the use of the services provided by the Stock Exchange for which a member is compulsorily required to pay an additional charge (based on the transaction value) over and above the charges for the membership in the Stock Exchange. The above features of the services*

provided by the Stock Exchange would make the same a kind of a facility provided by the Stock Exchange for transacting business rather than a technical service provided to one or a section of the members of the Stock Exchange to deal with special situations faced by such a member(s) or the special needs of such member(s) in the conduct of business in the Stock Exchange. In other words, there is no exclusivity to the services rendered by the Stock Exchange and each and every member has to necessarily avail of such services in the normal course of trading in securities in the Stock Exchange. Such services, therefore, would undoubtedly be appropriate to be termed as facilities provided by the Stock Exchange on payment and does not amount to "technical services" provided by the Stock Exchange, not being services specifically sought for by the user or the consumer. It is the aforesaid latter feature of a service rendered which is the essential hallmark of the expression "technical services" as appearing in Explanation 2 to Section 9(I)(vii) of the Act.

10. For the aforesaid reasons, 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.

11. In view of above conclusions, it will not be necessary for us to examine the correctness of the view taken by the Bombay High Court with regard to the issue of the disallowance under Section 40(a)(ia) of the Act. All the appeals, therefore, shall stand disposed in the light of our views and observations as indicated above.

18. Therefore, we respectfully following the same ground of the appeal is allowed. Accordingly, this ground of appeal is allowed in favour of the assessee.

19. Ground No.7 & 8 are relates to making addition of Rs.3,12,000/- on account of squared up account.

20. Brief facts of the cases are that the assessee debited this amount of Rs.3,12,000/- pertaining to prior period. It was submitted that the assessee has massive fall on 21-01-2008 & 22-01-2008, huge number clients stop to comply with the mark to market and other margin requirements. Therefore, the assesse could not have ascertained the exact quantum of losses till the time of settlement was reach with the respective clients and therefore some brokers. Hence, it was accounted only finalize an amount ascertain. However, the AO was not satisfied to the explanation of the assessee and

ascertain that the expenditure pertains to earlier period towards settlement of losses. Hence, the same is not pertained to the correct year. Therefore, the same was disallowed. In appeal, the CIT(A) upheld the disallowance made by the AO.

21. Being aggrieved, the assessee filed this appeal before this Tribunal. The ld. counsel submitted that the assessee has a massive fall on 21-01-2008 & 22-01-2008, huge numbers of clients were stop to comply with mark to market and other margin requirements. It was submitted that all the over lines were having transaction with the assessee before 21st & 22nd Jan, 2008, when the exchange has falling. The assessee has settled the amounts of he clients during the financial year with the stock-brokerage by paying of it round figure so as to pays any compensate with some brokers where he had settled the dispute with his clients. Therefore, there was no way to decide the quantum of losses after any previous accounting years. Since, the amount has been settled during the year, hence, liability has been settled in and as expenses for the year under consideration.

22. Per contra, the ld. Sr. DR relied on the order of lower authorities.

23. We have heard the rival submissions and find that the losses pertain to settle of 'Sauda' prior to period of 21-01-2008. The assessee was aware of the losses but quantum of losses could not be ascertained. Therefore, the losses have been settled during the year under consideration, hence, the liability has been ascertained during the year under appeal and same are allowable deduction under consideration. In view of this, this disallowance made by the AO and as sustained by the AO is deleted. Accordingly, these ground Nos.6 & 7 are allowed.

24. In the result, the appeal of the assessee is allowed.

25. The order pronounced in the open Court on 12-02-2020

Sd/-	Sd/-
(SANDEEP GOSAIN)	**(O.P.MEENA)**
JUDICIAL MEMBER	**ACCOUNTANT MEMBER**

Surat: Dated: 12th *Feb, 2020/Samanta, PS*
Copy of order sent to- Assessee/AO/Pr. CIT/ CIT (A)/ ITAT (DR)/ Guard file of ITAT.

By order

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Assistant Registrar, Surat