

**IN THE INCOME TAX APPELLATE TRIBUNAL “E” BENCH, MUMBAI
BEFORE SRI MAHAVIR SINGH, JM AND SRI ASHWANI TANEJA, AM**

**ITA No.6298/Mum/2014
(A.Y:2010-11)**

Sal Securities P. Ltd. 703-A, Lakshchandi Apartments, Krishna Vatika Marg, Gokul Dham, Goregaon East, Mumbai- 400063 PAN No.AAHCS8674E	Vs.	Income Tax Officer (TDS)-3(2), Room No. 910, Smt. K.G. Mittal Aurvedic Hospital Building Charni Road(W), Mumbai-400002
Appellant	..	Respondent
Assessee by	..	None
Revenue by	..	Shri. B.S. Bist, DR
Date of hearing	..	15-12-2016
Date of pronouncement	..	15-12-2016

ORDER

PER MAHAVIR SINGH, JM:

This appeal by assessee is arising out of the order of CIT(A) -14, Mumbai in appeal No. CIT(A)-14/IT-169/ITO TDS-3(2)/2012-13 dated 11-08-2014. The Assessment was framed by ITO(TDS)-3(2), Mumbai for the A.Y. 2010-11 vide order dated 31-03-2012 u/s 201(1) r. w. s. 201(1A) of the Income Tax Act, 1961 (hereinafter ‘the Act’).

2. The only issue in this appeal of assessee is against the order of CIT(A) treating the assessee as assessee in default for non-deduction of TDS u/s 194J by passing the order u/s 201(1) r. w. s. 201(1A) of the Act on transaction charges paid to National Stock Exchange of India, hence, the consequential interest also on the same. For this assessee has raised following grounds: -

“2. On the facts and in the circumstances of the case, the Ld. CIT(A) erred in confirming the order passed by the Ld. A.O. u/s 201(1) r. w. s. 201(1A) without properly appreciating the fact that the order was passed by the Ld. A.O. without considering the facts and figures on record and without application of mind.

3. In the facts and in the circumstances of the case, the Ld. CIT(A) erred in confirming the action of the Ld. A.O. in holding that the appellant has not deducted TDS u/s 194J of Rs. 99,282/- on transaction charges of Rs. 9,92,820/- paid to National Stock Exchange of India (NSE) and further erred in confirming the interest u/s 201(1A) of Rs. 35,741/- as levied by the Ld. A.O.”

3. The brief facts leading to the above issue are that the AO in view of the information received from the National Stock Exchange that during the financial year 2009-10 relevant

to the A.Y. 2010-11 the assessee has paid transaction charges amounting to Rs. 9,92,820/- on which no TDS has been deducted u/s 194J of the Act. Accordingly, the AO hold the assessee as deemed to be in default u/s 201(1) of the act and consequential interest u/s 201 (1A) was also levied. Aggrieved, assessee preferred appeal before CIT(A), who also confirmed the action of the AO by following the decision of Hon'ble Bombay High Court in the case of CIT(A) Vs. Kotak Securities Ltd [2012] 20 taxman dotcom 846 (Bom).

4. At the outset, it is noticed that this issue is now covered in favour of assessee by the decision of Hon'ble Supreme Court in the case of CIT Vs. Kotak [2016] 67 taxman.com 356(SC), wherein, Hon'ble Supreme Court has reversed the judgement of Hon'ble Bombay High Court by stating that the transaction charges paid to the Bombay Stock Exchange by its members are for technical services rendered is not appropriate view of the Bombay High Court. It was held that such charges really in the nature of payments made for facilities provided by this Stock Exchange and no TDS on such payment would be deductible u/s 194J of the Act. According to the learned Counsel this issue is squarely cover in favour of assessee and against the Revenue.

5. After hearing the learned Sr. DR and going through the facts of the case, we find that the issue is covered by the Supreme Court judgement in the case of Kotak Securities Ltd. and hence, respectfully following the same, we allow the claim of assessee and reverse the orders of the lower authorities. Appeal of the assessee is allowed.

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

Order pronounced in the open court on 15-12-2016.

Sd/-

(ASHWANI TANEJA)
ACCOUNTANT MEMBER

Mumbai, Dated: 15-12-2016

Sudip Sarkar /Sr.PS

Copy of the Order forwarded to:

1. The Appellant
2. The Respondent.
3. The CIT (A), Mumbai.
4. CIT
5. DR, ITAT, Mumbai
6. Guard file.

//True Copy//

Sd/-

(MAHAVIR SINGH)
JUDICIAL MEMBER

BY ORDER,

Assistant Registrar
ITAT, MUMBAI