

**IN THE INCOME TAX APPELLATE TRIBUNAL
MUMBAI BENCHES "A", MUMBAI**

BEFORE SHRI SANJAY ARORA (AM) AND SHRI RAM LAL NEGI (JM)

**ITA No. 6324/MUM/2014
Assessment Year: 2008-09**

Angel Broking Pvt. Ltd. (Successor to Angel Broking Ltd.) G-1, Akruiti Trade Centre, Road, No. 7, MIDC, Andheri (E), Mumbai- 400093. PAN- AAACA8821G	Vs.	The ITO (TDS)-1 (2), 8 th Floor, Room No. 805, K.J.Mittal Ayurvedic Hospital Building, Charni Road (W), Mumbai- 400 002
(Appellant)		(Respondent)

Appellant by : Shri. D.V. Lakhani.
Respondent by : Shri. R.P.Rastogi

Date of Hearing: 05/05/2016
Date of Pronouncement: 04/08/2016

ORDER

PER RAM LAL NEGI, JM

This appeal has been preferred by the appellant/assessee against order dated 14/08/2014 passed by Ld CIT(A)-14, Mumbai u/s 201(1)/201(1A) of the Income Tax Act, 1961 (in short 'the Act') for the assessment year 2008-09.

2. Brief facts of the case are that the assessee, a limited company and member of Bombay Stock Exchange, is engaged in the business of Share Broking. During the course of assessment proceedings, it was noticed that the assessee did not admittedly deduct tax at source on payment made on account of dematerialization (demat) charges amounting to Rs. 16,20,462/- as per the provisions of Section 194-J of the Act. Accordingly, the assessee was declared

as 'assessee in default' under section 201(1) and, consequently u/s 201(1A) of the Act for non-deduction of tax at source on technical fees and non-payment of interest thereon raising demand of Rs. 1,64,848/-and Rs.12,22,620/- respectively there under.

3. Aggrieved, the assessee is in appeal before the Tribunal, the assessee has challenged the impugned order on the following effective grounds:-

"1. On the facts & circumstances of the case the Learned Commissioner of Income Tax (Appeals) erred in enhancing the quantum of disallowance amounting to Rs. 16,00,462/- being the payment for DEMAT charges while passing the appellate order and has determined the tax liability u/s 201(1) fo the Income Tax Act, 1961 at Rs. 1,64,848/-. The appellant prays that the enhancement made by the Learned Commissioner of Income Tax (Appeals) is not justified and may be deleted.

2. On the facts & circumstances of the case the appellant prays that the appellant is not liable to deduct tax at source u/s 194J of the Income Tax Act, 1961 on the payment of DEMAT charges. The said payment does not qualify within the scope of payment of fees for professional or technical services. The Learned Commissioner of Income Tax (Appeals) has erred in concluding that the appellant was liable to deducted tax at source u/s 194J of the Income Tax Act, 1961 on the DEMAT charges. The conclusion reached by Learned Commissioner of Income Tax (Appeals) is erroneous.

3. On the facts & circumstances of the case the appellant prays that the tax determined u/s 201(1) of the Income Tax Act, 1961 at Rs. 1,64,848/- may be deleted.

4. *On the facts & circumstances of the case the Learned Commissioner of Income Tax (Appeals) erred in levying interest u/s 201(1A) of the Income Tax Act, 1961 amounting to Rs. 12,22,620/-. The appellant denies the liability for payment of interest u/s 201(1A) of the Income Tax Act, 1961 at Rs. 12,22,620/-. The appellant prays that the interest levied u/s 201(1A) of the Income Tax Act, 1961 amounting to Rs. 12,22,620/- may be deleted.*

5. *On the facts & circumstances of the case the appellant prays that, without prejudice to the above claim that the appellant is not liable to pay interest u/s 201(1A) of the Income Tax Act, 1961. There is an error in determining the quantum of interest u/s 201(1A) of the Income Tax Act, 1961 at Rs. 12,22,620/-. The appellant prays that the interest levied u/s 201(1A) of the Income Tax Act, 1961, at Rs. 12,22,620/- may be deleted.”*

4. At the very outset, the counsel for the assessee submitted that the assessee's case is squarely covered by the assessee's own case for the A.Ys. 2006-07 & 2007-08, in which the identical issue has been decided by the ITAT, Mumbai in favour of the assessee.

5. On the other hand the Ld. Departmental Representative (DR) relying on the findings of the Ld. CIT(A) contended that the impugned order does not suffer from any legal infirmity. The Ld. CIT(A) has passed the impugned order after taking into consideration the submissions made by the assessee.

6. We have heard the rival submissions of the parties and also perused the material placed before us in the light of their respective contentions. The only contention of the Ld. Counsel is that since the payment in question does not

fall within the purview of payment of fees for professional or technical services, the assessee is not liable to pay tax at source u/s 194J of the Act. The coordinate Bench of the ITAT has decided the same issue in favour of the assessee in the assessee's own case (in ITA No. 4866/Mum/2010) for the A.Y. 2007-08 by following its earlier decision rendered in assessee's case, i.e., for the A.Y. 2005-06 (in ITA No. 7031/Mum/2008), holding as under:-

“We have heard both sides and perused the records carefully. The dispute is regarding allowability of deduction on account of demat and depository charges paid by the assessee in connection with trading of shares. The demat charges are paid for getting the shares dematerialized into the electronic form and depository charges are for holding the shares in depository account. The assessing officer has held that these charges are payment for services which are technical in nature and therefore covered under the provisions of section 40(a) (ia) which does not allow deduction on account of such payment unless tax has been deducted at source and paid to the central government. We find that allowability of similar payments such as demat charges, v-sat charges, lease line charges had been considered by the Tribunal in case of the assessee in 2005-06. The Tribunal held that these charges have been levied for the facility provided by the stock exchange and the depository. The Tribunal also held that such charges are payment for facility provided and do not involve rendering of any technical services to the members of stock exchange. The tribunal followed the judgment of Hon'ble High Court of Madras in case of Skycell Communications Ltd 251 ITR 53 (Mad) in which it was held that merely collection of fees for use of standard facility provided does not amount to fees having been paid for technical services. The Tribunal accordingly held that provisions of section 40(a)(ia) were not applicable. The facts in this year are similar. The demat charges and depository charges are payment for standard facility provided. Though these facilities require use of technology, there are no technical services involved. We therefore, see no infirmity in the order of CIT a in deleting the addition made by assessing officer and the same is therefore upheld”

7. The issue involved, i.e., the applicability of section 194J of the Act to demat charges paid by the assessee broker to banks etc., in the present case is the same as that for the earlier years. We, accordingly, respectfully following the order of the co-ordinate Bench of the Tribunal for the assessment years 2005-06 and 2007-08 (supra), allow the appeal of the assessee.

8. In the result, the appeal filed by the assessee for the Asst. year 2008-09 is allowed.

Order pronounced in the open court on 4th August, 2016

Sd/-

(SANJAY ARORA)

ACCOUNTANT MEMBER

Sd/-

(RAM LAL NEGI)

JUDICIAL MEMBER

मुंबई Mumbai; दिनांक Dated: 04/08/2016

आदेश 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.

आदेशानुसार/ BY ORDER,

सत्यापित प्रति //True Copy//

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

Pramila