

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION

K

INCOME TAX APPEAL NO.4117 OF 2010

The Commissioner of Income Tax-4 .. Appellant
Vs.
M/s. The Stock and Bond Trading Company .. Respondent.

Mr. Vimal Gupta for the Appellant.

CORAM : J.P. DEVADHAR & K.K. TATED, JJ.
DATE : 14TH OCTOBER, 2011.

PC.

1 Two questions of law raised by the Revenue in this Appeal read thus:

A Whether on the facts and in the circumstances of the case and in law the Tribunal was justified in deleting the additions made by the Assessing Officer under section 40(a)(ia) of the Income Tax Act, 1961 claimed by the assessee firm being VSAT charges amounting to Rs.3,12,597/- and NSE lease line charges amounting to Rs.1,66,301/- and Transaction charges of Rs.4,45,024/- paid by the Assessee Firm to the National Stock Exchange, even though the Assessee had failed to deduct tax at source while making such payments as required under section 194J of the Income Tax Act, 1961?

B Whether on the facts and in the circumstances of the case and in law the Tribunal was justified in deleting the additions made by the Assessing

Officer under proviso to section 37(1) of the Income Tax Act, 1961 being penalty imposed by the National Stock Exchange on the Assessee?

2 As regards the first question is concerned, counsel for the Revenue states that the said question is answered against the Revenue in case of **The Income Tax Commissioner Mumbai City-4 vs. Angel Capital & Debit Market Ltd.** in **Income Tax Appeal (L) No.475 of 2011** dated 28th July, 2011. Hence, the first question cannot be entertained.

3 As regards the second question is concerned, the finding of fact recorded by the CIT (A) and upheld by the ITAT is that the payments made by the Assessee to the Stock Exchange for violation of their regulation are not an account of an offence or which is prohibited by law. Hence, the invocation of explanation to section 37 of the Income Tax Act, 1961 is not justified. In our opinion, in the facts and circumstances of the present case, no fault can be found with the decision of the ITAT. Accordingly, the second question cannot be entertained.

4 Appeal is accordingly disposed of with no order as to costs.

(J.P. DEVADHAR, J.)

(K.K. TATED, J.)