

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

**BEFORE SHRI DINESH KUMAR AGARWAL (J.M.)  
AND SHRI D. KARUNAKARA RAO (A.M.)**

**ITA No. 8317/Mum/2010**

Assessment Year 2005-06

**ITA No. 8322/Mum/2010**

Assessment Year 2007-08

Dy. Commissioner of Income-tax – 2(3), Room No. 555, Aayakar Bhavan, Mumbai – 400 020.	Vs.	M/s S.J. Investment Agencies P. Ltd., Ist Floor, Banaji House, 361 Dr. D.N. Road, Fort, Mumbai 400 001. PAN AAHCS9535Q
<b>(Appellant)</b>		<b>(Respondent)</b>

Revenue by: Shri Girija Dayal

Assessee by : Shri R.C. Jain

<b>Date of hearing</b>	<b>31-12-2012</b>
<b>Date of pronouncement</b>	<b>02-01-2013</b>

**ORDER**

**PER DINESH KUMAR AGARWAL, J.M.**

These two appeals preferred by the Revenue are directed against the common order dtd. 21-9-2010 passed by the ld. CIT(A) – 6, Mumbai for assessment years 2005-06 & 2007-08. Since facts are identical and common issue is involved, both these appeals are disposed of by this common order for the sake of convenience.

2. Briefly stated facts of the case extracted from ITA No. 8317/Mum/2010 for A.Y. 2005-06 are that the assessee company is engaged in the business of Mutual Fund Distributors and Investment

agents. The return was filed declaring total income of Rs. 9,07,237/- which was processed u/s 143(1) of the Income Tax Act, 1961 (the Act). On perusal of post assessment records the A.O. observed that the assessee company had shown to have earned gross receipts of Rs. 4,75,52,110/- as income from brokerage and out of it, the assessee had paid sub-brokerage Rs. 3,49,41,624/- to various parties without deducting tax at source. Hence, according to the A.O. an amount of Rs. 3,49,41,624/- is liable to be disallowed u/s 40(a)(ia) of the Act which has escaped assessment and accordingly re-opened the assessment u/s 147 of the Act. In response to the notice issued u/s 148 of the Act, the assessee stated that the return already filed may be treated as filed in response to notice u/s 148. The A.O. after providing copy of the reasons recorded asked the assessee to file objections. The assessee after seeking adjournments, filed the objection vide letter dtd. 27-10-2009, inter alia, stated that the appeal filed by the assessee for the A.Y. 2006-07 has been decided by the Id. CIT(A) in assessee's favour, therefore, the proceeding initiated be dropped. However, the A.O. did not accept the assessee's explanation. He observed that since the assessee has not deducted any tax at source on the sub-brokerage paid by the assessee, therefore, he disallowed the sub-brokerage of Rs. 3,49,41,624/- u/s 40(a)(ia) of the Act. The A.O. after making some other disallowances completed the assessment at an income of Rs. 3,59,61,760/- vide assessment order dtd. 25-11-2009 passed u/s 143(3) r.w.s. 147 of the Act. On appeal, the

ld. CIT(A) following the appellate order for the A.Y. 2006-07, however, allowed the claim of the assessee for both the assessment years.

3. Being aggrieved by the order of the ld. CIT(A) the Revenue is in appeal before us challenging in all the common grounds the deletion of disallowance of sub-brokerage u/s 40(a)(ia) of the Act.

4. At the time of hearing the ld. D.R. supports the order of the A.O.

5. On the other hand, the ld. Counsel for the assessee submits that this issue stands covered in favour of the assessee by the order of the Tribunal in assessee's own case in ACIT vs. M/s S.J. Investment Agencies P. Ltd. and vice versa in ITA No. 3820/Mum/2009 and C.O. No. 01/Mum/2010 for A.Y. 2006-07 order dtd. 23-2-2011. He also placed on record the copy of the said order of the Tribunal.

6. We have carefully considered the submissions of the rival parties and perused the material available on record. We find merit in the plea of the ld. Counsel for the assessee that the issue is covered in favour of the assessee by the order of the Tribunal in assessee's own case (supra) wherein the Tribunal vide para 6 of its order held as under:-

“6. After considering the arguments and submission we agree with the findings of the CIT(A). The provisions of section 194H are as under: -

“194H. Any person, not being an individual or a Hindu undivided family, who is responsible for paying, on or after the 1st day of June, 2001, to a resident, any income by way of commission (not being insurance commission referred to in section 194D) or

brokerage, shall, at the time of credit of such income to the account of the payee or at the time of payment of such income in cash or by the issue of a cheque or draft or by any other mode, whichever is earlier, deduct income-tax thereon at the rate of [ten] per cent :

Provided .....

Provided .....

Provided .....

Explanation.—For the purposes of this section,—

(i) “commission or brokerage” includes any payment received or receivable, directly or indirectly, by a person acting on behalf of another person for services rendered (not being professional services) or for any services in the course of buying or selling of goods or in relation to any transaction relating to any asset, valuable article or thing, not being securities;

(ii) .....

(iii) .....

(iv) .....

As can be seen from the above provision, the commission or brokerage definition does not include transactions in securities. There is no doubt that Mutual Funds are categorised as securities on which there is no objection from the Revenue either before the A.O. or before the CIT(A). In fact the CIT(A) also gives a finding that the A.O. has not disputed that units of Mutual Funds are securities as per Securities Contracts (Regulation) Act, 1956. Assessee is in the business of Mutual Funds distribution and investment agent. From the details of brokerage received and service tax deducted there from it can be seen that out of the brokerage income of `8,28,56,873/- the brokerage income of `8,27,47,095/- is from Mutual Funds. The balance brokerage of `1,09,779/- is towards bonds and fixed deposits. The sub-brokerage is paid in relation to units of Mutual Funds. From the details placed on record, we are convinced that the sub-brokerage paid is connected with the services rendered in the course of buying and selling of units of Mutual Funds or in relation to transactions pertaining to Mutual Funds and as per the provisions of section 194H Explanation (i) these are not covered by the provision for deduction of tax at source. There is nothing on record to indicate that the sub-brokerage is paid for any other services other than relating to securities. The A.O. also accepts that the brokerage received by the assessee is not covered by TDS whereas he was of the opinion that the sub-brokerage paid is covered by the provisions. We are unable to understand this logic of the A.O. For these reasons, we are of the opinion that the order of the CIT(A) does not require any modification and accordingly the same is confirmed. Revenue's grounds on this issue are accordingly rejected”.

7. In the absence of any distinguishing feature brought on record by the Revenue, we respectfully following the order of the Tribunal (supra),

decline to interfere with the order passed by the Id. CIT(A) and accordingly the common grounds taken by the Revenue for both the assessment years are rejected.

8. In the result, Revenue's appeals stand dismissed.

Order pronounced on 02.01.2013

Sd/-  
(D. KARUNAKARA RAO )  
ACCOUNTANT MEMBER

Sd/-  
(DINESH KUMAR AGARWAL)  
JUDICIAL MEMBER

Mumbai, Dated : 02.01.2013  
RK

Copy to:

1. The Appellant
2. The Respondent
3. Commissioner of Income Tax (Appeals)- -6, Mumbai
4. Commissioner of Income Tax – -2, Mumbai
5. Departmental Representative, Bench 'E', Mumbai

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BY ORDER

ASSTT. REGISTRAR, ITAT, MUMBAI