IN THE INCOME TAX APPELLATE TRIBUNAL
MUMBAI BENCHES "C", MUMBAI

Before Shri I.P. Bansal, J.M. and Shri P.M. Jagtap, A.M

I.T.A. No.5364/Mum/2011
Assessment Year: 2008-09

M/s.Churiwala Securities P. Ltd. C/o. Dr. C.P. Ramaswami, Advocate, Flat Nos. 102 & 303, Gitanjali Apts., 108 Srinagar Colony, Hyderabad 500 073 **PAN NO. : AAACC 6224 F**	Vs.	ACIT, CIR - 4(1) Mumbai
(Appellant)		(Respondent)

Appellant by	:	Shri C.P. Ramaswami
Respondent by	:	Shri Rajarshi Dwivedy
Date of hearing	:	23.08.2012
Date of pronouncement	:	07.09.2012

<u>O R D E R</u>

<u>Per P.M. JAGTAP (AM) :</u>

This appeal filed by the assessee is directed against the order of Ld. CIT(A)-8, Mumbai dated 24.05.2011.

2. Ground No. 1 raised by the assessee in this appeal is general in nature seeking no specific decision from us.

3. The issue in ground no. 2 relates to the disallowance of ₹.2,24,720/- made by the Assessing Officer and confirmed by the Ld. CIT(A) on account of annual subscription paid for renewal of website.

4. The assessee in the present case is a company which is engaged in the business of stock broking and dealing in shares as a member of Bombay Stock Exchange. The return of income for the year under consideration was filed by it on 29.09.2008 declaring total income of ₹.2,03,02,980/-. During the course of assessment proceedings, it was noticed by the Assessing Officer that the assessee company has claimed a sum of ₹.2,24,720/- paid to M/s. Capital Market Publisher (India) Pvt. Ltd. towards the annual charges of website for the period 01.04.2008 to 31.03.2009. As the assessee is following mercantile system of accounting, the said expenditure relating to Assessment Year 2009-2010 was disallowed by the Assessing Officer observing that the same is allowable as deduction only in Assessment Year 2009-2010. The Ld. CIT(A) confirmed the said disallowance made by the Assessing Officer.

5. We have heard the arguments of both the sides and also perused the relevant material on record. As rightly held by the authorities below, the expenditure incurred by the assessee towards the annual charges of the website pertaining to the period 01.04.2008 to 31.03.209 is allowable only in the Assessment Year 2009-2010 and not in the year under consideration i.e. Assessment Year 2008-2009 since the assessee follows the mercantile system of accounting. Even the Ld. Counsel for the assessee at the time of hearing before us has not been able to doubt or dispute this position by raising any material contention. We, therefore, sustain the disallowance made by the

Assessing Officer and confirmed by the Ld. CIT(A) on this issue and dismiss Ground No. 2 of the assessee.

6. In Ground No. 3, the assessee has challenged the action of the authorities below in restricting its claim for deduction of ₹.14,97,559/- u/s 88E to ₹.9,18,605/-.

7. In its return of income, the assessee had claimed the deduction of ₹.14,97,559/- u/s 88E on account of securities transaction tax on the profit of ₹.48,76,620/- attributable to share trading. While computing the said deduction, direct expenses of ₹.37,39,582/- were already deducted by the assessee from the share trading profit on account of jobber charges. No deduction on account of indirect expenses however was made. The Assessing Officer, therefore, allocated 5% of the salary expenses and 15% of the other expenses towards share trading income and after deducting such expenses amounting to ₹.9,13,699/-, he worked out the deduction allowable u/s 88E at ₹.9,18,605/- being 23.18% (average rate of income) of ₹.39,62,921/- (net share trading income). On appeal, the Ld. CIT(A) upheld the decision of the Assessing Officer on this issue.

8. We have heard both the sides and also perused the relevant material on record. Before us, the Ld. counsel for the assessee has not been able to give any basis on which rebate u/s 88E was claimed by the assessee at ₹.14,97,559/-. He had mainly contended that the share trading income on

which rebate u/s 88E was claimed by the assessee is net of direct expenses incurred in the form of jobber charges. It is, however, observed that the amount contemplated u/s 88E is the net share trading income and such income has to be computed after deducting the direct as well as indirect expenses attributable to earning of such income. In the present case, the indirect expenses have been allocated by the Assessing Officer at 5% of the salary expenses and 15% of the other expenses and the Ld. Counsel for the assessee has not been able to dispute that this allocation made by the Assessing Officer is quite fair and reasonable. We therefore, find no mistake in the deduction computed by the Assessing Officer u/s 88E at ₹. 9,18,605/- and uphold the impugned order of the Ld. CIT(A) confirming the decision of the Assessing Officer's on this issue decision. Accordingly, ground no. 3 is dismissed.

9. In the result, the appeal filed by the assessee is dismissed.

Order pronounced on this 7th day of September, 2012.

Sd/-	Sd/-
(I. P. BANSAL)	**(P. M. JAGTAP)**
JUDICIAL MEMBER	**ACCOUNTANT MEMBER**

MUMBAI, DATED : 07.09.2012

Rasika

<u>Copy forwarded to :</u>

1. The Appellant,
2. The Respondent,
3. The C.I.T.
4. CIT (A)
5. The DR, C- Bench, ITAT, Mumbai

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BY ORDER

ASSISTANT REGISTRAR
ITAT, Mumbai Benches, Mumbai