

Transaction charges paid to BSE are taxable: HC

Noting that the BSE not only provides physical infrastructure, but also renders managerial services to its members, the Bombay High Court has held that transaction charges paid to the bourse are taxable at the source.

"It is obvious that the stock exchange has to manage the entire trading activity carried out by its members and accordingly, managerial services are rendered... The transaction charges paid by the assesses [companies] to BSE constitute 'fees for technical services' and are taxable," a division bench of Justices J P Devadhar and A A Sayed said in a recent judgement.

The court was hearing an appeal filed by the Income Tax Department against an order of the Income Tax Appellate Tribunal, which had held that tax cannot be levied on the transaction charges.

Kotak Securities Ltd had approached the tribunal against the requirement for deduction at source of tax (TDS) on transaction charges paid by it to the BSE. Kotak had paid over Rs 5 crore in transaction charges in FY06.

"The stock exchange is not a mute spectator providing only physical infrastructure to the members... BSE is a supervisor, overseer, manager, controller and arbitrator over the security trading done through the exchange, which necessarily has ingredients of rendering managerial services," the bench said.

"Hence, the provisions of Section 194-J of the Income Tax with regard to technical services were applicable here," it said.

Transaction charges are levied by BSE on companies that trade in securities and derivatives through the BSE Online Trading (BOLT) system.

BOLT provides all the necessary data for an intending buyer and intending seller and facilitates trade in securities from the Trader Work Stations installed in brokers' offices. This eliminates the need for brokers to assemble in the trading ring.

The court noted that the exchange frequently upgrades the BOLT system. "The entire trading in securities is managed by the BSE through the BOLT system," it observed.

The court accepted the arguments of I-T Department lawyer Vimal Gupta that the BSE, through BOLT, provides a trading platform which is highly sophisticated and managed by the managerial staff of BSE and hence, it should be considered a "technical service" for the purpose of income tax.

(Business Standard)