

R.M. AMBERKAR
(Private Secretary)

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
O.O.C.J.**

**INCOME TAX APPEAL NO. 506 OF 2016
WITH
INCOME TAX APPEAL NO. 562 OF 2016**

Pr. Commissioner of Income Tax-24 .. Appellant
Vs
M/s. Paramount Financial Services .. Respondent

-
• Mr. Ashok Kotangle a/w Ms. Padma Divakar for the Appellant
.....

**CORAM : AKIL KURESHI &
M.S. SANKLECHA, JJ.**

DATE : DECEMBER 17, 2018.

P.C.:

1. These two appeals under Section 260A of the Income Tax Act ("**the Act**" for short) challenge the common order dated 23.1.2015 passed by the Income Tax Appellate Tribunal ("**the Tribunal**" for short). The common impugned order relates to A.Ys. 2007-08 and 2009-10. Thus, the two appeals.

2. The Revenue has urged the following identical question of law in the two appeals for our consideration:-

- "(i) Whether on the facts and circumstances of the case and in law, the Tribunal is justified in restricting the disallowance

to 10% of the sub brokerage expenses claimed by the respondent - assessee?"

3. It is an agreed position between the parties that the facts (save change in amount) and law are identical in both the appeals. Therefore, for the sake of convenience, we shall take facts from Income Tax Appeal No. 506 of 2016 in respect of A.Y. 2009-10.

4. The respondent is engaged in business of fee based corporate financial services. In its return for the A.Y. 2009-10, the respondent had debited sub-brokerage expenses for the assessment year at Rs. 1.78 crores against total commission and services earned Rs. 3.69 crores. This payment, according to the respondent was made to the sub-brokers and their associates for bringing the customers who required the liaisoning services of the assessee. The respondent arranged loans and advances to the corporate bodies for fees computed as commission.

5. The assessing officer disallowed the entire expenses of Rs. 1.78 crores claimed by the respondent on the ground that the above payments to sub-brokers was not genuine. This by

an assessment order dated 29.12.2011 under Section 143(3) of the Act.

6. Being aggrieved, the respondent preferred appeal to the Commissioner of the Income Tax (Appeals) [CIT(A)]. However, without any success. The said appeal was dismissed by CIT(A) by order dated 21.1.2013.

7. On further appeal, the Tribunal found that the authorities under the Act had doubted the genuineness of the services rendered by the sub-brokers and had disallowed the entire expenditure of Rs. 1.78 crores attributed to it. However, the Tribunal noted that the respondent did file affidavit explaining the transactions. However, the same was rejected to be a self serving document by the assessing officer. Nevertheless, the Tribunal found that the sub-brokers are more or less common for the assessment years 2007-08 to 2009-10. The Tribunal further found that in those years, the genuineness of the expenditure was not doubted. In fact, for A.Y. 2008-09, no disallowance was made. It also noted the fact that the expenses were disallowed to the

extent of 20% of the amount paid to the sub-brokers for A.Y. 2010-11. The Tribunal was of the view that 20% disallowance made in the assessment year 2010-11 cannot be applied in view of difference in turnover, Thus, the Tribunal after considering all the facts was of the view that disallowance has to be restricted to 10% for each of the assessment years under consideration. This was after taking into consideration the volume and nature of the business.

8. Mr. Kotangale, the learned counsel for the Revenue, submits that 20% disallowance of expenditure made to sub-brokers was claimed by the Revenue should have been accepted by the Tribunal. This particularly in view of the fact that for the assessment year 2010-11, 20% of the expenditure was disallowed and accepted by the respondent.

9. We find that this submission of the Revenue has been considered by the Tribunal and it found that the volume of the business in that year i.e 2010-11 was not comparable to the volume of the business in these years. Thus, the disallowance cannot be at the same level. Besides the

Tribunal noted that for A.Y. 2008-09, the Revenue accepted the expenditure in full without any disallowance. In the above circumstances, taking into consideration the volume of the business, the assessing officer was directed to recompute disallowance at 10% of sub-brokers expenses claimed by the assessee in its books of accounts. We further note that that there is no dispute regarding genuineness of the expenses. The only issue with respect of percentage of expenses to be disallowed on account of payment made to the sub-brokers. We find that considering the facts and circumstances of the case, the Tribunal not accepting 20% disallowance and limiting the disallowance to 10% in these facts cannot be said to be perverse in any manner. Further, in any view of the matter the percentage of disallowance of expenses on the basis of estimate which is a plausible estimate, no substantial question of law would arise. Thus, both the appeals do not merit consideration.

10. Accordingly, both the appeals are dismissed.

[M.S. SANKLECHA, J.]

[AKIL KURESHI, J]