



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

BEFORE SHRI SAKTIJIT DEY, JUDICIAL MEMBER AND
SHRI MANOJ KUMAR AGGARWAL, ACCOUNTANT MEMBER

ITA no.3384/Mum./2017
(Assessment Year : 2009-10)

Asstt. Commissioner of Income Tax
Circle-24(3), Mumbai

..... Appellant

v/s

M/s. Paramount Financial Services
B/402, Polaris, Off. Marol Maroshi Road
Andheri (E), Mumbai 400 059
PAN – AAGFP3880M

..... Respondent

Assessee by : Shri Bhupendra Shah
Revenue by : Shri Abhi Rama Karthikeyan

Date of Hearing – 08.05.2019

Date of Order – 22.05.2019

ORDER

PER SAKTIJIT DEY. J.M.

The aforesaid appeal has been filed by the Revenue challenging the order dated 8th February 2017, passed by the learned Commissioner (Appeals)-39, Mumbai, pertaining to the assessment year 2009-10.

2. Brief facts are, for the assessment year under dispute the assessee filed its return of income on 21st September 2009 declaring

total income of ₹ 1,44,36,320. In the course of assessment proceedings, the Assessing Officer while verifying the acceptability of various deductions / expenditure claimed by the assessee found that the assessee has claimed deduction of ₹ 1,78,52,082, on account of sub-brokerage. Further, the assessee had claimed an amount of ₹ 2,08,681, towards interest on brokerage. After calling for the details relating to the aforesaid expenditures, the Assessing Officer called upon the assessee to justify allowability of them. After considering the submissions of the assessee, the Assessing Officer disallowed payment made towards sub-brokerage by treating it as bogus and not incurred for the purpose of business. Similarly, he disallowed the interest on brokerage of ₹ 2,08,681. Against the aforesaid additions, the assessee went in appeal before the learned Commissioner (Appeals) and thereafter before the Tribunal. During the pendency of assessee's appeal, the Assessing Officer initiated proceedings for imposition of penalty under section 271(1)(c) of the Act in respect of the aforesaid additions/disallowances and ultimately passed an order imposing penalty of ₹ 61,38,852. Against the penalty order so passed, the assessee preferred appeal before the first appellate authority.

3. In the course of appeal proceedings, learned Commissioner (Appeals) found that out of the deduction claimed of ₹ 1,78,52,082, the Tribunal while deciding the quantum appeal of the assessee, had

allowed 90% and sustained the disallowance made by the Assessing Officer to the extent of 10% of sub-brokerage payment. Since the disallowance of sub-brokerage payment to the extent of 10% was on estimate basis, learned Commissioner (Appeals) deleted the penalty imposed with regard to the addition made on account of sub-brokerage payment. However, he confirmed the penalty imposed on the interest on brokerage amounting to ₹ 2,08,681.

4. The learned Departmental Representative submitted, since the assessee has furnished inaccurate particulars of income and concealed the income even with regard to the part of sub-brokerage payment disallowed by the Tribunal, learned Commissioner (Appeals) should have sustained the penalty imposed under section 271(1)(c) of the Act on such disallowance.

5. The learned Authorised Representative submitted, the part disallowance of sub-brokerage payment by the Tribunal was not on account of any doubt over the genuineness of such payment. Thus, he submitted, imposition of penalty under section 271(1)(c) of the Act on such disallowance made on estimate basis cannot be made. Therefore, he fully supported the decision of learned Commissioner (Appeals).

6. We have considered rival submissions and perused the material on record. The dispute in the present appeal is confined to the deletion

of penalty imposed under section 271(1)(c) of the Act on the disallowance/addition made on account of sub-brokerage payment of ₹ 1,78,52,082. Though, the Assessing Officer had disallowed the sub-brokerage payment by treating it as bogus and not for the purpose of business, however, the Tribunal while deciding the quantum appeal of the assessee had allowed 90% of the expenditure and has sustained the disallowance to the extent of 10% of the total payment purely on estimate basis. It is relevant to observe, against the aforesaid decision of the Tribunal, the Revenue went in appeal before the Hon'ble Jurisdictional High Court under section 260A of the Act. While deciding the appeal of the Revenue, the Hon'ble Jurisdictional High Court not only sustained the decision of the Tribunal in allowing 90% of the sub-brokerage payment but has also observed that there is no dispute regarding the genuineness of expenditure and has held that disallowance was purely on estimate basis. Thus, when the genuineness of the payment is not doubted and 90% of the expenditure has been allowed, penalty cannot be imposed under section 271(1)(c) of the Act of the Act on the disallowance of balance 10% made purely on estimate basis. Therefore, finding no infirmity in the order of the learned Commissioner (Appeals), we uphold the same by dismissing the ground raised by the Revenue.

7. In the result, Revenue's appeal is dismissed.

Order pronounced in the open Court on 22.05.2019

Sd/-
MANOJ KUMAR AGGARWAL
ACCOUNTANT MEMBER

Sd/-
SAKTIJIT DEY
JUDICIAL MEMBER

MUMBAI, DATED: 22.05.2019

Copy of the order forwarded to:

- (1) *The Assessee;*
- (2) *The Revenue;*
- (3) *The CIT(A);*
- (4) *The CIT, Mumbai City concerned;*
- (5) *The DR, ITAT, Mumbai;*
- (6) *Guard file.*

Pradeep J. Chowdhury
Sr. Private Secretary

True Copy
By Order

(Asstt. Registrar)
ITAT, Mumbai