

**IN THE INCOME TAX APPELLATE TRIBUNAL
“G” BENCH MUMBAI**

**BEFORE SHRI PRASHANT MAHARISHI, ACCOUNTANT MEMBER &
SHRI PAVAN KUMAR GADALE, JUDICIAL MEMBER**

**ITA No.2191/Mum/2023
(Assessment Year: 2017-18)**

YesSecurities(India)Ltd, Unit No.602, 6 th Floor, IFC Tower 1 & 2, Senapati Bapat Road, Elphinstone, Mumbai-400013.	बनाम/ Vs.	ACIT-Circle 4(2)(2), Room No.640, 6 th Floor, Aayakar Bhavan, M.K.Road, Mumbai – 400020.
स्थायी लेखा सं./जीआइआर सं./PAN/GIR No. : AAACY6065C		
(अपीलार्थी /Appellant)		(प्रत्यर्थी / Respondent)

Assessee by :	Ms.Krupa Gandhi, CA & Ms.Vidhi Salot.CA. AR
Revenue by :	Mr.Mirza Azhar.Sr.DR

सुनवाई की तारीख / Date of Hearing	24/01/2024
घोषणा की तारीख /Date of Pronouncement	05/02/2024

आदेश / ORDER

PER PAVAN KUMAR GADALE - JM:

The appeal is filed by the assessee against the order of the National Faceless Appeal Centre (NFAC), Delhi / CIT(A) passed u/sec 143(3) and U/sec 250 of the Act. The assessee has raised the following grounds of appeal:

“GROUND NO. I: DISALLOWANCE OF SALARY AMOUNTING TO RS. 6,72,30,360/- US 37(1) OF THE ACT:

1. *On the facts and circumstances of the case and in law, Hon'ble CIT(A) erred in confirming the disallowance of salary amounting to Rs.6,72,30,360/- u/s. 37(1) of the Act on the alleged ground that the same are not incurred wholly and exclusively for the purpose of business.*

2. *The Appellant prays that the disallowance of Rs. 6,72,30,360/- u/s 37(1) of the Act be deleted.*

GROUND NO. II: DISALLOWANCE OF BONUS AMOUNTING TO RS. 2,75,16,198/- U/S 37(1) OF THE ACT:

1. *On the facts and circumstances of the case and in law, Hon'ble CIT(A) erred in confirming the disallowance of bonus amounting to Rs.2,75,16,198/- u/s. 37(1) of the Act on the alleged ground that the same is not incurred wholly and exclusively for the purpose of business.*
2. *On the facts and circumstances of the case and in law, Hon'ble CIT(A) erred in ignoring that the bonus of Rs. 5,51,00,000/-(which included Rs 2,75,16,198/-) was reported in Form 3CD as having been paid before the due date u/s 139(1) and hence, was deductible u/s 43B.*
3. *The Appellant prays that the disallowance of Rs. 2,75,16,198/- u/s 37(1) of the Act be deleted.*

GROUND NO. III: DISALLOWANCE OF PROVISIONS ON OF SUB BROKERAGE EXPENSES AMOUNTING TO RS. 29,59,040/-:

1. *On the facts and circumstances of the case and in law, Hon'ble CIT(A) erred in confirming the disallowance of the provisions for sub brokerage expenses amounting to Rs.29,59,040/- on the alleged ground that Section 37 provides for deduction of expenses, and not provisions since provisions are unascertained liabilities.*
2. *The Appellant prays that the disallowance of Rs. 29,59,040/- of the Act be deleted.*

WITHOUT PREJUDICE TO GROUND NO. III

GROUND NO. IV: DISALLOWANCE U/S 115JB OF THE ACT:

1. *On the facts and circumstances of the case and in law, Hon'ble CIT(A) erred in confirming the disallowance of the provision for sub brokerage expenses by treating it as unascertained liabilities and thereby adding it back to the book profits u/s 115JB of the Act.*
2. *The Appellant therefore prays that the AO be directed to delete the disallowance of provisions u/s. 115JB of the Act.*

GROUND NO. V: LEVY OF INTEREST UNDER SECTION 234C OF THE ACT:

1. *On facts and in circumstances of the case and in law, Hon'ble CIT(A) erred in confirming the levy of interest u/s. 234C of the Act amounting to 9,47,193/-*

2. *The Appellant prays that the AO be directed to delete the levy of interest levied u/s. 234C of the Act of Rs.9,47,193/-.*

GENERAL

The Appellant craves leave to add, to alter and/or amend all or any of the above grounds of appeal either before or at the time of hearing.”

2. The brief facts of the case are that, the assessee company is engaged in the business of providing stock broking securities services and distribution of financial products and also offers, trading/investment in equity, merchant banking and other financial products. The assessee has filed the return of income for the A.Y 2017-18 on 31.10.2017 disclosing a total income of Rs. Nil after setoff of losses. Subsequently the case was selected for scrutiny under CASS and notice u/sec 143(2) and U/sec 142(1) of the Act are issued through ITBA. In compliance to the notice, the assessee has filed submissions through ITBA Portal. The Assessing Officer(AO) on perusal of the financial statements and tax Audit report found that (i) there is a delay in payment of employees contribution towards provident fund, the AO has dealt on the provisions of the Act, submissions, judicial decisions and made disallowance u/sec36(1)(v) of the Act of Rs. 20,06,662/-(ii) the AO observed that the assessee has claimed excess salary and bonus as per the income tax return in comparison to debits in the bank account. Whereas the assessee in the Profit & Loss account has debited under compensation to employees

an amount of Rs.26,34,80,563/- being the salaries and wages The A.O dealt on the submissions of the assessee and referred to the month wise salary statement at Para 5.2.2 of the order and bank account statement and observed that in the month of August 2016&October 2016, there is difference in the actual payments. As per the Income Tax Return (ITR), the assessee has debited Rs. 26,34,80,563/- but the actual salary is Rs.19,62,50,203/-as per bank statement and hence the A.O made disallowance u/sec37(1) of the Act being the excess claim of Rs.6,72,30,360/- as it was not incurred wholly and exclusively for the purpose of business.(iii) Similarly, the AO found that there is difference of actual bonus payment i.e Rs.2,76,54,691/- as per bank statement and the amount claimed in the Income Tax Return (ITR) is Rs.5,51,70,889/-.Therefore the A.O made disallowance of difference amount u/sec 37(1) of the Act of Rs 2,75,16,198/- as it was not incurred for the purpose of business (iv) the A.O found that the assessee has made a provision for sub-brokerage expenses and the assessee has furnished the submissions referred at Para 6.1 of the order. Since the provision pertains to unascertained liability of brokerages expenses without any basis of quantification, the A.O has disallowed the claim of Rs. 29,59,040/-(v) The last disputed issue, the AO while computing the book profits u/sec 115JB of the Act has made addition of provision of sub brokerage expenses being the unascertained liability of Rs.

29,59,040/-. Finally the AO after setting off of the brought forward loss has assessed the total income of Rs. 1,45,61,328/- and computed book profits u/s 115JB of the Act of Rs. 9,49,52,123/- and passed the order u/sec 143(3) of the Act dated 23.12.2019.

3. Aggrieved by the order, the assessee has filed an appeal with the CIT(A), whereas the CIT(A) has considered the grounds of appeal, submissions of the assessee, findings of the AO but has confirmed the action of the AO and dismissed the assessee appeal. Aggrieved by the order of the CIT(A), the assessee has filed appeal with the Hon'ble Tribunal.

4. At the time of hearing, the Ld. AR submitted that the CIT(A) has erred in confirming the disallowance of salary and bonus u/sec 37(1) of the Act though the claim was incurred wholly and exclusively for the purpose of business. Further the CIT(A) has erred in sustaining the action of the Assessing officer on disallowance of provision of sub-brokerage expenses and also such disallowance was considered while computing the book profits u/sec 115JB of the Act. The Ld. AR emphasized that the assessee has filed the return of income disclosing in the ITR the gross salary, whereas in the bank statement the salary is paid after deduction of the contributions to PF, Gratuity, TDS and other statutory deductions. Similarly the assessee has paid the bonus as reported in Form. No. 3CD before due date

u/sec 139(1) of the Act and is allowable u/sec 43B of the Act. In respect of the sub-brokerage expenses, the Ld.AR submitted that the assessee is in the business of trading/investment in equity, merchant banking, IPO and other financial products and the assessee has made year end provision of brokerage expenses payable to IPO sub brokers. These expenses are incurred wholly and exclusively for the purpose of business and cannot be treated as unascertained liabilities. In respect of computing the book profits u/sec 115JB of the Act, the A.O has made addition of provision of sub brokerage expenses and the CIT(A) has erred in confirming the action of the A.O overlooking the facts and submissions. Further the Ld.AR substantiated the submissions with the factual paper book, judicial decisions and prayed for allowing the appeal.

5. Per Contra, the Ld. DR submitted that the salary and bonus claimed in the ITR is more than the actual payment reflected in the bank statements. Further the assessee has not identified the sub brokerage payments and made a adhoc provision for expenses, which is in the nature of unascertained liability and the Ld. DR relied on the order of the CIT(A).

6. We heard the rival submissions and perused the material on record. On the first disputed issue, with respect to disallowance of salaries u/sec 37(1) of the Act, the Ld. AR contentions are that the CIT(A) has erred in sustaining the

action of the AO in disallowance of differential amount on comparison of payments in the bank statement and salary amount claimed in the Income Tax Return (ITR), whereas salary expenses are incurred wholly and exclusively for the purpose of business. The Ld.AR demonstrated ITR-6, in particular Part -A -Profit & Loss account, column -14 "Compensation to employees"(i) salaries and wages and (ii) Bonus placed at page 12 of the paper book. While filling of return of income, the assessee has clubbed all the composite details transferred from other ledger accounts forming part of employees statutory deductions/contributions and reconciliations in the profit and loss account and the Ld.AR referred to page 120, in particular Annexure IV highlighting salaries payments in the bank statement filed along with the other details in the assessment proceedings placed at page 140 to 147 of the paper book. The Ld. AR has also referred to the bank statement of the assessee where the salaries have been paid monthly and at Page 161 of the paper book-Annexure-VI -the details of Gross Salary including allowances, perquisites, medical recovery and other incentives & chargeable allowances month wise from April to March are disclosed and simultaneously deduction of provident fund, professional tax, TDS and other deductions are made and net salaries are computed. The Ld.AR submitted that the salary debited to the profit & Loss account is the gross salary, which includes the House Rent

Allowances, personal allowances, conveyance allowance, incentives and other chargeable allowances but there are certain additions and deductions to the gross salary and the net amount is paid to the salaried employees and is debited to the bank account. The Ld.AR demonstrated page 167 of the paper book with adjustment of additions which includes the stipend, medical allowance, petrol reimbursement, leave travelling allowance and bonus etc. Similarly, the deductions claimed towards payments to the statutory provident fund, voluntary provident fund, profession tax, ESIC and TDS etc, Whereas while filling the return of income, the deductions and additions are reconciled with the gross salary in the ledger accounts and are disclosed in the ITR. We find that the assessee has substantiated the calculations of gross salary as discussed and claimed in the profit and loss account. Whereas in the bank account statement, only net payments with respect to the salary will be reflected and not other payments towards deductions as discussed above, which are transferred from the respective ledger accounts. The assessee is following the system of accounting as per accounting policies and the assessing officer accepts the mercantile method of accounting of the assessee and the consistency is maintained from earlier years. Accordingly, we considering facts, circumstances and submissions set aside the order of the CIT(A) on this disputed issue and

direct the assessing officer to delete the addition and allow this ground of appeal in favour of the assessee.

7. Similarly in respect of the bonus payments which are debited to profit and loss account, the Ld. AR has referred to page 167 of the paper book where these bonus payments are highlighted. Further in Tax Audit Report- Form .no 3CD at column 26(i)(B) (a)- the bonus paid includes the payment of earlier years before due date u/sec139(1) of the Act. The assessing officer is not disputing the genuineness of bonus expenditure, but due to difference in claim made in the ITR and bank payment, which has been reconciled by the assessee with the information and details filed. Therefore, we considering facts, circumstances and submissions set aside the order of the CIT(A) on this disputed issue and direct the assessing officer to delete the addition and allow this ground of appeal in favour of the assessee.

8. The next disputed issue envisaged by the Ld.AR that the CIT(A) has erred in confirming the disallowance of provision of sub brokerage expenses. It was submitted that, the assessee was providing merchant banking and IPO services to its clients, whereas in respect of payments to sub – brokers, the assessee has made a provision for the sub-brokerage expenses. Since the provision of brokerages expenses are without any basis of quantification and the A.O has disallowed the claim treating as unascertained liability

and the Ld.AR referred to Annexure II- at page 73 of the paper book highlighting on brokerage expenses. When a query was raised to the Ld.AR to explain the nature of sub-brokerage expenses, identification of the parties and reasons for consolidation and details of payments made in the subsequent year. The Ld. AR submitted that this is a consolidated provision of expenses paid in the next year. We find that that the assessee is engaged in the business of providing stock broking securities services and distribution of financial products and is not disputed by the revenue. Whereas there is no clarity on the factual aspects of identity of broker, included in the provision of expenses and the quantification of amount. Therefore, considering the principles of natural justice, we shall provide with one more opportunity of hearing to the assessee to substantiate the claim with evidences and information. Accordingly, set aside the order of the CIT(A) on this disputed issue and remit the disputed issue to the file of the Assessing officer to examine and verify the facts and adjudicate afresh and decide on merits. The assessee should be provided adequate opportunity of hearing and shall cooperate in submitting the information .Accordingly, we allow this ground of appeal of the assessee for statistical purposes.

9. The Last disputed issue, that the AO while computing the book profits u/sec 115JB of the Act has made addition of provision of sub brokerage expenses treating as

unascertained liability. Since the issue of provision of sub-brokerage expens discussed in the above paragraph 8, is restored to the file of the AO. We consider it appropriate to remit this issue also to the file of the assessing officer on the similar directions. Accordingly, we allow this ground of appeal of the assessee for statistical purposes.

10. In the result, the appeal filed by the assessee is partly allowed for statistical purposes.

Order pronounced in the open court on 05.02.2024.

Sd/-

(PRASHANT MAHARISHI)
ACCOUNTANT MEMBER

Sd/-

(PAVAN KUMAR GADALE)
JUDICIAL MEMBER

Mumbai, Dated 05/02/2024

KRK, PS

आदेश की प्रतिलिपि अग्रेषित/Copy of the Order forwarded to :

1. अपीलार्थी / The Appellant
2. प्रत्यर्थी / The Respondent.
3. संबंधित आयकर आयुक्त / The CIT(A)
4. आयकर आयुक्त(अपील) / Concerned CIT
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, मुम्बई / DR, ITAT, Mumbai
6. गार्ड फाईल / Guard file.

सत्यापित प्रति //True Copy//

1.

आदेशानुसार/ BY ORDER,

उप/सहायक पंजीकार (Asst. Registrar)
आयकर अपीलीय अधिकरण, मुम्बई/ ITAT, Mumbai