IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION

INCOME TAX APPEAL NO. 991 OF 2014

The Commissioner of Income Tax - 4, Mumbai	}	**Appellant**
versus		
M/s. ICICI Securities Ltd.	}	**Respondent**

Mr. Ashok Kotatngale with Ms. Padma Divakar for the appellant.

Mr. S. E. Dastur-Senior Advocate with Mr.Niraj Sheth and Mr. Atul K. Jasani for the respondents.

CORAM :- S. C. DHARMADHIKARI & PRAKASH. D. NAIK, JJ.

DATED :- APRIL 27, 2017

P.C. :-

1. The tribunal has dismissed the appeal of the Revenue by the order dated 13th September, 2013. That is why this further appeal. The assessment year in question is 2002-03.

2. It is submitted that the questions proposed at pages 3 and 4 (para 4) are all substantial questions of law arising out of this order of the tribunal.

3. The respondent assessee was merged with ICICI Securities Ltd. It is engaged in stock broking operations. In the original

assessment order, the payment of procurement expenses by the assessee amounting to Rs.5,58,88,900/- to M/s. ICICI Capital Services Ltd. was disallowed by the assessing officer as non-genuine. During the scrutiny, it was observed that the assessee has incurred certain expenditure towards customisation of computer software. The assessing officer treated this expenditure as capital in nature and disallowed the same.

4. The disallowance of procurement expenses paid by the assessee to the ICICI Capital Services and computer expenses was challenged by the assessee in the first appeal. The Commissioner of Income Tax (Appeals) passed an order on 7th October, 2005 deleting the disallowance of procurement expenses and the computer expenses.

5. The Revenue did not accept this order and challenged it in the appeal before the tribunal. As far as the Revenue's request was concerned, the tribunal found that all the three grounds of appeal cannot be entertained. The two assessment years, namely, 2001-02 and 2003-02 raised these issues. The tribunal found that this is a second round of appeal before the tribunal. Earlier, the assessee had filed its return of income declaring a certain total income. The assessing officer disallowed the payment of commission and an appeal was filed before the first appellate

authority. The first appellate authority upheld that dis-allowance and further enhanced the amount to Rs.4,17,18,040/-. The assessee filed an appeal before the tribunal. The tribunal passed an order on 30th December, 2005 allowing the appeal and setting aside the order of the first appellate authority. The matter was remanded back to the assessing officer. Thereafter, certain additional evidences were produced. The dis-allowances were made by the assessing officer even on remand. Once again, an appeal was filed before the first appellate authority. That authority called for certain remand reports from the assessing officer and after going through the remand reports as well as evidence submitted by the assessee, the first appellate authority was satisfied with the submission of the assessee that the services were actually rendered by the I-Cap to the assessee. However, he disallowed the 10% of the commission as reasonable dis-allowance. The assessee filed an appeal against this retention of 10% dis-allowance. On the other hand, the Revenue preferred an appeal against the dis-allowance being set aside and as made by the assessing officer.

6. Though these appeals were heard and from a perusal of the order passed by the tribunal, it is apparent that it has come to a conclusion that there cannot be any justification for such 10% dis-

allowance. There is nothing like a reasonable token dis-allowance. The tribunal found that its earlier order of 30th December, 2005 was thus violated. It deleted the retention of dis-allowance of 10% made by the Commissioner of Income Tax (Appeals). As far as the Revenue's appeals are concerned, from the discussion and from para 7 onwards, it is apparent that the tribunal found that such dis-allowances as were made cannot be sustained for the reasons that the tribunal has set out.

7. We do not think that we should re-appreciate and re-appraise the factual matters. Our further appellate jurisdiction does not enable us to do this. The concurrent orders, therefore, cannot be termed as perverse or vitiated by any error of law apparent on the face of the record. Consequently, the appeal fails and it is dismissed. There would be no order as to costs.

(PRAKASH.D.NAIK, J.) **(S.C.DHARMADHIKARI, J.)**