IN THE HIGH COURT OF JUDICATURE AT BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION

INCOME TAX APPEAL NO.236 OF 2015

THE COMMISSIONER OF INCOME TAX - 6)...APPELLANT

V/s.

M/S.ASK WEALTH ADVISORS PVT. LTD.)...RESPONDENT

Mr.N.C.Mohanty, Advocate for the Appellant.

Mr.J.D.Mistri, Senior Counsel, a/w. Mr.A.K.Jasani, Advocate for the Respondent.

CORAM : S.V.GANGAPURWALA & A. M. BADAR, JJ.

DATE : 31st JULY 2017

P.C. :

1 The appeal pertains to Assessment Year 2008-09.

2 The present appeal is filed on following questions :

a) Whether, on the facts and in the circumstances of the case and in law, the Hon'ble ITAT is justified in holding that the "Shared Services Cost" of Rs.1.34 Crores was genuinely incurred by the assessee wholly and exclusively for purpose of its business and hence allowable as business expenditure ?

b) Whether, on the facts and in the circumstances of the case and in law, the Hon'ble ITAT is justified in holding without any evidence, that the "Shared Service Costs" of Rs.1.34 Crores paid by the Assessee to its Holding Company was reimbursement of actual expenses, when such expenses were actually estimated and allocated to the assessee-company as has been held by CIT (A) ?

c) Whether, on the facts and in the circumstances of the case and in law, the Hon'ble ITAT is justified in restoring the matter to the Assessing Officer with a direction to allow the "Shared Service Costs" of Rs.1.34 Crores in the hands of the assessee, if there is deduction of tax at source by the Holding Company in respect of the expenditure which were reimbursed by the Assessee to its Holding Company?

3 Mr.Mohanty, the learned counsel for the appellant, submits that the assessee claimed Rs.1.34 Crore as allowable business expenditure. There is no evidence to show that this expenditure of payment of Rs.1.34 Crores to the Holding Company was towards reimbursement of actual expenses. There

is absolutely no evidence that the Holding Company actually incurred the said expenses on behalf of the assessee Company. The learned counsel further submits that the Commissioner of Income Tax (Appeals) had given a finding that the expenditure were allocated by the Holding Company on estimate basis and not on actual basis. Even the agreement between the assessee and the Holding Company was considered by the Commissioner of Income Tax (Appeals). As such, the Tribunal has committed an error in negativing the finding of the Commissioner (Appeals). Section 40(a)(i) of the would not be attracted. Clauses 4.1 and 4.2 of the agreement is rightly considered. When there is no evidence of whatsoever nature to substantiate that the amount paid by the assessee to the Holding Company is for reimbursement of expenses, the Tribunal could not have directed the Assessing Officer to consider the same as expenditure. Even Tax Deducted at Source (TDS) is not deducted by the assessee while making payment to the Holding Company. Section 194(1) of the Act is attracted.

4 Mr.Mistri, the learned senior advocate for the respondent submits that even the Assessing Officer has not disputed about the entries with regard to the reimbursement of expenses made by the assessee to the Holding Company. However, the Assessing Officer went on the premise that the said expenses are much higher than the revenue income. The learned senior advocate submits that the Tribunal has rightly considered that the present year was the first year of its operation and naturally the expenses would be high and revenue less. The learned senior advocate further submits that the return shows negative income of Rs.16,12,68,490/-. Normally, the question of high expenditure with regard to allowance in deduction would arise if it is a case of positive income being showed. No error has been committed by the Tribunal. The Commissioner (Appeals) himself read the provisions of the agreement. The agreement specifically states that actual cost incurred only be reimbursed.

5 We have considered the submissions canvassed by the respective parties. The agreement dated 17th May 2007 between

the assessee of the Holding Company, more particularly, Clauses 4.1 to 4.4 reads thus :

> 4.1 It has been agreed that ASKIM would estimate, record and capture all the costs incurred, and keep the complete accounts of actual costs incurred by it in creating, setting up, maintaining and managing Human and other Resources, Infrastructure and Facilities, and in taking care of the requirements of Finance and Investment Advisory Services related work, Corporate Communication Services, Managerial Services, Administrative Services, and for providing the Support Services;
>
> 4.2 ASK Wealth Advisors hereby agree with ASKIM that it would from time to time, take account from ASKIM of the reimbursable costs, at the agreed basis of allocation, of different costs, for periodical reimbursements to ASKIM.
>
> 4.3 ASK Wealth Advisors agree with ASKIM that it would pay without delay all the agreed allocated costs periodically as per the Debit Notes or Advices, raised on it by ASKIM.

> 4.4 It is hereby clarified that apart from the Reimbursements of Actual Costs no other consideration would be required to be paid by ASK Wealth Advisors to ASKIM for availing of these Financial and Investment Advisory Services, and Support services.

6 Reading the said clauses, it is manifest that it has been agreed by the assessee that the assessee reimburses the actual cost incurred to the Holding Company. The said clauses do not lead to any inference that the amount would be paid on estimation.

7 The Assessing Officer in its order has observed thus :

> "The submission of the assessee has been considered but found not to be acceptable. On perusal of the details filed it is observed that it is specially a service agreement between ASK Wealth Advisors Ltd. and its associate company. ASK Investment Holdings P. Ltd. for shared service costs towards administrative, financial and infrastructural support and arrangement for sharing of costs incurred thereon. In support of its

claim, assessee company has submitted agreement dated 17.5.2007 made between these two company. On perusal of agreement it is found that ASK Investment Managers P. Ltd. (ASKIM) has agreed and accepted to provide the financial investment advisory and support services on the basis of sharing of actual costs and periodical reimbursement thereof on actuals, and on certain other terms and conditions. Here it is pertinent to mention that (i) the turnover of the assessee company is Rs.1,90,13,083/- which also includes rental income of R.21,60,000/-. Looking into the business turnover of the assessee company, the amount of service charges paid to the associate company i.e. ASKIM of Rs.1,34,47,688/- cannot be said to be reasonable, justifiable and correct. It is clearly exaggerated payments to the company for so called shared service charges. It is pertinent to mention here that for what purpose assessee company claims the payment have been made, the assessee company has also incurred such nature of expenditure directly and debited in the P & L A/c. some of the expenses for example are reported as under :”

8 The Assessing Officer has disallowed the same on the ground that the expenses made do not appear to be reasonable and are on the higher side. The Tribunal has considered that the present year was the first year of its operation, and therefore, during the year under consideration, the revenue was not very large, whereas it had to incur large cost to establish itself in the market. The assessee has incurred expenditure so that people can know it in the market and its services and get business which could earn its revenue. The said finding of fact appears to be plausible one. Even on reimbursement to the Holding Company of estimated cost of expenses, it could not have been subjected to tax as income as considered by this court of in Income Tax Appeal No.1914 of 2013 dated 4th August 2015. The Tribunal has given opportunity to the assessee as well as the Assessing Officer to verify the deduction of tax at source and if the Assessing Officer finds that tax has already been deducted at source in respect of expenditure which requires deduction of tax at source by the Holding Company, then no disallowance can be made with reference to such expenditure in hands of the assessee for

reimbursement to the Holding Company. It is for the Assessing Officer to verify the same.

9 In light of the above, no substantial question of law arises. The appeal is dismissed. No costs.

(A. M. BADAR, J.) **(S.V.GANGAPURWALA), J.)**