

आयकर अपीलीय अधिकरण, 'डी' न्यायपीठ, चेन्नई।
**IN THE INCOME TAX APPELLATE TRIBUNAL
'D' BENCH: CHENNAI**

श्री चंद्र पूजारी, लेखा सदस्य एवं
श्री जॉर्ज माथन, न्यायिक सदस्य के समक्ष

**BEFORE SHRI CHANDRA POOJARI, ACCOUNTANT MEMBER
AND
SHRI GEORGE MATHAN, JUDICIAL MEMBER**

आयकर अपील सं./ITA No.1741/Mds/2017
निर्धारण वर्ष /Assessment Year: 2010-11

Smt. Neetha Suneel Shah,
178 (Old No.88) NSC Bose Road,
Sowcarpet,
Chennai-600 079.

Vs. The Income Tax Officer,
Non-Corporate Ward-5(2),
Chennai-6.

[PAN: AAQPS 8486 E]
(अपीलार्थी/Appellant)

(प्रत्यर्थी/Respondent)

अपीलार्थी की ओर से/ Appellant by

: Mr.M.Karunakaran, Adv.

प्रत्यर्थी की ओर से /Respondent by

: Mrs.S.Vijayaprabha, JCIT

सुनवाई की तारीख/Date of Hearing

: 09.10.2017

घोषणा की तारीख /Date of Pronouncement

: 10.10.2017

आदेश / O R D E R

PER GEORGE MATHAN, JUDICIAL MEMBER:

ITA No.1741/Mds/2017 is an appeal filed by the assessee against the Order of Commissioner of Income Tax (Appeals)-5, Chennai, in ITA No.134/CIT(A)-5/16-17 dated 22.06.2017 for the AY 2010-11.

2. Mrs.S.Vijayaprabha, JCIT, represented on behalf of the Revenue and Mr.M.Karunakaran, Adv., represented on behalf of the assessee.

3. It was submitted by the Ld.AR that the issue in the appeal was against the action of the Ld.CIT(A) in confirming the addition of Rs.25,05,304/- representing Client Code Modification done by the assessee's broker in respect of the share transactions done by the assessee for which the assessee had disclosed short term capital gains and long term capital gains. It was a submission that the assessee had admitted short term capital gains u/s.111A by disclosing full value of the transactions at Rs.1,23,56,265/- and after deducting cost of acquisition at Rs.63,96,011/- had disclosed Rs.59,56,614/-. It was a submission that the AO had obtained the Client Code Modification and had made the allegation that the said modifications were done with an intention to reduce the assessee's profits. Consequently, the AO had made an addition of Rs.25,05,304/- representing the short term capital gains in respect of share transactions on which Client Code Modification had been done. It was a submission that the assessee had offered her entire profits on the sale of the shares as has been confirmed by the broker. It was a further submission that the Client Code Modification is done by the share broker and the assessee has no role to play in the same. It was a submission that the assessee was entitled to the benefit of the provisions of Sec.111A of the Act. It was a further submission that the issue was squarely covered by the decision of the Co-ordinate Bench of this Tribunal, 'A' Bench, Ahmedabad in the case of M/s.Kunvarji Finance Pvt. Ltd. in IT(SS)A Nos.615 to 618/Ahd/2010 dated 19.03.2015 wherein in Para No.11 of the order, which has been held as follows:

11. The Id. CIT(A) in paragraph 4.13 of his order has also recorded the findings that "all transactions at the Commodities Exchanges have been duly accounted in the books of account maintained by the concerned parties. Such profits/loss has been duly accounted whenever the transactions have been closed. Thus, whatever profits have been generated or accounting of actual trade, have been offered and brought to the charge of tax in the cases of concerned assesseees." These findings of fact recorded by the Id. CIT(A) has not been controverted by the Revenue at the time of hearing before us. When the transaction has been duly accounted for and the profit/loss has accrued to the concerned parties in whose names transactions have been closed, there cannot be any basis or justification for considering those profit/loss in the case of the assessee on the basis of mere presumption or suspicion. It is not the case of the Revenue that such alleged profit has actually been received by the assessee. In view of the totality of the above facts, we do not find any justification to interfere with the order of the CIT(A) in this regard and the same is sustained; and Ground Nos. 1 and 3 of the Revenue's appeal are rejected.

4. In reply, the Ld.DR submitted that the facts and figures as mentioned by the assessee requires verification and the assessee has not been able to reconcile the Client Code Modification with the share transactions which have been extracted by the AO in the Chart at Page Nos.3 & 4 of the Assessment Order. It was a submission that the provisions of Sec.111A did not apply in the assessee's case in respect of the Client Code Modification in so far as the same have not been shown to be bonafide and no evidence has been produced. It was a submission that the Revenue was also relying upon by the decision in the case of M/s.Kunvarji Finance Pvt. Ltd. referred to supra. It was a submission that the Client Code Modification being in excess of 1% as permitted by the Markets Committee, the addition was liable to be confirmed. It was a submission that the order of the Ld.CIT(A) was correct and did not merit any interference.

5. We have considered the rival submissions. At the outset, a perusal of the decision of the Co-ordinate Bench of this Tribunal in the case of

M/s.Kunvarji Finace Pvt. Ltd. referred to supra clearly shows that the Circular which has been relied upon by the Co-ordinate Bench of this Tribunal in the case of M/s.Kunvarji Finace Pvt. Ltd. more specific. Circular No.MCX/T&S/032/2007 dated 22.01.2007 clearly specify in Clause-F that the facility of Client Code Modifications is allowed as interim measure up to the March 31, 2007 and after this date, the said facility will be completely stopped. The assessment year involved in the impugned appeal is AY 2010-11 and consequently, the said Circular would have no applicability to the Client Code Modifications for the relevant AY. The decision relied upon by the AO, consequently, would have no applicability as the said decision has been rendered on the basis of the said Circular issued by the Commodities Exchange. From where the assessing authority has obtained the Client Code Modifications in respect of the assessee which has been extracted at Para No.6 in Page Nos.3 & 4 of the Assessment Order is also not coming out of the Assessment Order. The assessee has also not been able to show any reconciliation in respect of the said Client Code Modifications and the share transactions. The assessee is only claiming that the number of shares as discussed in the Client Code Modifications are less than the number of shares transacted by the assessee in respect of the each of the scripts and consequently, it should be considered that the said modifications have been taken into consideration when computing the profits as provided by the stock broker. This does not hold the water in so far as the assessee has not been able to tally the rate per share which has been extracted by the AO in his

Assessment Order at Para No.6 with the transaction charts and the confirmation provided by the stock broker. Thus, it is noticed that the facts relevant for deciding this issue has not been properly assimilated nor they being produced by the assessee. It has also noticed that the assessee is relying upon the profits and loss account prepared by the broker through whom the assessee has dealt with and nothing has been done to verify the Client Code Modifications as done by the broker with the broker itself. This being so, in the interest of natural justice, the issue in this appeal is restored to the file of the AO for re-adjudication after verifying the details of the Client Code Modifications which has been extracted by the AO in the Chart at Para No.6 of the Assessment Order. The assessee shall reconcile the transactions with the share transactions as recorded by the share broker. The AO is also at liberty to have the same to be verified with the stock broker.

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

Order pronounced in the Open Court on October 10, 2017, at Chennai.

Sd/-

(चंद्र पूजारी)

(CHANDRA POOJARI)

लेखा सदस्य/**ACCOUNTANT MEMBER**

Sd/-

(जॉर्ज माथन)

(GEORGE MATHAN)

न्यायिक सदस्य/**JUDICIAL MEMBER**

चेन्नई/Chennai,

दिनांक/Dated: October 10, 2017.

TLN

आदेश की प्रतिलिपि अग्रेषित/**Copy to:**

1. अपीलार्थी/Appellant
2. प्रत्यर्थी/Respondent
3. आयकर आयुक्त (अपील)/CIT(A)
4. आयकर आयुक्त/CIT
5. विभागीय प्रतिनिधि/DR
6. गार्ड फाईल/GF