

**IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH “SMC”, NEW DELHI**

BEFORE SHRI N.S. SAINI, ACCOUNTANT MEMBER

ITA No.6806/Del/2017
Assessment Year: 2009-10

Shri Tulsi Dass CR-204, Lalita Park, Laxmi Nagar, Delhi-110092 PAN No.ACJPD7746H (APPELLANT)	Vs	ACIT, Circle – 58 (1) New Delhi (RESPONDENT)
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Appellant by	Sh. K. Sampath, Advocate Sh. V. Rajkumar, Advocate
Respondent by	Sh. S. L. Anuragi, Sr. DR

Date of hearing:	16/01/2019
Date of Pronouncement:	23/01/2019

ORDER

PER N. S. SAINI AM:

1. This appeal filed by the assessee against the order CIT(A)-19, New Delhi dated 29.08.2017 for the A. Y.2009-10.

2. The assessee has taken following grounds of appeal of the assessee as under :-

“On the facts and in the circumstances of the case and in law and the Ld. CIT(A) erred in confirming the following actions of the Assessing Officer :

1. Initiating proceedings u/s 147/148 of the Income-tax Act, 1961 (the act) without there being any cogent material leading to the believe of escapement of any income :
2. Passing the order u/s 147/143(3) of the Act at an income of Rs.28,47,345/- against the returned income in a sum of Rs.9,49,309/-.
3. Passing the order u/s 147/143(3) of the Act without disposing of the objections to the initiation of reassessment proceedings u/s 147/148 of the Act;
4. Making an addition of Rs.18,97,935/- by disallowing genuine loss suffered on share trading treating the same as contrived on account of client code modification.”

3. In ground No.1 of the appeal the assessee has challenged the reopening of assessment u/s 148 of the Act being without cogent material leading to the belief of escapement of any income.

4. The CIT(A) adjudicated this ground of appeal of the assessee observing that the Assessing Officer received certain information from ADIT (investigation) Unit – 1(3) (3)/Ahemdabad vide letter dated 11.03.2016 that certain brokers has misused client code modification facility of transfer of loss on account of share transaction from one account to the other to reduce the tax liability in the hands of the beneficiary clients and that the assessee Sh. Tulsi Dass is also one of the beneficiary during the financial year 2008-09 through client code modification route. On the basis of this information the Assessing Officer recorded the reasons to believe to initiate proceedings u/s 147 of the IT Act. It is observed from the reasons that the Assessing Officer has analysed the information received from ADIT (Investigation) and verified the same from the income tax return of the assessee for A. Y. 2009-10.

5. The information was specific to the extent that it contained the PAN, name on address of the assessee as appearing in the income tax records the client code modification of the assessee with the broker Modex International Securities Limited and the reduction in the income of the assessee due to client code modification in the name of assessee of Rs.18,97,935/-. It was noticed that the assessee has shown sale / gross receipts of business and profession at Rs.1,24,73,989/- in the return of income as against 12,73,10,855/- received by the assessee as per details of scrips in the assessee's account. The Assessing Officer observed that the assessee has shown profits and gains from the business other than speculative at only Rs.10,05,287/-. Considering the above information and observations recorded from the analysis of the income tax return filed by the assessee the Assessing Officer had reason to believe that income to the tune of Rs.18,97,935/- chargeable to tax has escaped assessment which needs to be assessed/re-assessed. The contention of the assessee that proceedings were initiated under reason to suspect and not reason to believe is not sustainable from the analysis given by the Assessing Officer on the basis of information received

and verification of the same with a return of income filed by the assessee and keeping in view the fact that information was specific so as to contain the names address and PAN number of the assessee. It was clear that Assessing Officer had proper reason to believe before initiating the proceedings u/s 147. The Assessing Officer has recorded his own satisfaction on the basis of information received on verification of the same from return filed by the assessee. The contention of the assessee there is no material or document on the basis of which he concluded that client code modification has been done, is also not sustainable. At the stage of initiating proceedings u/s. 147 the Assessing Officer is not required to provide the material or documents to the assessee. The Assessing Officer has given copy of note sheet containing the reasons recorded alongwith the satisfaction note of the Principal CIT in connection with the proceedings the initiated u/s 147 which is sufficient compliance of the provisions in relation to proceedings initiated u/s 147. Hence, he dismissed the ground of appeal of the assessee.

6. Before me the AR of the assessee submitted that the reasons recorded by the Assessing Officer for reopening of assessment was at best reason to suspect and not reason to believe of the Assessing Officer for initiating the proceedings u/s 147 of the Act and therefore, the reopening of assessment was bad in law and consequently the order passed in pursuance to such reopening of assessment was bad in law.

7. On the other hand the Ld. DR fully justified the order of the CIT(A).

8. I have heard the rival submissions and perused the orders of the lower authorities and materials available on record. In the instant case the facts of the case are that for the A. Y. 2009-10 the assessee had filed return income u/s 139 of the Act on 29.09.2009. The said return was accepted u/s 143 (1) of the Act. Thereafter the assessment for the aforesaid year was reopened by the recording the following reasons for reopening on 27.04.2016.

“ The department is in possession of information that some brokers had misused client code modification facility (in short “CCM”) to transfer loss and profits on account of share transactions from the client to the other.

These losses/ profits were shifted to reduce the tax liability in hands of either the original client or modified client. The information received in the case of the assessee. Sh. Tulsi Dass is as under :-

Sl. No	Pan no. & Name of the beneficiary	Name of Beneficiary Client	Address of Beneficiary	Name of broker	Ascertained profit Shifted out	Ascertained losses shifted	Net reduction income due CCM
1.	ACJPD7746H	TULSI DASS	CR -204-LALITA PARK LAXMI NAGAR DELHI-110092	MODEX International Securities Ltd.	1420202.5	477732.5	(-) 1897935

The information received was examined with reference to the return of income filed by the assessee. On perusal of the ITR filed by the assessee for A. Y. 2009-10, it was noticed that the assessee was engaged in the business of online trading and commission agent. As per the details of scrips in the assessee's account, the gross receipts of the assessee from the transaction is Rs.12,73,10,855/- whereas the assessee has shown sales gross receipts of business and profession at Rs.1,34,73,989/-. The assessee has shown profits and gains from business other than speculative business at Rs.10,05,287/-. Also, perusal of the various schedules of the return of income reveals that the assessee has not shown the said receipts under any head of income.

In view of the above mentioned facts and evidences gathered. I have reasons to believe that the income to the tune of atleast Rs.1897935/- chargeable to tax has escaped assessment and this income needs to be assessed/reassessed u/s 147 of the Act . I am satisfied that it is fit case for issue of notice u/s 148 of the IT Act. 1961.

9. On perusal of the above recording shows that this was not at all a reason to believe envisaged u/s 147 of the Act. At best the same can be considered as reason to suspect only. The recording states that the assessee Sh. Tulsi Dass has suffered a loss of Rs.4,77,732.50/- in a transaction in which client code modification was involved and earned profit of Rs.10,05,287/- in a transaction in which client code modification was involved. However, there is no material on record to show that prima facie the said client code modification was because of some malafide reason and the assessee has received cash in lieu of payment made for loss of Rs.4,77,732.50/- and profit of Rs.14,20,202.5 in which client code modification was involved. Thus, the above recording does not satisfy

requirement of law mandatory for assuming jurisdiction to reopen the assessment. My above view is supported by the decision of the Bombay High Court in the case of Coronation Agro Industries Ltd. Vs. DCIT reported in 390 ITR 464. Therefore, the reassessment order passed pursuant to the above recording is hereby quashed and ground of the appeal of the assessee is allowed.

9. As I have set aside the reassessment order passed for the year under appeal, therefore, the other grounds of appeal taken by the assessee on the merits of the addition have become academic in nature and are accordingly not required to be adjudicated by me. Accordingly, they are dismissed.

10. In the result, the appeal of the assessee is allowed.

Order pronounced in the open court on 23.01.2019

Sd/-
(N. S. SAINI)
ACCOUNTANT MEMBER

Dated: 23.01.2019.

Neha

Copy of order to: -

- 1) The Appellant
- 2) The Respondent
- 3) The CIT
- 4) The CIT(A)
- 5) The DR, I.T.A.T., New Delhi

Assistant Registrar
ITAT, New Delhi

Date of dictation	18.01.2019
Date on which the typed draft is placed before the dictating Member	
Date on which the approved draft comes to the Sr.PS/PS	
Date on which the fair order is placed before the Dictating Member for Pronouncement	
Date on which the fair order comes back to the Sr. PS/ PS	
Date on which the final order is uploaded on the website of ITAT	23.01.2019
Date on which the file goes to the Bench Clerk	
Date on which file goes to the Head Clerk.	
The date on which file goes to the Assistant Registrar for signature on the order	

Date of dispatch of the Order	
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