

IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCHES "SMC" : DELHI

BEFORE SHRI BHAVNESH SAINI, JUDICIAL MEMBER

ITA.No.7834/Del./2017
Assessment Year 2010-2011

M/s. Anil Chandhok HUF B-1/36, Model Town, New Delhi – 110 009. PAN AAHHA3540E	vs.	The Income Tax Officer, Ward -36 (4), New Delhi.
(Appellant)		(Respondent)

For Assessee :	Shri Alok Mittal, C.A.
For Revenue :	Shri S.L. Anuragi, Sr. D.R.

Date of Hearing :	01.05.2019
Date of Pronouncement :	03.05.2019

ORDER

This appeal by Assessee has been directed against the Order of the Ld. CIT(A)-12, New Delhi, Dated 28.09.2017, for the A.Y. 2010-201, challenging the addition of Rs.8,27,748/- on account of suppression of profit by way of Client Code Modification ("CCM") by the Broker.

2. Briefly the facts of the case are that an information was received from ADIT (Inv.), Ahmedabad, Dated 18.03.2016 in respect of CCM dissemination of beneficial client who have taken contrived losses and

shifted-out profit during the F.Y. 2009-2010. As per the information, the assessee availed contrived losses of Rs.8,27,748/- by shifting-out ascertained profit of Rs.8,27,748/-. Assessment was reopened. The A.O. also noted that Ahmedabad Investigation Directorate as an institutional response to archestrated misuse for CCM for tax evasion, carried-out coordinated limited purpose survey under section 133A of the I.T. Act, 1961 at the premises of 12 Brokers and few of their clients across India. The survey report was prepared by the ADIT (Inv.) Ahmedabad on the basis of data received from National Stock Exchange. After analysis of the data, it came to the notice that CCM have been misused in order to create fictitious losses/profits. Some of the Brokers on spot verification also admitted to have received the commission. The assessee was found one of the beneficiaries for a sum of Rs.8,27,748/-. On that basis, notice under section 148 was issued to the assessee. The A.O. issued notices under section 133(6) of the I.T. Act, to the broker as well as National Stock Exchange. It is understood that in thousands of the cases informations are

being provided by the Stock Exchange to various Departments in CCM cases. Since it was a time barring case, the A.O. decided the same on the basis of the material on record. Explanation of assessee was required for 05.12.2016, but, nobody appeared on that date. However, show cause notice was issued to file reply by 22.12.2016, but, again nobody appeared. Therefore, A.O. completed the assessment under section 147 of the I.T. Act, 1961 on 23.12.2016 and made the addition of Rs.8,27,748/-.

3. This addition was challenged before the Ld. CIT(A). The written submissions of the assessee is reproduced in the appellate order, in which the assessee briefly explained that A.O. issued notices to the Brokers and National Stock Exchange under section 133(6), but, nothing has been taken on record as to what information have been received. The A.O. made the addition without even knowing the details/numbers of transactions. No information have been obtained from the said Broker and even no notice have been issued or survey conducted in the case of the Broker of the assessee. No opportunity of being heard have been

provided to the assessee. The Ld. CIT(A), however, did not accept the contention of the assessee. The Ld. CIT(A), noted that the whole proceedings revolve around the report from DDIT (Inv.), Ahmedabad, Dated 18.03.2016. The same is reproduced in the appellate order and following the same, the Ld. CIT(A) held that assessee has not tried to explain the transaction by giving necessary particulars. The assessee has not explained as to why CCM was used in his case. Therefore, addition was confirmed and appeal of assessee has been dismissed.

4. Learned Counsel for the Assessee submitted that A.O. made the addition in violation of principles of natural justice. The assessee is engaged in the business of trading in shares and financial instruments. The assessee could not file ledger account of the Broker due to non-receipt of the notice. The addition is made solely on the basis of the information received from the Investigation Wing without further verifying the same and without providing copy of the same to the assessee. The A.O. made the addition purely on hypothetical ground without any cogent basis that

modification to client code of the assessee was malafide act. Learned Counsel for the Assessee, therefore, submitted that since it was a time barring case and report of Investigation Wing is not provided to the assessee and no notice have been received by assessee, therefore, addition is wholly unjustified.

5. On the other hand, Ld. D.R. relied upon the Orders of the authorities below.

6. I have considered the rival submissions and perused the findings of the authorities below. This case was reopened on the basis of the information received from ADIT, Investigation, Ahmedabad, Dated 18.03.2016 in respect of CCM misuse for the purpose of showing losses and shifting-out the profits. The Ld. CIT(A) also noted in his findings that the whole proceedings revolve around the report of Investigation Wing, Ahmedabad, Dated 18.03.2016. Though the Ld. CIT(A) reproduced the said information in the appellate order, but, it is not discernible from the Orders of the authorities below whether the said report was provided to the assessee or confronted to the

assessee at any stage in order to get the explanation of the assessee. In the absence of any observation or findings in the Orders of the authorities below, it is clear that no such report was confronted to the assessee for seeking explanation of assessee. Learned Counsel for the Assessee, therefore, rightly contended that A.O. passed the Order in violation of principles of natural justice. It may also be noted that the A.O. issued notice to the assessee seeking explanation for 05.12.2016 and 22.12.2016. The A.O. passed the Order on 23.12.2016 considering it to be time barring case. The A.O. did not record in the assessment order if the said notice have been served upon the assessee. The assessee also pleaded before the Tribunal in the application for admission of the additional evidences that ledger account of the Broker could not be submitted before A.O. due to non-receipt of the notice and without seeking clarification from the side of the assessee. Considering these facts and the fact that the entire case is based upon report received from Investigation Wing, I am of the view that impugned Orders have been passed by the authorities below

in violation of the principles of natural justice without confronting or providing the said report to the assessee. The matter, therefore, requires reconsideration at the level of the A.O. I accordingly, set aside the Orders of the authorities below and restore the matter in issue to the file of A.O. with a direction to him to provide copy of the report of the Investigation Wing, Ahmedabad to assessee and pass the Order as per law, by giving reasonable, sufficient opportunity of being heard to the assessee.

7. The request of the assessee for admission of the additional evidences have become infructuous because the matter is restored to the file of A.O. Assessee is at liberty to produce sufficient evidences before A.O. in support of his explanation. Appeal of Assessee is, therefore, allowed for statistical purposes.

8. In the result, appeal of Assessee allowed for statistical purposes.

Order pronounced in the open Court.

Sd/-
(BHAVNESH SAINI)
JUDICIAL MEMBER

Delhi, Dated 03rd May, 2019

VBP/-

Copy to

1.	The appellant
2.	The respondent
3.	CIT(A) concerned
4.	CIT concerned
5.	D.R. ITAT 'SMC' Bench, Delhi
6.	Guard File.

// BY Order //

Assistant Registrar : ITAT Delhi Benches :
Delhi.