

IN THE INCOME TAX APPELLATE TRIBUNAL  
DELHI BENCH : SMC : NEW DELHI

BEFORE SHRI R.K. PANDA, ACCOUNTANT MEMBER

ITA No.4675/Del/2018  
Assessment Year: 2010-11

Rekhi Holdings Pvt. Ltd.,  
36, Sant Nagar,  
East of Kailash,  
New Delhi.

Vs. ACIT,  
Central Circle-14,  
New Delhi.

PAN: AAACR6025K

(Appellant)

(Respondent)

Assessee by	:	Shri Ved Jain, Advocate & Shri Rishabh Jain, CA
Revenue by	:	Shri S.L. Anuragi, Sr. DR
Date of Hearing	:	20.02.2019
Date of Pronouncement	:	16.05.2019

ORDER

This appeal by the assessee is directed against the order dated 11<sup>th</sup> June, 2018 passed by the CIT(A)-26, New Delhi, relating to Assessment Year 2010-11.

2. Facts of the case, in brief, are that the assessee is a private limited company and filed its return of income on 28<sup>th</sup> September, 2010 declaring a loss of Rs.17,71,540/- which was processed u/s 143(1) of the Act on 25<sup>th</sup> January, 2011. Subsequently, a search and seizure operation u/s 132 of the IT Act was conducted in the assessee company and its group concerns. In response to notice u/s 153A, the assessee filed its return of income on 9<sup>th</sup> September, 2013 and assessment u/s 153A/143(3) of the Act

was completed determining the total loss at Rs17,12,515/- wherein disallowance u/s 14A of Rs.59,025/- was made in the hands of the assessee company. Subsequently, the Assessing Officer reopened the case of the assessee after recording the following reasons:-

“ The assessee company had e-filed its return on 28.09.2010 with declaring income of Rs. NIL. This office has received information from Pr. CIT(OSD) in charge of Director of Income Tax (I & CI), Mumbai vide letter No. DIT/(I&CI)/CCM/2014-15 dated 27.02.2015 that some brokers were alleged to be indulging in transferring fictitious losses to different clients to reduce their tax liability and also fictitious profit to other clients. One of the clients in this list was M/s P. Rekhi Holdings Pvt. Ltd., 36, Sant Nagar, East of Kaliash, New Delhi-110065. When confronted with the client modification data and the statements of brokers, these clients admitted having taken fictitious loss from the brokers.

On the basis of the information, that fictitious losses to the tune Rs.40,25,433/- were booked by M/s Rekhi Holdings Pvt. Ltd., 36 Sant Nagar, East of Kaliash, New Delhi-110065 and the same must be adjusted from the income/ profit earned during the year losses brought forwarded in next year accordingly.

In view of the above, I have reason to believe that due to failure on the part of the assessee to disclose fully and truly all material facts necessary for its income for this assessment year i.e. A.Y. 2010-11 income to the extent of Rs.40,25,433/- has escaped income.”

3. Accordingly, notice u/s 148 of the Act was issued on 20<sup>th</sup> March, 2015. The assessee, in response to the same filed a letter challenging the validity of notice issued u/s 148 and jurisdiction of the DCIT, Circle 21(1). The assessee also filed its return under protest requesting the Assessing Officer to treat the original return filed u/s 139(1) on 28<sup>th</sup> September, 2010 as the return filed in response to the notice u/s 148 and requested to provide the reasons recorded for reopening. After obtaining the reasons so recorded, the assessee filed its objections which were disposed of by the

Assessing Officer who rejected the same. Subsequently, the Assessing Officer issued statutory notices asking the assessee to explain as to why the amount of Rs.40,25,433/- should not be disallowed and taxed in the hands of the assessee. Rejecting the various explanations given by the assessee and observing that the assessee was not able to substantiate its contentions with any supporting documents and observing that specific information was received from NSE that the assessee company has taken fictitious loss entry of Rs.40,25,433/-, the Assessing Officer disallowed the amount of Rs.40,25,433/- and added the same to the total income of the assessee.

4. Before the CIT(A), the assessee, apart from challenging the addition on merit, challenged the validity of the reassessment proceedings on the ground that the Assessing Officer who had issued the notice u/s 148 did not have the jurisdiction. The Assessing Officer who has passed the reassessment order never issued any notice u/s 148. Further, the Assessing Officer, without application of mind and on vague reasons has reopened the assessment which is not justified. It was further argued that the reasons supplied do not provide complete details on the transactions modified and the notice was not issued as per the mandate of law. Relying in various decisions, it was argued that it was a mere change of opinion and, therefore, the reassessment proceedings initiated by the Assessing Officer are bad in law.

4.1 However, the Id.CIT(A) was not satisfied with the arguments advanced by the assessee. After calling for a remand report from the Assessing Officer and after

considering the rejoinder of the assessee to the remand report, the Id.CIT(A) upheld the action of the Assessing Officer in reopening of the assessment and also sustained the addition on merit.

5. Aggrieved with such order of the CIT(A), the assessee is in appeal before the Tribunal by raising the following grounds:-

“1. On the facts and circumstances of the case, the order passed by the Commissioner of Income [CIT(A)] is bad both in the eye of law and on facts.

2. On the facts and circumstances of the case the Ld. CIT(A) has erred both on facts and in law in rejecting the contention of the assessee that the order passed by the AO is without jurisdiction.

3. On the facts and circumstances of the case the Ld. CIT(A) has erred both on facts and in law in rejecting the contention of the assessee that the initiation of the reassessment proceedings and the reassessment order are bad both on facts and in law and liable to be quashed as the statutory conditions and procedure prescribed under the statute have not been complied with.

4. (i) On the facts and circumstances of the case, learned [CIT(A)] has erred in rejecting the contention of the assessee that the reassessment proceedings initiated by the A.O. are bad in the eye of law as the reasons recorded for the issue of notice under Section 148 are bad in the eye of law and are contrary to the facts.

(ii) On the facts and circumstances of the case, the Ld. CIT(A) has erred both on facts and in law in confirming the addition made by the AO despite the fact that the reason given are vague and such addition is made after indulging into surmises and conjectures.

5. On the facts and circumstances of the case, the Ld. CIT(A) has erred both on facts and in law in confirming the addition made by the learned AO despite the made without application of his own mind.

6. On the facts and circumstances of the case, the learned CIT(A) has erred both on facts and in law in confirming the addition despite the fact that the assessment u/s147, cannot be made on account of change of opinion.

7. On the facts and circumstances of the case, the Ld. CIT(A) has erred both on facts and in law in confirming the addition despite the fact that the

learned A.O. has drawn the adverse inference on the basis of material collected at the back of the assessee without giving it an opportunity to rebut the same.

**Book Profit computed u/s 115JB**

8. (i) On the facts and circumstances of the case, the learned CIT(A) has erred both on facts and in law in confirming the addition of an amount of Rs.40,25,433/- account of Client Code modification through broker.

(ii) That the above addition has been confirmed rejecting the detailed explanation and evidences brought on record by the assessee.

(iii) That the above addition has been made rejecting the contention of the assessee that the Client Code modification can only be done at the Stock Broker or Co Broker level and assessee neither being a stock broker nor commodity broker Client Code modification cannot be done by it.

**Normal Provisions of the Act**

9. (i) On the facts and circumstances of the case, the learned CIT(A) has erred both facts and in law in confirming the addition of an amount of Rs.40,25,433/- on account of Client Code modification through broker.

(ii) That the above addition has been confirmed rejecting the detailed explanation and evidences brought on record by the assessee.

(iii) That the above addition has been confirmed rejecting the contention of the assessee that the Client Code modification can only be done at the Stock Broker or Commodity Broker level and assessee neither being a stock broker nor commodity broker, Client Code modification cannot be done by it.

10. On the facts and circumstances of the case, the CIT(A) has erred, both on facts and in law confirming the action of the AO in charging interest under sections 234A, 234B, 234C and 234D of the Act.

11 .The appellant craves leave to add, amend or alter any of the grounds of appeal.”

6. The Id. counsel for the assessee strongly challenged the order of the CIT(A). He submitted that after the search u/s 132 of the Act was conducted on 28<sup>th</sup> July, 2011, the case of the assessee was centralized in Central Circle No.15, vide order dated 20<sup>th</sup>/23<sup>rd</sup> July, 2012 passed u/s 127 of the IT Act. He submitted that the DCIT, Central Circle-15, issued notice u/s 153A asking the assessee to file return of income.

Referring to page 15 to 17 of the paper book, he submitted that the order u/s 153A/143(3) of the Act was passed on 24<sup>th</sup> March, 2014 by the DCIT, Central Circle-15, New Delhi. Referring to page 18 of the paper book, he submitted that the notice u/s 148 of the IT Act was issued by the DCIT, Circle 21(1), New Delhi on 20.03.2015. Referring to page 42 of the paper book, he submitted that the order of decentralization of the case was passed on 3<sup>rd</sup> August, 2017 by the CIT, Central Circle-2, New Delhi. Thus, from 20<sup>th</sup> July, 2012 to 3<sup>rd</sup> August, 2017, the jurisdiction of the assessee was lying with Central Circle-15, New Delhi, whereas the notice u/s 148 was issued by the DCIT, Circle 21(1), New Delhi on 20<sup>th</sup> March, 2015. Therefore, the DCIT, Circle 21(1), New Delhi who had issued notice u/s 148 was not having jurisdiction over the assessee to issue such notice. Referring to the following decisions, he submitted that only an authority who had jurisdiction over the assessee's case is competent to issue a notice in terms of section 148 of the Act and any authority who is not having jurisdiction over the assessee, if issues notice u/s 148 of the Act, then, such notice so issued will be without jurisdiction and consequently the assessment made has to be held as bad in law and deserves to be quashed:-

- (i) CIT vs. Smt. Anjali Dua 2008 (7) TMI 958 (Delhi High Court);
- (ii) Ranjeet Singh vs. ACIT 2008 (6) TMI 236 (ITAT, Delhi);
- (iii) Dr. (Mrs.) K.B. Kumar v. ITO 2010 (1) TMI 669 (ITAT Delhi); and
- (iv) CIT v. Anil Khosla 2008 (9) TMI 931 (Delhi High Court).

7. He submitted that the Assessing Officer has blindly relied upon the report of the Investigation Wing which itself is not based on any material against the assessee.

The mere recording of reasons on the basis of reproduction of information from Investigation Wing and issuing notice for initiation of reassessment proceedings does not constitute application of mind much less independent application of mind. Therefore, the proceeding is without jurisdiction. For the above proposition, he relied on the decision of the Hon'ble Bombay High Court in the case of *M/s Coronation Industries Ltd. vs. DCIT, vide Writ Petition No.2627 of 2016, order dated 23.11.2016*, where it is held that mere client code modification by broker does not mean that any income has escaped assessment. Referring to the decision of the Hon'ble Bombay High Court in the case of *PCIT vs. PAT Commodity Services Pvt. Ltd., vide ITA No. 1257 of 2016, order dated 15<sup>th</sup> January, 2019*, he submitted that the Hon'ble High Court in the said decision has held that mere client code modification by broker does not mean that any income has escaped assessment. He accordingly submitted that mere client code modification by broker does not mean that any income has escaped assessment and consequently, the reassessment proceedings should be held as void and the subsequent addition on the basis of such reassessment has to be quashed.

8. The ld. counsel for the assessee, referring to pages 31 to 36 of the paper book, submitted that the assessee has raised objection to initiation of reassessment proceedings u/s 147 of the Act, vide letter dated 1<sup>st</sup> March, 2016 and the aforesaid objections were disposed of by the Assessing Officer vide order dated 1<sup>st</sup> March, 2016, copy of which is placed at page 37 of the paper book. The disposal of the objections on the very same day shows that the Assessing Officer did not apply his

mind before rejecting the objections. He submitted that in the instant case, the action has been taken u/s 147 of the Act after completion of the assessment u/s 153A/143(3) on the basis of the report of the Investigation Wing and the Assessing Officer has not conducted any inquiry on the same. Therefore, the reassessment proceedings initiated in the instant case are not in accordance with law. For the above proposition, the Id. counsel for the assessee relied on the decisions of the Delhi Bench of the Tribunal in the case of *Mohan Aggarwal vs. ACIT*, vide ITA No.2497/Del/2018, order dated 31.01.2009, *M/s Prashant Agencies Pvt. Ltd. & PPN Properties Pvt. Ltd. vs. ITO*, vide ITA No.3059/Del/2018, order dated 16<sup>th</sup> January, 2019, *ITO vs. M/s Abhishek Fincap Services Pvt. Ltd.*, ITA No.2750/Del/2017, order dated 13<sup>th</sup> September, 2017 and the decision of the Jaipur Bench of the Tribunal in *DCIT vs. Gyandeeep Khemka*, vide ITA No.695/JP/2018, order dated 23<sup>rd</sup> October, 2018.

9. So far as the merit of the case is concerned, he submitted that the orders of the authorities below cannot be accepted since the Assessing Officer has not pointed out any basis or material or evidence to support his findings that the assessee has received entry of fictitious losses. The Assessing Officer has not spelt out in the reasons recorded as well as the assessment order as to on which scrips the assessee has taken loss entries. Further, in the reasons recorded as well as the assessment order, the Assessing Officer has not mentioned anywhere of any statement of broker of the assessee regarding the admission of any fictitious client code modification. He submitted that the addition has been made by the Assessing Officer despite assertions by the assessee that it is not into broking services and accordingly has not done any

client code modification. He submitted that when the assessment order is based on the report of the Investigation Wing without any fresh and independent inquiry conducted by the Assessing Officer and when no broker has given any statement against the assessee, therefore, in the light of the judicial precedents cited above the addition made by the Assessing Officer and sustained by the CIT(A) should be deleted both under regular provisions and MAT provisions while computing the book profit.

10. The Id. DR, on the other hand, heavily relied on the order of the CIT(A). So far as the jurisdiction of the assessee is concerned, he submitted that the Id.CIT(A) has already decided the issue against the assessee which is self-explanatory and, therefore, the ground raised by the assessee on this issue should be dismissed. So far as the merit of the case is concerned, he submitted that here also the Id.CIT(A) has given a clear-cut finding that the assessee has misused the facility of client code modification for creating artificial loss/profits which came to light on the basis of the survey conducted by the Investigation Wing. Therefore, on all counts, the order passed by the CIT(A) has to be upheld and the grounds raised by the assessee should be dismissed.

11. I have considered the rival arguments made by both the sides and perused the orders of the authorities below. I find the assessee in the instant case, filed the original return of income on 28<sup>th</sup> September, 2010. Subsequently, after the search conducted u/s 132 of the Act on 28<sup>th</sup> July, 2011, the case of the assessee was

centralized in Central Circle-15, vide order dated 20<sup>th</sup>/23<sup>rd</sup> July, 2012 passed u/s 127 of the IT Act. The assessee, in response to the notice u/s 153A, filed its return of income before the DCIT, Central Circle-15, New Delhi. The assessment u/s 153A read with section 143(3) was completed on 24<sup>th</sup> March, 2014 by the DCIT, Central Circle-15, New Delhi. I find the order for decentralization of the case of the assessee was passed on 3<sup>rd</sup> August, 2017 by the CIT, Central-2, New Delhi, a copy of which is placed at page 42 of the paper book. Thus, from 20<sup>th</sup> July, 2012 to 3<sup>rd</sup> August, 2017 the jurisdiction of the assessee was lying with Central Circle-15, New Delhi, whereas the notice u/s 148 was issued by the DCIT, Central Circle-21(1) on 20<sup>th</sup> March, 2015. Therefore, the Assessing Officer, who had issued the notice u/s 148 had no jurisdiction over the assessee at that particular point of time. Although this fact was brought to the notice of the Assessing Officer, vide letter dated 15<sup>th</sup> April, 2015, a copy of which is placed at page 19 of the paper book, however, I find the same was not considered. The relevant objection of the assessee in the said letter reads as under:-

“In this regard it is submitted that firstly the proceedings initiated for reassessment, and notice issued u/s 148 by your honour is without jurisdiction and barred by limitation.”

12. I find, the Hon'ble Delhi High Court in the case of Smt. Anjali Dua (supra) has observed as under:-

“It is in this background that the Tribunal noted that the request of the assessee to transfer the jurisdiction was noted in the letter dated 25-3-1998 whereby the no objection of Commissioner of Income-tax, New Delhi was conveyed to the Commissioner of Income-tax, Ludhiana. It is also noted that thereafter the assessee submitted returns for the assessment years 1997-98 onwards at New Delhi. It is in these facts and circumstances that the Tribunal came to the

conclusion that insofar as, the assessee was concerned, after the said transfer, it is only the revenue authorities at New Delhi who had jurisdiction over the assessee's cases and who were competent to issue a notice in terms of section 148 of the said Act. It may also be pointed that, pursuant to the issuance of impugned notice under section 148 of the said Act on 28.3.2003, when the notice under section 142(1) was issued to the assessee in December 2003, the assessee by her reply dated 21-1-2004 indicated that her Assessing Officer was not located in Ludhiana, but as the Income-tax Officer at New Delhi

12.1 I find, the coordinate Bench in the case of Dr. Mrs. K.B. Kumar (supra) has observed as under:-

“7. In this view of the matter and respectfully following the decisions (supra), it is held that notice under section 148 issued by ITO, Ghaziabad was without jurisdiction and consequent upon the same reassessment framed by the Assessing Officer, Delhi is invalid and the same is accordingly quashed. Consequently, the order of the learned CIT(A) is set aside on the legal issue raised by the assessee in her appeal. Ground No. raising the legal issue is decided in favour of the assessee.

12.2 I find, the Hon'ble Delhi High Court in the case of CIT vs Anil Khosla (supra) has observed as under:-

“1. This is an appeal in respect of the assessment year 1994-1995 directed against the order passed by the Income Tax Appellate Tribunal on 21-9-2007. The issue sought to be raised in the present appeal pertains to the jurisdiction of the Assessing Officer in issuing the notice under section 148. The Tribunal on consideration of the facts that jurisdictional ITO did not issue any notice under section 148 to assessee in spite of objection taken by assessee before Assistant Commissioner of Income Tax. The Tribunal, therefore, concluded that there was a jurisdictional defect in notice issued under section 148 on basis of which the Assessing officer assumed jurisdiction and made assessment. In fact, this was the very view taken by the Commissioner of Income Tax (Appeals) also which has been confirmed by the Tribunal.

2. We see no reason to interfere with these findings on fact. No substantial question of law arises for our consideration. The appeal is dismissed.”

13. The various other decisions relied on by the Id. counsel for the assessee to the proposition that notice issued u/s 148 by the Assessing Officer not having jurisdiction over the assessee is invalid also supports his case. Since, in the instant case, the Assessing Officer who has issued notice u/s 148 on 20<sup>th</sup> January, 2015, was not having jurisdiction over the assessee, therefore, such notice issued u/s 148 of the IT Act and the assessment order passed consequent to issue of such notice u/s 148 has to be quashed. Therefore, the first legal ground raised by the assessee regarding the validity of reassessment on the ground that the notice was issued by the Assessing Officer not having jurisdiction over the assessee is allowed.

14. Even otherwise also, I find the Hon'ble Bombay High Court in the case of *M/s Coronation Agro Industries Ltd. (supra)* has held that mere client code modification by broker does not mean that any income has escaped assessment. The relevant observations of the Hon'ble High court reads as under:-

“2. This petition challenges notice dated 31st March, 2016 issued under Section 148 of the Income Tax Act, 1961. The impugned notice seeks to reopen the assessment for Assessment Year 2009–10. The regular assessment proceedings were completed on 28th December, 2011 under Section 143(3) of the Act.

3. The reasons in support of the impugned notice relies upon the information received from the Principal Director of Income Tax that the petitioner has benefited from a client code modification by which a profit of Rs.22.50 lakhs was shifted out by the petitioner's broker, resulting in reduction of the petitioner's taxable income. The only basis for forming the belief is the report from the Principal Director of Income Tax and the application of mind to the report of the Assessing Officer along with the record available with him. This information and application of mind has led the Assessing Officer to form a reasonable belief that there is not only an escapement of income but there has been failure to truly and fully disclose all material facts and information as the modus operandi of shifting profits was not known to the Revenue as not

disclosed by the petitioner when the Assessing Officer passed the order in regular assessment proceedings.

4. We note that the reasons in support of the impugned notice accept the fact that as a matter of regular business practice, a broker in the stock exchange makes modifications in the client code on sale and / or purchase of any securities, after the trading is over so as to rectify any error which may have occurred while punching the orders. The reasons do not indicate the basis for the Assessing Officer to come to reasonable belief that there has been any escapement of income on the ground that the modifications done in the client code was not on account of a genuine error, originally occurred while punching the trade. The material available is that there is a client code modification done by the Assessee's broker but there is no link from there to conclude that it was done to escape assessment of a part of its income. Prima facie, this appears to be a case of reason to suspect and not reason to believe that income chargeable to tax has escaped assessment.

5. In the above view, prima facie, we are of the view that the impugned notice is without jurisdiction as it lacks reason to believe that income chargeable to tax has escaped assessment.”

15. I find the Hon'ble Bombay High Court in the case of *PCIT vs. PAT Commodity Services Pvt. Ltd. (supra)* has dismissed the appeal filed by the Revenue against the order of the Tribunal in deleting the addition being the profits of the company on account of large-scale client code modification. The relevant observations of the Hon'ble High Court vide para 3 of the order reads as under:-

“3. The respondent assessee is a private limited company engaged in the business of providing commodity services to its clients. In the return of income filed by the assessee for the Assessment Year 2006-07, the Assessing Officer noticed that there were instances of client code modifications. The Assessing Officer believed that the same was done to indulge in circular trading to pass on profits or losses to the clients of the assessee company as per requirements. After hearing the assessee, the Assessing Officer made additions in the income of the assessee on such basis. The issue eventually reached to the Tribunal. The Tribunal did accept the Revenue's theory of misuse of clients code modification facility. However, the Tribunal accepted the assessee's explanation and discarded the Revenue's theory that profit of the assessee's company were passed on to the clients. It was also noticed that the Revenue has not contended that the client code modification facility is often misused by the assessee to pass on losses to the investors, who

may have sizable profit arising out of commodity trading against which such losses can be set off. The Revenue normally points out number of such instances of client code modifications as well as nature of errors in filling of the client code. At any rate, what can be taxed in the hands of the present assessee is the income escaping assessment. Even if the Revenue's theory of the assessee having enabled the clients to claim contrived losses, the Revenue had to bring on record some evidence of the income earned by the assessee in the process, be it in the nature of commission or otherwise. In the present case, the Assessing Officer has added the entire amount of doubtful transactions by way of assessee's additional income, which is wholly impermissible. We do not know the fate of the individual investors in whose cases, the Revenue could have questioned the artificial losses. Be that as it may, we do not think entertaining these appeals would serve any useful purpose.”

16. The various other decisions relied on by the Id. counsel for the assessee also support the case of the assessee. Since, in the instant case, the Assessing Officer has not pointed out any basis or material or evidence to support his finding that the assessee has received entry of fictitious losses and has not spelt out in the reasons recorded as well as the assessment order as to on which scrips the assessee has taken loss entries and in the order nowhere it has been mentioned of any statement of broker of the assessee regarding the admission of any fictitious client code modification, therefore, I am of the considered opinion that the addition made by the Assessing Officer and sustained by the CIT(A) is not justified. Accordingly, the ground raised by the assessee on merit is also allowed.

17. In the result, the appeal filed by the assessee is allowed.

The decision was pronounced in the open court on 16.05.2019.

Sd/-

(R.K. PANDA)  
ACCOUNTANT MEMBER

Dated: 16<sup>th</sup> May, 2019

dk

Copy forwarded to

1. Appellant
2. Respondent
3. CIT
4. CIT(A)
5. DR

Asstt. Registrar, ITAT, New Delhi