

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

BEFORE SH. R. K. PANDA, ACCOUNTANT MEMBER

ITA No.794/Del/2019

Assessment Year: 2009-10

Mukesh Chand Garg B-1/305, Ground Floor, Janak Puri, New Delhi-110058 PAN No.AEYPG7826A (APPELLANT)	Vs	ITO Ward- 49 (3) New Delhi (RESPONDENT)
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Appellant by	Sh. Ved Jain, Advocate Ms. Surbhi Goyal, CA
Respondent by	Sh. S. L. Anuragi, Sr. DR

Date of hearing:	08/08/2019
Date of Pronouncement:	07/10/2019

ORDER

PER R.K. PANDA, AM:

This appeal filed by the assessee is directed against the order dated 24.12.2018 of the CIT(A) -17, New Delhi relating to A.Y.2009-10.

2. The assessee in its various grounds of appeal has challenged the order of the Ld. CIT(A) in confirming the addition of Rs.4,25,810/- and has also challenged the validity of proceedings u/s. 147.

3. Facts of the case, in brief, are that the assessee is an individual and filed his return of income on 24.08.2009 declaring total income of Rs.5,49,980/-. Subsequently on the basis of information received from PCIT of the Income Tax (Investigation), Ahemdabad that the assessee had availed contrived loss of Rs.4,39,342/- through broker by

changing the client codes in sale and purchase orders of securities, the case of the assessee was reopened u/s. 147 after recording reasons. In response to notice u/s. 148 the assessee submitted that the original return filed may be treated as return filed in response to notice u/s. 148. The Assessing Officer, during the course of assessment proceedings, concluded that the assessee has purchased exempt long term capital gain through brokers by changing client codes in sale and purchase orders of securities and had claimed the same as exempt. Since the assessee has earned capital gain of Rs.4,39,342/- and claimed the same as long term capital gain exempt from tax, the Assessing Officer held the same to be non genuine and accordingly made addition of Rs.4,39,342/-.

4. In appeal the CIT(A), relying on various decisions, upheld the action of the Assessing Officer. Aggrieved with such order of the CIT(A), the assessee is in appeal before the Tribunal.

5. The Ld. Counsel for the assessee referring to page-12 of the paper book drew the attention of the bench to column No.12 where the PCIT had simply mentioned "satisfied". Referring to clause No.11 of the form he submitted that the additional CIT has simply mentioned "YES", it is fit case to issue notice u/s. 148 of the IT Act". Referring to the decision of the Hon'ble Delhi High Court in the case of PCIT Vs. M/s. N. C. Cables Limited reported in 391 ITR 11 and the decision of the Hon'ble M. P. High Court in the case of CIT Vs. S. Goenka Lime and Chemicals Limited reported in (2015) 56 taxman.com 390 and various other decisions filed in the paper book, he submitted that the courts have held that the reopening is not sustainable where approval / sanction given by the authority is without recording satisfaction. Referring to various other decision he submitted that the Assessing Officer, not having jurisdiction over the assessee, cannot issue notice

u/s. 148 of the IT Act. The Assessing Officer in the instant case has not applied his mind and initiated action u/s. 147 on the basis of report of the investigation wing. Therefore, the reassessment proceedings initiated by the Assessing Officer is not sustainable.

6. So far as the merit of the case is concerned, the Ld. Counsel for the assessee referring to the decision of Hon'ble Bombay High Court in the case of PCIT Vs. PAT Commodity Services Private Limited reported in (2019) 2 TMI 720 submitted that the Hon'ble High court has decided the issue in favour of the assessee and the appeal filed by the revenue has been dismissed. He accordingly submitted that both legally and factually the order of the CIT(A) is not sustainable.

7. The Ld. DR on the other hand heavily relied on the order of the AO and CIT(A).

8. I have considered the rival arguments made by both the sides and perused the orders of the authorities below. I have also considered the various decisions cited before me. I find the Assessing Officer, on the basis of report of the investigation wing of the department, reopened the assessment and made addition of Rs.4,39,342/- on account of client code modification through broker which has been upheld by the CIT(A). It is the submission of the Ld. Counsel for the assessee that the reopening was made in a mechanical manner without application of mind by the Assessing Officer and on borrowed satisfaction. Further the approving authorities have also given the approval in a mechanical manner and the assessee was never given any opportunity of cross-examination. It is also his submission that in view of the decision of Hon'ble Bombay High Court in the case of PCIT Vs. PAT Commodity Services Private Limited (supra) the addition on account of client code modification is not sustainable.

9. A perusal of the proforma for approval to issue of notice u/s. 148, copy of which is placed at page 12 of the paper book shows that as per clause 12 of the proforma, the PCIT while giving approval has simply mentioned “satisfied”. Similarly as per clause 11, the Addl. CIT has simply mentioned “Yes”, it is a fit case to issue notice u/s. 148 of the IT Act, 1961.

9.1 The Hon’ble Delhi High Court in the case of PCIT Vs. N. C. Cables Ltd. (supra) has held as under :-

“11. Section 151 of the Act clearly stipulates that the CIT(A), who is the competent authority to authorize the reassessment notice, has to apply his mind and form an opinion. The mere appending of the expression 'approved' says nothing. It is not as if the CIT (A) has to record elaborate reasons for agreeing with the noting put up. At the same time, satisfaction has to be recorded of the given case which can be reflected in the briefest possible manner. In the present case, the exercise appears to have been ritualistic and formal rather than meaningful, which is the rationale for the safeguard of an approval by a higher ranking officer. For these reasons, the Court is satisfied that the findings by the ITAT cannot be disturbed.”

9.2 The Hon’ble M. P. High court in the case of CIT Vs. S. Goyanka Lime & Chemicals Ltd. (supra) has held as under :-

“7. We have considered the rival contentions and we find that while according sanction, the Joint Commissioner, Income Tax has only recorded so “Yes, I am satisfied”. In the case of Arjun Singh (supra), the same question has been considered by a Coordinate Bench of this Court and the following principles are laid down:-

“The Commissioner acted, of course, mechanically in order to discharge his statutory obligation properly in the matter of recording sanction as he merely wrote on the format “Yes, I am satisfied” which indicates as if he was to sign only on the dotted

line. Even otherwise also, the exercise is shown to have been performed in less than 24 hours of time which also goes to indicate that the Commissioner did not apply his mind at all while granting sanction. The satisfaction has to be with objectivity on objective material.”

8. If the case in hand is analysed on the basis of the aforesaid principle, the mechanical way of recording satisfaction by the Joint Commissioner, which accords sanction for issuing notice under section 148, is clearly unsustainable and we find that on such consideration both the appellate authorities have interfered into the matter. In doing so, no error has been committed warranting reconsideration.

9- As far as explanation to Section 151, brought into force by Finance Act, 2008 is concerned, the same only pertains to issuance of notice and not with regard to the manner of recording satisfaction. That being so, the said amended provision does not help the revenue.

10- In view of the concurrent findings recorded by the learned appellate authorities and the law laid down in the case of Arjun Singh (supra), we see no question of law involved in the matter, warranting reconsideration.

11- The appeals are, therefore, dismissed.”

9.3 Since in the instant case also both the approving authorities have given the approval in a mechanical manner, therefore, in the light of the ratio laid down by the decisions cited (supra) and the other decisions filed in the case law compilation, the reassessment proceedings in my opinion are not in accordance with law. Therefore, the same is liable to be quashed. I, therefore, quash the reassessment proceedings.

10. Even otherwise on merit also, so far as the addition on account of client code modification is concerned I find the Hon'ble Bombay High Court in the case of PAT Commodity Services (supra) has observed 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 200607, 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.

4. In the result, both the appeals are dismissed.”

11. Respectfully following the decision of Hon'ble Bombay High Court cited (supra). I hold that the addition made by the Assessing Officer and sustained by the CIT(A) on account of client codes modification is not justified. The grounds raised by the assessee are accordingly allowed.

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

Order pronounced in the open court on 07.10.2019.

Sd/-
(R.K PANDA)
ACCOUNTANT MEMBER

Neha

Date:- 07.10.2019

Copy forwarded to:

1. Appellant
2. Respondent
3. CIT
4. CIT(Appeals)
5. DR: ITAT

ASSISTANT REGISTRAR
ITAT NEW DELHI

Date of dictation	
Date on which the typed draft is placed before the dictating Member	
Date on which the approved draft comes to the Sr.PS/PS	07.10.2019
Date on which the fair order is placed before the Dictating Member for Pronouncement	07.10.2019
Date on which the fair order comes back to the Sr. PS/ PS	07.10.2019
Date on which the final order is uploaded on the website of ITAT	07.10.2019
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	