



IN THE INCOME TAX APPELLATE TRIBUNAL “G” BENCH, MUMBAI

BEFORE SHRI RAJESH KUMAR, AM AND SHRI AMARJIT SINGH, JM

आयकर अपील सं/ I.T.A. No.1986/Mum/2019
(निर्धारण वर्ष / Assessment Years: 2009-10)

Systematix Shares and Stocks (India) Limited The Capital, ‘A’ Wing, 6 th Floor, No. 603-604, Plot No.C-70, G. Block, BKC, Bandra (E), Mumbai.	बनाम/ Vs.	Principal Commissioner of Income Tax-4 Aayakar Bhavan, M.K. Road, Mumbai-400020.
स्थायी लेखा सं./जीआइआर सं./PAN/GIR No. : AAEC8827N		
(अपीलार्थी /Appellant)	..	(प्रत्यर्थी / Respondent)

Assessee by:	Shri Rajiv Khandelwal
Revenue by:	Shri Laxmi Vara Prasad Gude (DR)

सुनवाई की तारीख / Date of Hearing: 15/07/2019

घोषणा की तारीख /Date of Pronouncement: 13/09/2019

आदेश / ORDER

PER AMARJIT SINGH, JM:

The assessee has filed the present appeal against the order dated 26.03.2019 passed by the Principal Commissioner of Income Tax-4, Mumbai [hereinafter referred to as the “PCIT”] relevant to the A.Y.2009-10 in which the Principal Commissioner of Income Tax-4 has invoked the provisions u/s 263 of the I.T. Act, 1961.

2. The assessee has raised the following grounds of appeal: -

“The Principal Commissioner of Income-tax - 4, Mumbai (hereinafter referred to as the Pr. CIT) erred in framing an order dated 26.03 .2019 under section 263 of the Act to set aside the order of the Assistant Commissioner of Income-tax -4(2)(1), Mumbai (hereinafter referred to as the Assessing Officer) by holding that the assessment completed by the Assessing Officer is erroneous in so far as it is prejudicial to the interest of the Revenue and consequently, setting aside the said assessment order to the files of the Assessing Officer.

The appellants contend that the Pr. CIT has not appreciated the facts of the case in its entirety the impugned order under section 263 is bad in



law inasmuch as the assessment order of the Assessing Officer is neither erroneous nor prejudicial to the interests of the Revenue.

The appellants further, contend that on the facts and in the circumstances of the case and in law, the Pr CIT ought not to have reached the aforesaid conclusion inasmuch as the Assessing Officer after having been satisfied on the basis of all papers and documents that have been furnished to him, completed the assessment.

The appellants crave leave to add to, alter and/ or amend the aforestated ground of appeal.”

3. The brief facts of the case are that the Principal Commissioner of Income Tax-4 invoked the provisions u/s 263 of the I.T. Act, 1961 against the assessee in his order dated 26.03.2019 stated therein that the assessee filed the return of income on 15.09.2010 declaring total income to the tune of Rs.2,29,65,620/-. Thereafter, the assessment was completed u/s 143(3) of the I.T. Act, 1961 on 30.03.2013 assessing the income at Rs.4,10,10,791/-. Thereafter, the case of the assessee was reopened u/s 148 of the Act on the ground that the assessee had indulged in frequent Client Code Modification (CCM). Thereafter, the assessment was completed u/s 143(3) r.w. Section 147 of the I.T. Act, 1961 assessing the income to the tune of Rs.4,10,10,791/-. The AO nowhere raised any addition in respect of Client Code Modification (CCM) in the assessment order dated 17.12.2016.

4. It is mentioned in the order that the record speaks that the assessee provided accommodation entries by using Client Code Modification (CCM) facility in F& O segment at NSE to the tune of Rs.4,50,44,801/-. The Client Code Modification (CCM) facility was misused by brokers, therefore, notice u/s 263 of the Act dated 20.03.2019 was issued which was replied by the assessee. After considering the reply of the assessee, the PCIT invoked the provisions u/s 263 of the Act and set aside the order dated 17.12.2016 and directed the AO to make proper and specific enquiry in respect of Client Code Modification (CCM) effected by assessee and investigate the genuineness of each and every Client Code Modification (CCM) entry. The



assessee was not satisfied by the order passed u/s 263 of the Act, therefore, the assessee filed the present appeal before us.

6. We have heard the argument advanced by the Ld. Representative of the parties and perused the record. In the instant case, the assessee filed the return of income on 15.09.2010 declaring total income to the tune of Rs.2,49,52,000/- which was processed u/s 143(3) of the Act. Thereafter, the case was selected for scrutiny and the assessment of the assessee was completed u/s 143(3) of the Act determining income to the tune of Rs.4,10,10,791/- on 30.03.2013. Thereafter, the case of the assessee was reopened u/s 148 of the Act dated 15.07.2015. The reason for reopening the same was conveyed by virtue of letter dated 08.02.2016 which is hereby reproduced as under for ready reference for the A.Y. 2010-11:-

“the return income filed by assessee is on 15.09.2010 declaring total income to the tune of Rs.2,49,52,000/- and the same was completed u/s 143(3) of the Act on 30.03.2013 raising a demand of Rs.70.43 lakhs.”.

7. *It is noticed that the assessee has provided accommodation entries by using the client code modification facility in F & O segment in NSE to the tune of Rs.4,50,44,801/- to various parties during the F.Y.2009-10 as per the information received from the O/o the DIT, Intelligence and Criminal Investigation, Mumbai vide letter no. DIT(I&CI)/CCM/2014-15 dated 27.02.2015*. After the reply of the reasons, the assessee filed the reply by virtue of letter dated 25.02.2016 and the relevant part has been replied at column-10 which is hereby reproduced as under:-

“10. It may be noted that whenever client codes are modified for the reasons stated above, the trade does not change i.e. description, quantity rate and brokerage charged by us not change. There is no change in the transaction except for the change of the client code and corresponding client name. Therefore any change of client code would not result in any additional income than what has already been accrued and accountant as brokerage. The premise that alteration of client code leads to income chargeable to tax has escaped for assessment is factually incorrect. The reasons recorded and given to us only indicate a mere observation/suspicion that cannot be the basis or reason to believe to reopen the assessment.”



8. Subsequently the AO passed the order u/s 143(3) r.w. Section 147 of the Act assessing the total income to the tune of Rs.4,10,10,791/-. The said income had already been assessed by virtue of order dated 30.03.2013 in view of the provisions u/s 143(3) of the I.T. Act, 1961 meaning thereby no addition of any kind was raised. Now, coming to the order in question u/s 263 of the Act, we noticed that the PCIT-4 reopened the assessment on the basis of this fact that the assessee had provided accommodation entry by using the Client Code Modification (CCM) facility in F & O segment at NSE to the tune of Rs.4,50,44,801/- The Commissioner was of the view that the assessee had provided accommodation entry by using the Client Code Modification (CCM) facility in F & O segment at NSE to the tune of Rs.4,50,44,801/-. The Commissioner of Income Tax has directed the AO to make the enquiry or verification of the Client Code Modification (CCM) and details of (CCM) available on record. However, the Commissioner has mentioned that the order is erroneous and prejudicial in the interest of the revenue but how the order is erroneous and prejudicial to the interest of revenue is not on record because the order was passed for verification purpose. The provisions u/s 263 of the Act is not liable to be invoked for the verification purpose unless it is quite clear that the order is erroneous and prejudicial to the interest of the revenue. In the instant case also, no relevant record was summoned. The PCIT on appraisal of the assessment order passed the order without any material available on record, therefore, the order in the said circumstances is not seems justifiable in view of the law settled in **CIT Vs. Gabriel India Ltd. reported in 203 ITR 108**. It is also came into notice that the issue raised in the order passed u/s 263 of the Act has already been examined by AO while passing the order u/s 143(3) r.w. Section 147 of the Act. In this regard, a show cause notice dated 20.03.2019 is on the file which speaks about the relevant issue to which the



AO had already been raised the query while passing the order under section 143(3) r.w. Section 147 of the Act. The said query was also replied by assessee by virtue of letter dated 25.03.2019. Apparently the issue has been examined and the possible view has already been taken. We also find the support of the jurisdictional High Court in case of **PCIT Vs. Pat Commodity Services Pvt. Ltd. dated 15.01.2019 I.T. Appeal No.1257 & 1383 of 2016** in which it is specifically held 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 client's 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 ' used by 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.”

9. In view of the said decision, it is specifically held that profit of the assessee companies were passed on to the Client Code Modification (CCM) Facility nowhere generate the revenue to the assessee, hence, the same is not liable to assess the income of the assessee.



10. Taking into account all the facts and circumstances, we are of the view that the order passed by PCIT u/s 263 of the Act in question is not liable to be sustainable in the eyes of law, therefore, we set aside the same.

11. In the result, the appeal of the assessee is hereby ordered to be allowed.

Order pronounced in the open court on this 13/09/2019

Sd/-

Sd/-

(RAJESH KUMAR)
ACCOUNTANT MEMBER

(AMARJIT SINGH)
JUDICIAL MEMBER

Mumbai; Dated 13/09/2019
Vijay/Sr. PS

Copy of the Order forwarded to :

1. The Appellant
2. The Respondent.
3. The CIT(A), Mumbai.
4. CIT
5. DR, ITAT, Mumbai
6. Guard file.

सत्यापित प्रति //True Copy//

BY ORDER,

(Asstt. Registrar)
ITAT, Mumbai