



ITA No.2770/Mum/2018
Nalanda Securities P.Ltd.
Assessment Year-2010-11

आयकर अपीलीय अधिकरण “बी” न्यायपीठ मुंबई में।
IN THE INCOME TAX APPELLATE TRIBUNAL
“B” BENCH, MUMBAI

श्री शक्तिजीत दे, न्यायिक सदस्य एवं
श्री मनोज कुमार अग्रवाल, लेखक सदस्य के समक्ष।
BEFORE SHRI SAKTIJIT DEY, JM AND
SHRI MANOJ KUMAR AGGARWAL, AM

आयकर अपील सं./ I.T.A. No.2770/Mum/2018
(निर्धारण वर्ष / Assessment Year:2010-11)

Nalanda Securities Private Limited 9, 2 nd floor, Roseland Building 108 Water Field Road, Bandra (W) Mumbai-400 050	बनाम/ Vs.	DCIT-13(1)(1) Income tax Office, 2 nd Floor Aaykar Bhavan, Churchgate Mumbai.
स्थायी लेखासं./जीआइआरसं./PAN/GIR No. AABCN 1045 Q		
(अपीलार्थी/ Appellant)	:	(प्रत्यर्थी / Respondent)

अपीलार्थीकी ओरसे/ Appellant by	:	Shri Rahul Hakani-Ld. AR
प्रत्यर्थीकी ओरसे/ Respondent by	:	Shri K. Madhusudan – Ld. CIT-DR

सुनवाईकी तारीख/ Date of Hearing	:	03/10/2019
घोषणाकी तारीख / Date of Pronouncement	:	14/10/2019

आदेश / O R D E R

Per Manoj Kumar Aggarwal (Accountant Member):-

1. Aforesaid appeal by assessee for Assessment Year [in short referred to as ‘AY’] 2010-11 contest the order of Ld. Commissioner of Income-Tax (Appeals)-21, Mumbai, [in short referred to as ‘CIT(A)’], *Appeal No. CIT(A)-*



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21/DCIT-13(1)(1)/IT-419/2016-17 dated 31/01/2018 on following grounds of appeal: -

1. The learned CIT(A) erred in upholding the issue of notice u/s 148 and reopening your appellant's assessment u/s 147/148 of the Income Tax Act,1961. Your appellant submits that looking at the facts and circumstances of your appellants case and in law the notice issued under section 148 is illegal and the reassessment proceedings and the reassessment order passed under section 143(3) r.w.s 147 ought to be quashed and original assessment order be restored.
2. The learned CIT(A) is erred in upholding following observation
 - (a). The name of the broker is M/s Pasupati Capital Services P. Ltd.
 - (b). In this case, assessee has executed the transaction during FY 2009-10. As per the information received, assessee company is one of the beneficiaries and create fictitious Profit/Loss amounts to Rs. 2,97,730/-
 Your appellant submits that the above observations are incorrect and without any basis. The learned CIT(A)'s failed to appreciate that the broker mentioned is M/s Pasupati Capital Services P. Ltd and not your appellant and has never had any business relationship or connection whatsoever with said M/s Pasupati Capital Services P. Ltd.
Your appellant therefore submits that the reopening of assessment u/s 147/148 is bad in law and ought to be quashed.
3. The learned Commissioner (Appeals) has erred in law and on facts in upholding the addition made by the Assessing Officer.
Even though, the learned Dy. Commissioner of Income Tax has not provided the details of the fictitious profit / loss created from misuse of client code modifications amounting Rs. 2,97,730/-, the learned Commissioner (Appeals) has erred in not directing the assessing officer to give the information about transactions resulting in fictitious profit / loss.
The learned Commissioner (Appeals) failed to appreciate the fact that no proper details of the alleged profit / loss amounting to Rs. 2,97,730/- and the pattern of client code modification has been given by the learned Dy. CIT to your appellant in spite of repeated requests by the appellant.
Your appellants therefore submits that looking to the facts & in the circumstances of your appellant's case and in law, no addition is called for and the learned Dy. CIT be directed to delete the same.
4. Alternatively, your appellant therefore submits that looking to the facts & in the circumstances of your appellant's case and in law, the learned Dy.CIT be directed to give the details of the fictitious profit/loss created from misuse of client code modifications amounting to Rs.2,97,730/- and reassess the income."



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As evident from grounds of appeal, the assessee is aggrieved by confirmation of addition of Rs.2.97 Lacs. The assessee has also challenged the validity of reassessment proceedings.

2.1 We have heard and considered rival submissions, perused relevant material on record and deliberated on judicial pronouncements as cited before us.

2.2 Facts on record would reveal that the assessee being resident corporate assessee stated to be engaged in providing financial services was assessed u/s 143(3) r.w.s. 147 on 16/12/2016 wherein it was saddled with impugned addition of Rs.2.97 Lacs on account of alleged fictitious loss. The original assessment was framed u/s 143(3) vide order dated 15/03/2013.

2.3 The reassessment proceedings were triggered pursuant to receipt of certain information from DDIT (Investigation), Ahmedabad that the assessee obtained fictitious losses by misuse of client code modification facility with a view to reduce tax liability. It was alleged that the assessee created artificial loss of Rs.2.97 Lacs in the books thereby deliberately reducing the taxable profits. Accordingly, notice u/s 148 was issued on 30/03/2016 which was followed by statutory notices u/s 142(1) & 143(2) calling for requisite details from the assessee. The reasons leading to reopening of assessment were duly communicated. It was alleged that the assessee was beneficiary of fictitious loss of Rs.2.97 Lacs created by misusing client code modification (CCM) facility.



2.4 The assessee, vide submissions dated 15/09/2016, explained that errors were due to wrong punching or typing by dealers who had to execute trades at a fast speed due to constant orders which they get from various clients. The attention was drawn to the fact that genuine modifications were allowed by SEBI / stock exchanges to rectify the unforeseen errors. In the above background, it was contended that code modification transactions were genuine.

2.5 However, relying upon the findings of investigation arm of the department having conducted spot verifications by way of surveys and inquiries, it was noticed that some of the brokers and their clients have indulged in the practice of misuse of client-code modification thereby artificially shifting profits and losses from original client code to modified client code with an intention to reduce the legitimate tax liability which would have been arisen had the original trades not been modified.

2.6 Proceeding further, it was also noted that the client-code modification facility was approved by SEBI and provided by the exchanges to brokers so as to enable rectification of genuine mistakes of punching of orders of a particular trade given by a particular client in its particular account maintained with the broker. In this facility, the broker could change the client-code of a particular trade and transfer the trade from one account to another account during the trading hours & within time limit permitted by the stock exchange after the close of trading hours. After the modification in client-code is made, it was submitted to the stock exchange for information and necessary modification / up-dation in the data. However, many brokers



misused this facility for creating artificial losses / profits and provided such fictitious profits / losses to various clients by charging some commission.

2.7 In the above background, Ld. AO formed an opinion that the assessee company was a beneficiary of such practice and has reduced its overall profit by taking fictitious losses to the extent of Rs.2.97 Lacs stated to be obtained from a broker *M/s Pasupati Capital Services Pvt. Ltd.* and therefore, the said loss of Rs.2.97 Lacs was to be disallowed.

3.1 Before Ld. first appellate authority the assessee challenged the quantum additions on legal grounds as well as on merits. However, the legal submissions could not find favor with Ld. CIT(A) who upheld the action of Ld. AO in triggering reassessment proceedings against the assessee.

3.2 On merits, it was noted by Ld. CIT(A) that stock exchanges provided for special facility for modification of client codes of executed trades with a view to rectify the human errors. However, since the assessee could not produce any substantial evidence to support its claim, the addition was to be upheld. Aggrieved, the assessee is under appeal before us.

4. After careful consideration of factual matrix as enumerated by us in preceding paragraphs, we find ourselves in agreement with the decision of Ld. first appellate authority that the reassessment proceedings were validly initiated against the assessee since Ld. AO was clinched with tangible material in the shape of information from investigation wing which suggested possible escapement of income in the hands of the assessee. The Ld. AO, after appreciating the data supplied by investigation wing, reopened the case as per due process of law. This information was more



than enough to form an opinion that certain income escaped assessment. Nothing more was required at this stage and Ld. AO had ample reasons to believe that income escaped assessment and he was well within his jurisdiction to open the case. Finding no merits in legal grounds, we dismiss the same.

5. So far as the merits of the quantum additions are concerned, we find that there is nothing more than a general allegation that the assessee obtained fictitious loss from the said broker. In fact, it is the submissions of the assessee that no details of the alleged fictitious transactions were ever provided to the assessee despite being specifically demanded by the assessee vide letter dated 07/11/2016, a copy of which has been placed on record. Nothing on record would suggest that the assessee was in collusion with the said broker. It is trite law that no addition could be made merely on the basis of suspicion, conjectures or surmises. In our considered opinion, the primary onus was on revenue to confront the details of the alleged fictitious transactions to the assessee and thereafter, establish that the assessee colluded with the said broker to obtain factitious losses. The facility of client code modification was provided by the stock exchanges / SEBI with a view to rectify the human error. No nexus of the data obtained from investigation wing could be established with the transactions, if any, carried out by the assessee, with the said broker. Therefore, the allegations of Ld. AO, in our opinion, are without any cogent or supporting evidences and therefore, the addition made, in this manner, could not be sustained in



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the eyes of law. Hence, by deleting the same, we allow grounds of appeal, on merits.

6. Resultantly, the appeal stands partly allowed.

Order pronounced in the open court on 14th October, 2019.

Sd/-

(Saktijit Dey)

न्यायिक सदस्य / **Judicial Member**

मुंबई Mumbai; दिनांक Dated : 14/10/2019

Sr.PS:-Jaisy Varghese

Sd/-

(Manoj Kumar Aggarwal)

लेखा सदस्य / **Accountant Member**

आदेश की प्रतिलिपि ँ ग्रेषित/Copy of the Order forwarded to :

1. अपीलार्थी/ The Appellant
2. प्रत्यर्थी/ The Respondent
3. आयकरआयुक्त(अपील) / The CIT(A)
4. आयकरआयुक्त/ CIT– concerned
5. विभागीयप्रतिनिधि, आयकरअपीलीयअधिकरण, मुंबई/ DR, ITAT, Mumbai
6. गार्डफाईल / Guard File

आदेशानुसार/ BY ORDER,

उप/सहायकपंजीकार (Dy./Asstt.Registrar)
आयकरअपीलीयअधिकरण, मुंबई / ITAT, Mumbai.