

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

**BEFORE SHRI H.S. SIDHU, JUDICIAL MEMBER**

**ITA No. 7982/Del/2018  
Assessment Year: 2010-11**

M/S PRECISION GAUGES & TOOLS P. LTD., 283, AGCR ENCLAVE, NEW DELHI - 110 092 (PAN: AAACP6879R)	Vs.	ACIT, CIRCLE 20(1), NEW DELHI
<b>APPELLANT</b>		<b>RESPONDENT</b>

<b>Assessee by</b>	<b>Shri K. Sampath, Advocate &amp; Sh. Rajakumar, Advocate</b>
<b>Revenue by</b>	<b>Shri Pradeep Singh Gautam, Sr. DR</b>

**ORDER**

This appeal filed by the assessee against the impugned order dated 16.10.2018 passed by the Ld. CIT(Appeals)-7, New Delhi in relation to assessment year 2010-11 on the following grounds:

1. On the facts and circumstances of the case and in law, the authorities below erred in holding a sum of Rs. 2,31,804/- to be bogus loss on account of CCM.
  2. The action being arbitrary, erroneous and unlawful must be quashed with directions for appropriate relief.
  3. The assessee craves leave to add, amend or otherwise alter the ground of appeal.
2. The brief facts of the case are that the assessee filed its e-return of income on 28.9.2010 for the AY 2010-11 declaring income of Rs. 31,92,710/-. The return of the assessee was processed u/s. 143(1) of the Income Tax Act, 1961 (in short "Act"). Subsequently, information

was received from the office of the Pr. Director of Income Tax (Inv.), Ahmedabad that some brokers were diverting profits/losses through adopting Client Code Modification facility. The case of the assessee was reopened u/s. 147 of the Act and the notice u/s. 148 of the Act was issued on 15.03.2017 to the assessee. The AO passed the order u/s. 147/143(3) of the Act on 14.12.2017, assessing the total income at Rs. 34,24,510/- after addition of Rs. 2,31,804/- on account of accommodation entry. Aggrieved by the aforesaid assessment order, the assessee has filed the appeal before the Ld. CIT(A), who vide his impugned order dated 16.10.2018 has dismissed the appeal of the assessee. Against the impugned order dated 16.10.2018, assessee is in appeal before the Tribunal.

3. Ld. Counsel for the assessee stated that AO has mechanically acted on the information supplied by the Investigation Wing (Ahemdabad) and without applying his own mind, added a sum of Rs. 2,31,804/- to the returned income which is based on apprehensions and surmises that the mechanism of CCM was adopted to evade the taxes only whereas all the transactions are duly reported in the books of account maintained by the assessee company and the addition was made by the AO without having any adverse material available against the assessee company. He further submitted that similarly Ld. CIT(A) has upheld the order of the AO. Hence, he requested that the addition in dispute may be deleted and appeal of the assessee may be allowed.

4. Ld. DR relied upon the orders of the authorities below.

5. I have heard both the parties and perused the records, especially the impugned order. The Assessee in this case submitted a return of

income for Rs. 31,92,710/- which was processed u/s 143(1) of the Act. Later on, proceedings u/s 147/148 of the Income-tax Act, 1961 ('the Act') were taken in this case which culminated in a reassessment in terms of the order dated 14.12.2017 causing an enhancement of income of Rs. 2,31,804/-. Against such action an appeal was filed before the Ld. CIT(A), New Delhi who confirmed the addition as made in the reassessment order. It is noted that the Assessing Officer, while carrying out reassessment, did not even pause to consider as to what activities were pursued by the Company. He was obsessed to give effect to a report admittedly received by him from the DI (Investigation), Ahmedabad in respect of Client Code Modification cases in some share transactions. The Assessing Officer listed the modus operandi of cases generally involved in Client Code Modification cases. Thereafter he states that the assessee in response to a query raised by him he had no knowledge of the Client Code Modification for he had no access to the change/modification of codes. The Assessing Officer also issued notices to the broker of the assessee M/s OJ Financial Services Ltd who stated

- "The broker of the assessee M/s O.J. Financial Services Ltd. was also issued notice u/s 133(6) for furnishing information related to the assessee as well as the broker itself with regard to client code modification. However, the broker, vide its reply dated 24. 11.2017 submitted that "Our data base has data only on transaction after modification. We do not have data on original codes. Only stock exchange has this data on original codes and modified codes. Rather, we requested NSE to provide us CCM (Client Code Modification) details but they refused to provide the same."

5.1 The Assessing Officer, thereafter, proceeded to examine the facts obtaining in the subject case and found that in the month of January there were 22 transactions all of which resulted in a loss of Rs.

2,31,804/- . The Assessing Officer thereafter did an hypothetical analysis of the report and asked the assessee to submit an answer. The assessee submitted under:-

"that the assessee company had not entered issued any instruction to the broker for client code modification nor has any action taken independently by the broker been intimated or communicated to the assessee company. As such, we state that the client mode modification facility, if any, must have been used by the broker to rectify the genuine mistakes/errors as per the SEBI guidelines."

5.2 The Assessing Officer thereafter summarised his findings and concluded the assessment by making an addition of Rs.2,31,804/-. While doing so, the reasons stated by the Assessing Officer are as under:-

"4.3 I have considered and examined the reply filed by the assessee, and the same is not found to be acceptable for following reasons:-

- i. Specific information was received' from the office of DGIT (Inv.) describing modus operandi of the brokers misusing client code modification facility which clearly established that the assessee has reduced its taxable income through misuse of CCM;
- ii. On the basis of analysis of data received, following patterns/features were noticed;
  - a. Trades have been modified to unrelated parties indicating that they are non-genuine;
  - b. Most of CCM was done during fag end of the year i.e. in last two months;
  - c. The client code modification was consistently used to always transfer losses in accounts of some clients and profits in the accounts of others.

d. Many brokers accepted that they charged commission at the rates varying from 0.5% to 2% on the amounts of accommodation entries provided by them to different beneficiaries during the course of search and survey action;

e. The orders issued by SEBI and NSE clearly indicate that the CCM facility was misused for non-genuine motives;

f. The pattern of modification of character of the client codes cannot be said to be punching errors as observed above."

5.3 When the issue was contested before the Ld. CIT(A) by the Assessee, the Ld. CIT(A) has referred to the decision of the Apex Court in SEBI Vs. Rakhi Trading Pvt. Ltd. and concluded as under and dismissed the appeal:-

"3.6 Though, delivered in a slightly different context, the judgement does indeed look at the spurious conduct of manipulating the systems so as to contrive prices thereby impact the losses or gains from such trading as required to fit into the scheme of things of a taxpayer. The investigation wing has detected the same by way of a survey. I have considered the facts as above and also the submission of the appellant and also perused the order. The jurisprudence referred to by the Ld. AR is distinguishable on the facts of the case. The material relied upon by the AO in taxing the income sought to be shifted out using the route of client code modification is valid and hence the addition of Rs.2,31,804/- is sustained. The ground of appeal is ruled against the appellant."

5.4 Before doing so the Ld. CIT(A) cited the following Para from the judgement and order of the Apex Court:-

"Conclusion - 46 - Considering the reversal transactions, quantity, price and time and sale, parties being persistent in number of such trade transactions with huge price variations, it will be too naive to held that the transactions are through screen-based trading and hence anonymous. Such conclusion would be over-looking prior meeting of minds involving synchronisation of buy and sell order and not negotiated deals as per the board's circular. The impugned transactions are manipulative/deceptive device to create a desired loss and/or profit. Such synchronized trading is violative of transparent norms of trading in securities. If the findings of SAT are to be sustained, it would have serious repercussions undermi.ng the integrity of the market and the impugned order of SAT is liable to be set aside. On the above additional reasons also, I agree with the conclusion allowing the appeal preferred by SEBI against the traders. I also agree with the conclusion dismissing the appeal preferred by the SEBI against the brokers."

5.5 It is noted that Assessing Officer and the Ld. CIT(A) failed to advert to the facts of the case in their proper perspective. While it is true that some brokers have in the past indulged in interpolation and manipulation through the CCM facility, yet it is equally true that all

CCM transactions cannot be said to be interpolated or manipulated. Interpolation and manipulation may possibly happen in fringe cases. Both the Assessing Officer and the Ld. CIT(A) were seemingly obsessed with the report of the DI (Inv), Ahmedabad and the case laws on the subject. Both of them failed to note even the basic facts of the subject case. The Assessing Officer failed to note that there was no information from the DI (Inv) with regard either to the assessee or his broker having indulged in any objectionable transaction. He also failed to note that in this case CCM had not been done in the last two months of the year as opined by him. The corrections as effected in the CCMs were of a most nominal amount of Rs. 2 Lakhs plus which could not lie in the realm of manipulation. The broker of the assessee on enquiry had confirmed that the modifications were all genuine. The Assessing officer had not found any evidence of any under-hand commission having been paid to the broker for manipulations. Whatever was paid to the broker was all through regular channels and was at the rates as prescribed by the stock exchange. The Assessing Officer failed to also note these punching errors occurred in seriatim only in the month of January of that year whereas the assessee's trading in share transactions was spread over the entire year. The fact that the error which occurred could be the product of a novice's mistake at the broker's end has been completely lost sight of by the Assessing Officer. The Ld. Commissioner (Appeals) while deciding the issue was overtaken by the decision of the Apex Court in SEBI vs. Rakhi Trading Pvt. Ltd. Ld. CIT(A) in his enthusiasm to apply the ratio of the case appears to have overlooked the indispensable conditions spelt in the decision itself. In the circumstances it is noted that since the nominal loss as incurred by the Assessee and claimed as such is due to genuine errors in CCM as

explained to the Assessing Officer in details and there is nothing irregular about it, hence, the same is directed to be allowed and addition made on this account is hereby cancelled by allowing the appeal of the assessee.

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

Order pronounced on 03/12/2019.

**Sd/-**  
**(H.S. SIDHU)**  
**JUDICIAL MEMBER**

Dated: 03/12/2019

SRB

Copy forwarded to:

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

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ASSISTANT REGISTRAR  
ITAT NEW DELHI