

**IN THE INCOME TAX APPELLATE TRIBUNAL "SMC", BENCH
MUMBAI**

BEFORE SHRI R.C.SHARMA, ACCOUNTANT MEMBER

**ITA No.609/Mum/2019
(Assessment Year: 2009-10)**

Shri Kishor Khimji Chheda, 10, Pushpa Kunj, 2 nd Floor, Dr. Ambedkar Road, Mulund (W), Mumbai-400080.	Vs.	I.T.O.-29(2)(1), Room No. 201, C-10, Pratyakshkar Bhavan, Bandra Kurla Complex, Bandra (E), Mumbai- 400051.
PAN/GIR No.AAAPC 4412 A		
(Appellant)	..	(Respondent)

Assessee by	Shri Kumar Kale (Adv)
Revenue by	Shri R.K. Gubgotra (JCIT-DR)
Date of Hearing	06/02/2020
Date of Pronouncement	14/02/2020

आदेश / O R D E R

PER: R.C. SHARMA, A.M.

This appeal by the assessee is directed against the order dated 19/11/2018 of Id. CIT(A)-40, Mumbai for the A.Y. 2009-10 in the matter of order passed u/s 143(3) r.w.s. 147 of the Income Tax Act, 1961 (in short, the Act). Following grounds have been taken by the assessee:

- "1. On the facts and in the circumstances of the case, and in law, the Id. CIT(A) erred in upholding legal validity of the reassessment proceedings even though the reopening of the assessment U/s 147 was bad in law and without jurisdiction, inasmuch as the mandate of Section 147 was not satisfied. Your appellant, therefore, prays that the assessment order dated 29/12/2016 passed U/s 143(3) r.w.s. 147 of the Act be quashed.*

2. *On the facts and in the circumstances of the case, and in law, the Id. CIT(A) erred in confirming the addition of Rs. 1,99,800/- made by the Id. AO as alleged loss booked by the appellant by client code modification. Your appellant, therefore, prays that the addition of Rs. 1,99,800/- be deleted."*

2. Rival contentions have been heard and record perused. Facts in brief are that the assessee had filed his return of income on 29.06.2009 declaring total income of Rs.3,26,790/-, which was processed u/s. 143(1) of the Act. Scrutiny assessment u/s. 143(3) of the Act was completed in assessee's case vide order dated 27.07.2011. Subsequently, a notice u/s. 148 of the Act was issued on 30.03.2016 by the AO reopening the assessment. The AO issued letter dated 03.11.2016 to the assessee, providing copy of reasons recorded for re-opening of the assessment. The assessee filed letter dated 15.11.2016 before the AO wherein he raised objections against the re-opening of assessment. The AO passed assessment order u/s. 143(3) r. w. s. 147 of the Act dated 29.12.2016, in which he rejected the objections raised by the assessee.

3. The assessee has objected the reopening which was disposed off by the A.O. During the course of reassessment proceedings, the A.O. made addition on account of Client Code Modification in terms of information received from DGIT (Inv.) Mumbai. As per the information, the assessee was found to be one of the beneficiary of Client Code Modification. As per the reasons recorded by the A.O. we

found that there was sufficient reason to belief that the income to the Client Code Modification has escaped assessment. Accordingly, I uphold the reopening of assessment.

4. With regard to merit of addition, I found that the assessee has entered into transaction on the stock exchange. All the transactions entered into have been duly recorded in the books of accounts and are supported with bills and ledgers from the Stock exchange and the broker. The AO did not provide an opportunity nor did it confirm with the broker regarding the transactions. It solely relied on the information from the investigation wing. The National Stock Exchange has not confirmed any wrong doing in the said case too. Client Code Modification is not in the hands of the assessee but it can be done only by the broker. Client Code Modification or repunching done by the broker without permission of the assessee for which the assessee shall not be responsible. Therefore, I do not find any justification in the order of the A.O. for making addition without confirmation from the National Stock Exchange. Therefore, in the substantial interest of justice, I set aside the orders of the lower authorities and restore the matter back to the A.O. for deciding afresh after providing due and effective opportunity of hearing to the assessee.

5. In the result, appeal of the assessee is allowed in part for statistical purposes.

Order pronounced in the open court on 14th February, 2020.

Sd/-
(R.C.SHARMA)
ACCOUNTANT MEMBER

Mumbai; Dated 14/02/2020.
*Ranjan

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