



ITA No.1944/Mum/2019
M/s Mudra Securities
Assessment Year: 2010-11

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

माननीय श्री अमरजीत सिंह, न्यायिक सदस्य एवं
माननीय श्री मनोज कुमार अग्रवाल, लेखा सदस्य के समक्ष।
BEFORE HON’BLE SHRI AMARJIT SINGH, JM AND
HON’BLE SHRI MANOJ KUMAR AGGARWAL, AM
(Hearing through Video Conferencing Mode)

आयकर अपील सं./ I.T.A. No.1944/Mum/2019
(निर्धारण वर्ष / Assessment Year:2010-11)

Mudra Securities 401/402, Business Classic Chincholi Bunder Road Malad (W), Mumbai-400 064.	बनाम/ Vs.	Income Tax Officer-Ward-30(2)(2) C-13, Room No.513, 5 th Floor Bandra Kurla Complex Mumbai-400 051.
स्थायीलेखासं./जीआइआरसं./PAN/GIR No. AAHFM-5035-E		
(□ पीलार्थी/ Appellant)	:	(प्रत्यर्थी / Respondent)

Assessee by	:	Shri Neelkanth Khandelwal- Ld. AR
Revenue by	:	Shri Manpreet Singh Duggal – Sr. DR

सुनवाई की तारीख/ Date of Hearing	:	10/11/2020
घोषणा की तारीख / Date of Pronouncement	:	08/12/2020

आदेश / O R D E R

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)-50, Mumbai, [in short referred to as ‘CIT(A)’], *Appeal No.CIT(A)-50/10295/2017-18* dated 07/02/2019 on certain



grounds. However during the course of hearing, Ld. AR for assessee pressed only for Ground Nos. 2 & 3 which read as under: -

2. On facts and in law, the Ld. CIT(A) had erred in confirming a sum of Rs.85,29,160/- being alleged undisclosed profit on future and option transaction in shares without appreciating the full facts of the case. Under the facts and circumstances of the matter, he ought not to have confirmed the said sum of Rs.85,29,160/-. (Tax effect: Rs.26,35,510)

3. On facts and in law, the Ld. CIT(A) had erred in upholding a sum of Rs.73,703/- being commission earned from contra parties on client code modification without appreciating the full facts of the case. Under the facts and circumstances of the matter, he ought not to have upheld the said sum of Rs.73,703/-. (Tax effect: Rs.22,774/-)

It is evident that the assessee is aggrieved by part confirmation of additions on account of Client-code modification (CCM) to the extent of Rs.85.29 Lacs. Ground No. 3 is consequential ground which contests the action of Ld. AO in estimating commission on certain transactions.

2. We have carefully heard rival submissions and perused relevant material on record including documents placed in the paper book. The Ld. AR Shri Neel Khandelwal, enumerating the factual matrix, has relied upon various judicial pronouncements which have duly been deliberated upon by us. The Ld. Sr. DR, Shri Manpreet Singh Duggal, on the other hand, sought dismissal of the appeal on the basis of surrounding circumstances and preponderance of probabilities. Our adjudication to the subject matter of appeal would be as given in succeeding paragraphs. In this appeal, we are concerned only with addition of Rs.85.29 Lacs against category-3 transactions, the details of which have already been tabulated on page nos. 67 to 69 of the impugned order.

3.1 Facts in brief are that the assessee being resident firm is stated to be engaged in trading of shares and derivatives. It works as a sub-broker



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for another entity namely M/s Inventure Growth & Securities Ltd. (IGSL). The assessee's case for year under consideration was subjected to reassessment proceedings pursuant to receipt of certain information from Director of Income Tax (Intll. & criminal inv.), Mumbai regarding tax evasion through client-code modification (CCM) with a view to reduce overall tax liabilities by shifting profits. Accordingly, the case was reopened by issuance of notice u/s 148 on 19/03/2015 as per due process of law and an assessment was framed u/s 143(3) r.w.s. 147 on 23/02/2016 wherein the assessee was saddled with additions of Rs.347.17 Lacs on account of alleged undisclosed profit on future and option (F&O) transactions in shares. Against these transactions, the commission was estimated at Rs.3 Lacs which was also added to the income of the assessee. However, upon further appeal, Ld. CIT(A) provided substantial relief to the assessee but sustained addition to the extent of Rs.85.29 Lacs with respect to category-3 transactions (as per details given on page nos. 67 to 69 of impugned order). It appears that the revenue is not in further appeal against the same. However, the assessee has assailed the additions as sustained by Ld. CIT(A).

3.2 During assessment proceedings, based on the information so received by the department, the details of client code modification as received from National Stock Exchange (NSE) was confronted to the assessee. It was noted that a total of 2720 modified trades were distributed amongst 34 entities, the details of which have been extracted on page nos. 7 & 8 of the assessment order. It was alleged that client codes were modified in a structured manner so as to provide undue benefit to the assessee firm as well as to these entities.



3.3 The principal broker M/s IGSL, in response to notice u/s 133(6), submitted that orders were received by the sub-brokers telephonically and the receipt of order was created in the order log at the respective trading terminal of the sub-broker. The trades were cancelled / modified based on the request made by the clients for correcting the error in punching the client code in the trading system.

3.4 However, the assessee, vide submissions dated 09/09/2015, submitted that the transactions where codes were modified belonged to the assessee and the modification was genuine. The modifications were executed by the broker to rectify possible mistakes which should be contributed to human error. The attention was drawn to the facts that modification was only to the extent of 1.15% which was attributable to human error. The code modifications were done by the broker due to wrong punching of *sauda* by their office and the assessee had no role in such modifications but it was done by virtue of modification procedure as allowed by the stock exchange NSE.

3.5 After perusing the replies received from M/s IGSL and the assessee, Ld. AO reached a conclusion that the assessee was actively involved in the practice of client code modification. All the trades were executed by the assessee on his own terminal and client codes were also modified by the assessee for their benefits. The assessee clarified that it punched orders for F & O segment on their own terminals and submitted that code modification was done in cases where dealer had made mistake in punching the order in wrong client code due to large number of clients. Most of these errors were rectified immediately upon realization of the mistake after close of trading hours. It was also



submitted that stock exchange had not charged any penalty / fine for such CCM transactions for the years under consideration. These facts were subsequently confirmed by M/s IGSL also.

3.6 However, not convinced, Ld. AO formed an opinion that the client codes were modified in a structured manner after ascertaining the position of profit / loss required to be accommodated. Few of the clients whose codes were modified had common addresses which would lead to a conclusion that the benefit of CCM was provided to certain persons of same group / family.

3.7 The data compiled by Ld. AO revealed that the net result of all client-code modifications was loss of Rs.347.17 Lacs which was significantly disproportionate to the overall profit of Rs.637.95 Lacs earned by the assessee in F&O segments. Although the modified trades were 1.15% in terms of total trade but they resulted into more than 50% of loss of overall profits of the assessee. Therefore, modifications could not be accepted to be genuine. Finally, the profit of Rs.347.17 Lacs was alleged to be shifted out of the books by the assessee and the same was added to the income of the assessee. The Ld. AO made another addition of Rs.3 Lacs being estimated commission earned by the assessee in providing undue benefits to the contra parties by resorting to client code modification.

4.1 Before Ld. CIT(A), the assessee, inter-alia, submitted that it was allotted a sub-broker code namely M1 to carry out the transactions in the stock and derivatives in its own account. Besides being trader, the assessee had some entities registered as clients under the assessee's code M1 for executing trades on their behalf. Each of those clients was



allotted one code which began with M1 followed by another serial numbers. The client code beginning with M1 followed by another serial number was only indicative of facts that these clients belonged to the assessee. Drawing attention to the CCM details as collated by Ld. AO, it was submitted that there was repetition of names / entries. Further few of the entities were not the clients of the assessee but the clients of the main broker only. These entities were categorized as Category-1 transactions. The CCM transactions with entities which were clients but covered under family and relatives were categorized as Category-2 transactions. The CCM transactions with remaining entities were categorized as Category-3 transactions which form the subject matter of present appeal before us. These transactions aggregated to Rs.85.29 Lacs.

4.2 The assessee contended that assessee's own volume of trades was as high as 90% of total trades undertaken by the assessee. Since the assessee's trade was high, the staff of the assessee, in order to save time, had prefixed the client code of the assessee in the system as default which led to punching errors of client code at the time of transactions. Therefore, the mistakes were not typographical errors but because of punching of default code at the time of carrying out the transactions on behalf of the clients. These codes were later on modified to correct the same. The attention was drawn to the fact that CCM transactions were 2720 in number which merely constitute 1.15% of total number of total trades undertaken by the assessee. The assessee also dealt with various objections raised by the Ld. AO which have already been tabulated on page numbers 29 to 37 of the impugned order. It was



reiterated that modification was done to correct the genuine punching errors which took place at the time of carrying out the transactions. The mechanism adopted by the assessee was stated to be a common practice in the trade. The assessee also pleaded that adverse material as received from DIT (Inv.) being relied upon by Ld. AO was never confronted to the assessee for rebuttal and cross-examination of persons conveying such information. Further, the additions made on mere presumptions and suspicions without any evidences would be invalid in the eyes of law. The Ld. AO did not bring on record any material to show that the client-code modification was not genuine one. The assessee also placed on record the confirmation of all the Category-3 clients who owned the respective transactions carried out in their account. They also submitted that the income so earned by them was duly reflected in their respective Income Tax Returns for the year under consideration. The copies of all such confirmations have also been placed before us in the paper-book and we have duly considered the same.

4.3 Since the assessee had furnished additional evidences during the course of appellate proceedings, a remand report was sought from Ld. AO vide letter dated 15/11/2018 which was further extended at the request of Ld. AO. However, till the date of framing of the impugned order i.e. 07/02/2019, no such report was forthcoming and therefore, it was presumed that Ld. AO had nothing to say on the issue. In the said background, the matter was to be proceeded with on merits.

4.4 The Ld. CIT(A) noted that client-code modification was permitted as per applicable rules of intra-day transactions. The modification could be



up-to 1% of total orders without attracting any penalty whereas the higher modification would attract penalties in the range of Rs.500/- to Rs.10,000/-. The modification up-to 5% was to attract meager penalty of Rs.500/-. Since the assessee had modification only to the extent of 1.15% of total trades, it was held that the same was not of the magnitude so as to take an adverse view blindly. It was noted that the Category-3 transactions were with respect to assessee's clients on whose behalf the assessee had executed the transactions in F&O segment. After considering assessee's submissions and documentary evidences, Ld. CIT(A) deleted additions for Category-1 and Category-2 transactions but chose to confirm additions for Category-3 transactions by observing that the mistake of client code could not be repeated so often and in a brazen manner several times. Therefore, the addition for this category aggregating to Rs.85.29 Lacs was to be confirmed. As a logical consequence, the commission income of Rs.3 Lacs as estimated by Ld. AO was restricted to the extent of Rs.73,703/-.

Aggrieved, the assessee is in further appeal before us.

5. We have carefully heard the rival submissions. From the enumeration of facts, it is quite evident that the practice of client-code modification is permissible as per the rules of stock exchanges since the possibility of punching errors could not be ruled out at the time of carrying out the transactions and human error was inevitable. The modifications to the extent of 1% could be done without any penalty and even the modification of 5% would attract meager penalty of Rs.500/-. The same would support the fact that due to large volume of transactions, the punching errors could not be ruled out while carrying



out the trades and therefore, a facility was given to the stock-brokers to modify the same within certain norms. We find that no such norms have been shown to have been violated by the assessee while carrying out the modification. No penalty is shown to have been imposed on the assessee since the modification done by the assessee was only to the extent of 1.15% of total trades which could not be termed as abnormal on the given facts and circumstances.

6. We also find that the whole basis of making additions in the hands of the assessee is information of DIT (Inv.) wherein it was alleged that the profits were shifted by client code modification. To substantiate these allegations was the onus of revenue. The assessee had filed confirmatory letters of all category-3 clients wherein all these clients owned up the transactions and also confirmed that the profits so earned by them on these transactions were duly reflected in their respective returns of income. The copies of confirmations have been placed on page nos. 143 to 172 of the paper-book. These confirmations could not be controverted by the revenue. By filing these documentary evidences, the assessee had duly discharged its onus to prove the genuineness of the modifications. The Ld. AO, despite being provided with another opportunity by way of remand proceedings, could not rebut the evidences filed by the assessee and failed to bring on record any adverse material against the assessee to dislodge the assessee's claims. It is trite law that no additions are sustainable in law on mere doubts, conjectures or surmises. The onus was on revenue to substantiate the allegations with corroborative evidences. However, this onus has remained un-discharged. Therefore, there could be no



justification to sustain the additions of Rs.85.29 Lacs by treating the same as the income of the assessee. Our view is well supported by the decision of Hon'ble Bombay High Court in **Pr.CIT V/s PAT Commodities Services Private Ltd. (ITA Nos.1257 & 1383 of 2016 dated 15/01/2019)** wherein the revenue's appeal was dismissed by Hon'ble court by observing 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 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.

Respectfully following the same and not convinced with legality of additions so made by the revenue, we delete the impugned additions same and allow the grounds thus raised before us. Consequently, the commission income against these transactions would also not survive. Both the grounds as urged before us stands allowed.



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7. In the result, the appeal stands partly allowed in terms of our above order.

Order pronounced on 08th December, 2020.

Sd/-

(Amarjit Singh)

न्यायिक सदस्य / **Judicial Member**

Sd/-

(Manoj Kumar Aggarwal)

लेखा सदस्य / **Accountant Member**

मुंबई Mumbai; दिनांक Dated : 08/12/2020
Sr.PS, Jaisy Varghese

आदेशकीप्रतिलिपिअग्रेषित/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/सहायक पंजीकार (Dy./Asstt.Registrar)
आयकरअपीलीयअधिकरण, मुंबई / ITAT, Mumbai.