

**IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH: 'SMC-1' NEW DELHI**

**BEFORE SHRI R. K. PANDA ACCOUNTANT MEMBER
AND
MS SUCHITRA KAMBLE, JUDICIAL MEMBER**

**I.T.A. No. 7533/DEL/2018 (A.Y 2010-11)
(THROUGH VIDEO CONFERENCING)**

Vineet Malhotra C/o M/s RRA Tax India, D-28, South Extension, Part-1 New Delhi AAZPM1434B (APPELLANT)	Vs	ACIT Circle-61 (1) New Delhi (RESPONDENT)
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Appellant by	Sh. Somil Agarwal, Adv
Respondent by	Ms. Shivani Bansal, Sr. DR

Date of Hearing	09.03.2021
Date of Pronouncement	20.04.2021

ORDER

PER SUCHITRA KAMBLE, JM

This appeal is filed by the assessee against order dated 25/09/2018 passed by CIT(A)-20, New Delhi for assessment year 2010-11.

2. The grounds of appeal are as under:-

“1. (a) That having regard to the facts and circumstances of the case, Ld. CIT(A) has erred in law and on facts in not quashing the impugned reassessment order passed by Ld. AO u/s 147/143(3), more so when the same is passed without assuming jurisdiction as per law and without complying with the mandatory conditions of section 147 to 151 of the Act.

1(b) That in any case and in any view of the matter, action of Ld.CIT(A) is not quashing the impugned reassessment order framed by Ld. A.O u/s 147/143(3), is beyond jurisdiction, , bad in law and against the facts and se

and the same is no sustainable on various legal and factual grounds.

2. That having regard to the facts and circumstances of the case, Ld. CIT(A) has erred in law and on facts in confirming the action of Ld. AO in making addition of Rs. 1,75,600/- on account of shifting of profit due to alleged share trading loss/transactions by using client code modification, more so when assessee has claimed loss of Rs.44,638/- in the return of income and impugned addition has been made and that too by recording incorrect facts and findings and without providing the entire adverse material used against the assessee and without observing the principles of natural justice.

3. That in any case and in any view of the matter, action of Ld. CIT(A) in confirming the action of Ld. AO in making addition of Rs. 1,75,600/-, is bad in law and against the facts and circumstances of the case.

4. That having regard to the facts and circumstances of the case, Ld. CIT(A) has erred in law and on facts in not reversing the action of Ld. AO in charging interest u/s 234D of income Tax Act, 1961.

3. The assessee is an advocate by profession and derived income from business or profession, income from house property, income from capital gain and income from other sources. Return of income was filed on 1/10/2010 declaring total income of Rs.24,75,040/-. The Assessing Officer made addition of Rs. 1,75,600/- in respect of difference between the profit which has been shifted out in respect of loss due to Client Code Modification.

4. Being aggrieved by the assessment order, the assessee filed appeal before the CIT(A). The CIT(A) dismissed the appeal of the assessee.

5. The Ld. AR submitted that at the initial stages, the assessee has claimed loss of Rs. 44,638/- in the return of income for which the Assessing Officer

has given an incorrect finding that the assessee never claimed loss. The assessee further submitted that the assessee was not aware at any time whether any Client Code Modification has been done by the broker. The Ld. AR submitted that any activity related to Client Code Modification done by the broker and not by the assessee on its own and the assessee always relied on the statement of broker for the purposes of profit or loss earned/incurred by the assessee on the transaction of shares/securities entered by him and the assessee was not aware of any Client Code Modification activity done by the broker. The Ld. AR also submitted that as relates to Ground No. 1, the reassessment u/s 147/143 (3) is beyond jurisdiction bad in law and against the facts and circumstances of the case and the same is not sustainable on various legal and factual grounds.

6. The Ld. DR relied upon the assessment order and the order of the CIT(A).

7. We have heard both the parties and perused the material available on record. It is pertinent to note that the assessee has claimed loss of Rs.44,638/- and at no point of time was aware about the Client Code Modification. All the details which were given by the assessee were before the Assessing Officer and at no point of time, the assessee was responsible for the Client Code Modification. The evidences and the circumstances clearly set out that assessee has never indulged into Client Code Modification and the same is confirmed from the broker which is enclosed at Page 33 of the paper book. The material available is that there is a Client Code Modification done by the assessee's broker but there is no evidence emerging from the records which concludes that the assessee was involved in Client Code Modification and the same was done to escape assessment of a part of its income. Neither the Assessing Officer nor the report of Investigation wing has provided any reason or documents or statement which could establish that the client code modification has resulted in the shifting of the profit and the assessee has received back equivalent amount of cash or any monetary benefits. Further,

M/s Century Finvest Pvt. Ltd. in its response to information sought by the Assessing Officer u/s 133(6) of the Act has clarified that no client code modification occurred during the Financial Year 2009-10 in the account of the assessee. These facts were not disputed by the Assessing Officer. The Ld. AR relied upon the decision of the Hon'ble Bombay High Court in case of M/s Coronation Agro Industries Ltd. Vs. DCIT WP No. 2627/2016 order dated 23/11/2016 which is apt in the present case. Thus, the CIT(A) was not right in confirming the addition. The appeal of the assessee is allowed.

8. In result, the appeal of the assessee is allowed.

Order pronounced in the Open Court on this 20th Day of April, 2021

**Sd/-
(R. K. PANDA)
ACCOUNTANT MEMBER**

**Sd/-
(SUCHITRA KAMBLE)
JUDICIAL MEMBER**

Dated : 20/04/2021
*R. Naheed **

Copy forwarded to:

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

ASSISTANT REGISTRAR
ITAT NEW DELHI

Date of dictation	10.03.2021
Date on which the typed draft is placed before the dictating Member	10.03.2021
Date on which the typed draft is placed before the Other Member	20.04.2021
Date on which the approved draft comes to the Sr. PS/PS	20.04.2021
Date on which the fair order is placed before the Dictating Member for pronouncement	20.04.2021
Date on which the fair order comes back to the Sr. PS/PS	20.04.2021
Date on which the final order is uploaded on the website of ITAT	20.04.2021
Date on which the file goes to the Bench Clerk	20.04.2021
Date on which the file goes to the Head Clerk	
The date on which the file goes to the Assistant Registrar for signature on the order	
Date of dispatch of the Order	