

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

BEFORE SHRI SAKTIJIT DEY (JM)

**ITA No. 1185/MUM/2019
Assessment Year: 2009-10**

ITO4(3)(4), Room No. 637, 6 th Floor, Aayakar Bhavan, Mumbai - 400020	Vs.	Manoj J Doshi, B-22, Nirmala Apartments, Shankar Galli, Kandivali (W), Mumbai - 400067 PAN: AACPD9751D
(Appellant)		(Respondent)

Revenue by : Shri Saurabh Kumar Rai (DR)

Assessee by : None

Date of Hearing : 27/05/2021

Date of Pronouncement: 06/07/2021

ORDER

This is an appeal by the revenue against order dated 19.12.2018 of learned Commissioner of Income Tax (Appeals) - 9, Mumbai for the assessment year 2009-10.

2. When the appeal was called for hearing, none appeared on behalf of the assessee. However, considering the nature of dispute, I proceed to dispose of the appeal ex-parte qua the assessee after hearing the learned Departmental Representative and based on materials on record.

3. In ground No. 1, the revenue has challenged the deletion of Rs. 6,54,067/-.

4. Briefly the facts are, the assessee is an individual engaged in the business of trading in shares and securities. On receiving information from Investigation Wing of the Department at Ahmedabad, the Assessing Officer (AO) found that some brokers are creating fictitious profits and losses by misusing the Client Code Modification facilities in Futures and Options (F & O) segment of National Stock Exchange (NSE). As per the modus operandi, the brokers are

transferring the fictitious losses to different clients to reduce the tax liability. He found that the assessee is a beneficiary of such fictitious loss amounting to Rs. 6,54,067/- provided by a broker namely M/s Anant Investments. Based on such information, the AO reopened the assessment under section 147 of the Act. In course of assessment proceedings, the assessee not only objected to the reopening of assessment but also vehemently contested the departments allegation of fictitious loss provided by the broker. However, the AO was not convinced. Ultimately, he disallowed the loss of Rs. 6,54,067/- and added back to the income of the assessee. Further, he alleged that for availing the benefit of such fictitious loss, the assessee must have paid commission to the concerned broker and accordingly disallowed an amount of Rs. 19,622/-, being 3% of the transaction value, as commission paid to the brokers. The assessee contested the aforesaid disallowance before learned Commissioner (Appeals). After considering the submissions of the assessee in the context of facts and material on record, learned Commissioner (Appeals) deleted the both the disallowances.

5. I have considered the submissions of learned Departmental Representative and perused the material on record. As could be seen from the material on record, the AO has simply proceeded based on information received from the Investigation Wing of the department at Ahmedabad and made the disallowance. The AO has not made any independent enquiry to ascertain the genuineness of the transaction with the concerned broker. Thus, no adverse material has been brought on record by the AO as a result of any fruitful enquiry conducted to establish that the assessee, indeed, has availed fictitious loss on such transaction by way of client code modification, as alleged in the report of the Investigation Wing. Therefore, the addition made purely and conjectures and surmises cannot be accepted. In view of the aforesaid, I do not find any infirmity in the decision of learned Commissioner (Appeals). Since, I have already held that there is no factual basis in holding that the assessee has availed the benefit of fictitious loss by way of client code modification, the addition made because of payment of commission to the broker is also

unsustainable. Accordingly, I uphold the decision of learned Commissioner (Appeals) on the issue. Grounds are dismissed.

6. In the result, appeal is dismissed.

Order pronounced in the open court on 6th July, 2021.

Sd/-
(SAKTIJIT DEY)
JUDICIAL MEMBER

मुंबई Mumbai; दिनांक Dated: 06/07/2021

Alindra, PS

आदेश प्रतिलिपि अग्रेषित/Copy of the Order forwarded to :

1. अपीलार्थी / The Appellant
2. प्रत्यर्थी / The Respondent.
3. आयकर आयुक्त (अपील) / The CIT(A)-
4. आयकर आयुक्त / CIT
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, मुंबई /
DR, ITAT, Mumbai
6. गार्ड फाईल / Guard file.
सत्यापित प्रति //True Copy//

आदेशानुसार/ BY ORDER,

उप/सहायक पंजीकार (Dy./Asstt. Registrar)
आयकर अपीलीय अधिकरण, मुंबई / ITAT, Mumbai