

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

**BEFORE SHRI SAKTIJIT DEY, JUDICIAL MEMBER
AND
PRADIP KUMAR KEDIA, ACCOUNTANT MEMBER**

ITA No.2123/Del/2019
Assessment Year: 2010-11

R.K. Global (Finance) Pvt. Ltd., 5, 2 nd Floor, Sagar Apartments, 6-Tilak Marg, New Delhi Pin: 110001	Vs.	ITO, Ward 20(3), New Delhi.
PAN :AAACR4440A		
(Appellant)		(Respondent)

Appellant by	N o n e
Respondent by	Shri Shayam Manohar Singh, Sr. DR

Date of hearing	04.05.2022
Date of pronouncement	19.05.2022

ORDER

PER SAKTIJIT DEY, JUDICIAL MEMBER:

This is an appeal by the assessee against order dated 08.01.2019 of learned Commissioner of Income-Tax(Appeals)-7, New Delhi for the assessment year 2010-11.

2. Before we proceed to deal with the issue arising in the appeal, it is necessary to observe, on perusal of material on record including hearing notices issued to assessee, it is seen that appeal was fixed for hearing on 18.01.2021, 15.03.2021 and 11.05.2021. However, on none of these dates the assessee appeared. On 26.04.2022, appeal was adjourned to 04.05.2022 as 03.05.2022 was a holiday. When the appeal was called for hearing on 04.05.2022, no one appeared on behalf of the assessee. It is relevant to observe, the order dated 26.04.2022, fixing the appeal for hearing on 04.05.2022, was uploaded on the official website, hence, it has to be presumed that the assessee must have knowledge of the date of hearing fixed for 04.05.2022. Even then, assessee did not appear on 04.05.2022. This shows complete lack of interest on the part of the assessee to pursue the present appeal

3. Considering the fact that assessee has been given sufficient opportunity to represent its case, we proceed to dispose of the appeal ex parte qua the assessee after hearing the learned Departmental Representative.

4. The grounds raised by the assessee are as under:

1. Action of learned Commissioner of Income-Tax(A) in not allowing relief on the ground that the Assessing Officer not satisfied the procedure for issuing notice under section 148 r.w.s. 151 of Income Tax Act is illegal, bad in law and void ab-initio.
2. Action of learned Commissioner of Income-Tax(A) in not considering the case of the Assessee and not giving relief to the assessee that reopening under section 147 r.w.s. 148 of the Income-

Tax Act is on the basis of incomplete information/documents/whereabouts of the transactions or even to say the nature of transactions is unjust, illegal, arbitrary & against the facts & circumstances of the case.

3. Action of learned Commissioner of Income-Tax(A) in not considering the case of the assessee and not giving relief to the assessee on the ground of appeal that Action of the Assessing Officer in mechanical reopening of the Assessment without having belief that the income had escaped Assessment as the information received from the Investigation Wing of the department was mechanically reproduced in reasons for reopening the assessment, is unjust, illegal, arbitrary & against the facts & circumstances of the case.
4. Action of learned Commissioner of Income-Tax(A) in confirming the shifting of Profit/Loss on account of client code modification as profit/loss of assessee and making addition as made by Income Tax Officer under section 68 of Rs.1,58,97,590 as artificially depressed profit of assessee is unjust, illegal, arbitrary & against the facts & circumstances of the case.
5. The appellant craves to add, delete, amend, alter, submit and withdraw any ground before the appeal is heard.

5. Briefly, the facts are, assessee is a resident company. For the assessment year under dispute, assessee filed its return of income on 13.10.2011 declaring nil income. Subsequent to the processing of return of income under Section 143(1) of the Act, the Assessing Officer received information from the ACIT (Inv.), Unit 1(3), Ahmedabad, indicating that the assessee is one of the beneficiaries of Client Code Modification in respect of transaction in sale/purchase of shares, both, in cash segment as well as future and option (F & O) segments. As per the investigation report, during the period from 01.04.2009

to 313.03.2010, assessee, allegedly, had shifted out profit to the tune of Rs.1,58,97,596 resulting in reduction in income. Based on such information, assessing officer reopened the assessment under Section 147 of the Act. In response to statutory notices issued by the Assessing Officer, assessee appeared and filed objection challenging the reopening of assessment under Section 147 of the Act. After disposing of the objections of the assessee separately, assessing officer continued with the assessment proceedings and called upon the assessee to furnish the details relating to share transaction. As alleged by the Assessing Officer, neither the assessee appeared on the date fixed for hearing nor furnished the necessary details. Thus, the assessing officer proceeded to complete the assessment based on material available on record. While doing so, he concluded that the assessee reduced its income through contrived transaction by means of Client Code Modification and artificially reduced its profit. Accordingly, he added back an amount of Rs.1,58,97,597 to the income of the assessee by invoking the provisions of Section 68 of the Act. Against the Assessment Order so passed, assessee preferred an appeal before learned Commissioner (Appeals) by challenging the validity of the reopening of assessment under Section 147 of the Act as well as merits of the addition made under Section 68 of the Act. However, learned Commissioner (Appeals) did not find merit in the appeal filed by the assessee, hence, dismissed.

6. We have considered the submissions of learned Departmental Representative and perused the material available on record.

7. In ground Nos. 1, 2 and 3, assessee has challenged the validity of reopening of assessment under Section 147 of the Act. As could be seen from the facts on record, the return of income filed by the assessee was not subjected to scrutiny but was only processed under Section 143(1) of the Act. Therefore, Assessing Officer had no opportunity to verify the return of the assessee at the initial stage. It is a fact on record that subsequently the Assessing Officer received information from the Investigation Wing of the Department indicating that the assessee is a beneficiary of Client Code Modification. Thus, the Assessing Officer had tangible material to proceed under Section 147 of the Act. It is further relevant to observe, in response to notice issued under Section 148 of the Act, assessee had raised objection against reopening of assessment. However, from the discussions made by the Assessing Officer in the Assessment Order, it can be seen that the objections of the assessee were disposed of by the Assessing Officer in a separate order. Therefore, the grounds raised by the assessee challenging the reopening of assessment under Section 147 of the Act do not merit consideration. Accordingly, grounds are dismissed.

8. As regards merits of the issue, after analyzing the facts on record including the report/information received from the Investigation Wing of the Department, Assessing Officer has come to a definite conclusion that the

assessee is a beneficiary of Cline Code Modification and by adopting such means has reduced its income. The aforesaid view of the Assessing Officer has also been endorsed by learned Commissioner (Appeals). Factual finding of the departmental authorities remain uncontroverted before us, as, the assessee has not brought on record any material to prove the contrary.

9. In view of the aforesaid, we do not find any valid reason to interfere with the decision of learned Commissioner (Appeals).

10. In the result, appeal is dismissed.

Order pronounced in the open court on 19th May, 2022.

**Sd/-
(PRADIP KUMAR KEDIA)
ACCOUNTANT MEMBER**

**Sd/-
(SAKTIJIT DEY)
JUDICIAL MEMBER**

Dated: 17th May, 2022.

Mohan Lal

Copy forwarded to:

1. Appellant
2. Respondent
3. CIT
4. CIT(A)
5. DR

Asst. Registrar, ITAT, New Delhi

Sl. No.	Particulars	Date
1.	Date of dictation (Order drafted through Dragon software):	10.05.2022
2.	Date on which the draft of order is placed before the Dictating Member:	12.05.2022
3.	Date on which the draft of order is placed before the other Member:	.05.2022
4.	Date on which the approved draft of order comes to the Sr. PS/PS:	16.05.2022
5.	Date of which the fair order is placed before the Dictating Member for pronouncement:	17.05.2022
6.	Date on which the final order received after having been singed/pronounced by the Members:	19.05.2022
7.	Date on which the final order is uploaded on the website of ITAT:	.05.2022
8.	Date on which the file goes to the Bench Clerk	.05.2022
9.	Date on which files goes to the Head Clerk:	
10.	Date on which file goes to the Assistant Registrar for signature on the order:	
11.	Date of dispatch of order:	