

**IN THE INCOME TAX APPELLATE TRIBUNAL,
MUMBAI BENCH “SMC”, MUMBAI**

**BEFORE SHRI KULDIP SINGH, JUDICIAL MEMBER AND
SHRI GAGAN GOYAL, ACCOUNTANT MEMBER**

**ITA No.2423/M/2021
Assessment Year: 2009-10**

Income Tax Officer- 27(1)(1), Room No.406, 4 th Floor, Tower No.6, Vashi Railway Station Complex, Vashi, Navi Mumbai Maharashtra – 400 703	Vs.	Shri Aditya Bansilal Damani, 1301, Luv Kush Towers, Sindhi Society, Nr. Vivekanand School, Chembur, Mumbai – 400 071 PAN: AFFPD0348N
(Appellant)		(Respondent)

Present for:

Assessee by : None
Revenue by : Shri Ashish Kumar, D.R.

Date of Hearing : 04 . 07 . 2022
Date of Pronouncement : 12 . 07 . 2022

O R D E R

Per Kuldip Singh, Judicial Member:

The appellant, Income Tax Officer-27(1)(1), Mumbai (hereinafter referred to as ‘the Revenue’) by filing present appeal, sought to set aside the impugned order dated 20.02.2020 passed by the Commissioner of Income Tax (Appeals), Mumbai (hereinafter referred to as CIT(A)] qua the assessment year 2009-10 on the grounds inter alia that:

“On the facts and circumstances of the case and in law, the Ld. CIT(A) erred in deleting the entire addition of Rs.8,80,324/- holding that the disallowance made by the Assessing officer on account of Client Code Modification is unwarranted and that the assessee had no intention to evade tax by availing the benefit of Client Code

Modification failing to appreciate that the entire transactions of purchase and sales for booking the losses is by way of sham transaction through the broker M/s B P Equities Pvt. Ltd.

(ii) On the facts and circumstances of the case and in law, the Ld. CIT(A) erred in deleting the entire addition of Rs.8,80,324/- holding that the assessee had not intention to evade taxes by availing the benefit of Client Code Modification without appreciation that the broker M/s B P Equities Pvt. Ltd. through whom assessee had booked losses has been reprimanded by the SEBI multiple times for indulging in fraudulent and unfair trade practices.

(iii) The appellant craves leave to amend or alter any grounds or add a new ground which may be necessary.”

2. Briefly stated facts necessary for adjudication of the controversy at hand are : assessment in this case was reopened by issuing notice under section 148 of the Income Tax Act, 1961 (for short 'the Act'). Thereafter, notices under sections 143(2) and 142(1) of the Act were issued and served upon the assessee. During assessment proceedings the Assessing Officer (AO) noticed that the assessee has entered into certain trades in shares and securities on National Stock Exchange (NSE) through its broker and on verification of the information it is noticed that the assessee has shifted profit of Rs.8,80,324/- through "Client Code Modification". Notices under section 133(6) of the Act were issued to the NSE and in response thereto NSE informed that the "Client Code Modification" has been made in this case. Broker of the assessee also submitted the details called for. Then assessee was called upon to show cause as to why the amount of Rs.8,80,324/- be not added to his income. During assessment proceedings AO also noticed that there was one more broker M/s. BP Equity Pvt. Ltd., whom notice under section 133(6) was issued who has filed details and it is seen that the client code 43334 also belongs to assessee and as such the above transactions pertained to assessee only.

Declining the contentions raised by the assessee the AO proceeded to hold that the entire transactions of purchase and sale of shares entered into by the assessee and losses booked through “Client Code Modification” is held as a sham transaction and the loss claimed of Rs.8,80,324/- in the P& L Account is disallowed and thereby framed the assessment under section 143(3) r.w.s 147 of the Act @ total income of Rs.19,09,734/-.

3. Assessee carried the matter before the Ld. CIT(A) by way of filing appeal who has partly allowed the appeal. Feeling aggrieved with the impugned order passed by the Ld. CIT(A) the Revenue has come up before the Tribunal by way of filing present appeal.

4. Despite issuance of the notice to the assessee none appeared on behalf of him, so the Bench decided to decide this appeal on the basis of material available on record with the assistance of the Ld. D.R. for the Revenue.

5. We have heard the Ld. Departmental Representative for the Revenue, perused the orders passed by the Ld. Lower Revenue Authorities and documents available on record in the light of the facts and circumstances of the case and case law relied upon.

6. Undisputedly, during the year under assessment assessee has entered into certain trades in shares and securities on NSE through its brokers. It is also not in dispute that assessee has claimed loss of Rs.8,80,324/-. AO proceeded to disallow the loss claimed by the assessee to the tune of Rs.8,80,324/- on the ground that there was “Client Code Modification” in this case and the losses were booked through “Client Code Modification”.

7. In the backdrop of the aforesaid facts and circumstances of the case, the Ld. CIT(A) deleted the disallowance by returning following findings:

“5. I have duly considered to the submissions, perused the material on record and the assessment order.

5.1 Ground No.1 to 4 are against the disallowance of an amount of Rs.8,80,324/-as losses booked proof client code modification.

5.1.1 In the instant case it has been observed by the AO that during the year under consideration the appellant has entered into certain trades in shares and securities on NSE through its brokers. During the course of assessment proceedings, the AO observed from the details availed from NSE that the appellant had entered and settled the transactions on the same day and it had resulted in loss of Rs.8,80,324/- and since it was reported that there were client code modification in these cases and as the losses were booked through client code modifications, they were a sham transaction. Therefore, the AO disallowed the loss claimed by the appellant of Rs.8,80,324/- in his order u/s.143(3) r.w.s.147 dated 29.12.2016.

5.1.2 During the course of appellate proceedings, the appellant had submitted the ledger copy of the broker i.e. M/s. B.P. Equities P. Ltd., copy of the contract notes and the copy of HDFC Bank statement of the appellant for F.Y. 2008-09 duly highlighting the payment transactions against the loss incurred for the period alongwith the copy of the reply filed by the broker against the notice u/s.133(6) of the Act dated 23.12.2016 during the course of assessment proceedings. From the copy of reply filed by the broker, M/s. B.P. Equities P. Ltd., alongwith the detailed P&L statement in F&O segment for F.Y.2008-09, it has been observed that the transactions done by the appellant that resulted in losses. Thereafter, since the appellant incurred huge losses during the period from 20.01.2009 to 31.01.2009, he stopped trading with the broker M/s. B.P. Equities P. Ltd. and did not do any single trade thereafter till date. Further, it is a fact that a broker in stock exchange make modifications in the client code on sale/purchase of any securities post closing session i.e. after the trading is over so as to rectify any error which would have occurred during the day while punching the order. Hence, if the AO during the course of assessment proceedings has not provided the details of the client code modification i.e. from which code to which code the transactions have been shifted, details of the scrip in which client code has been modified, details of the parties involved in modification and further investigation to show that the loss of someone else had been shifted to the appellant, it cannot concluded that the client code modification was done to escape assessment of a part of the income of the appellant, and it cannot be established that

there has been an escapement of income on account of client code modification. The AO has proceeded to make the additions in view of suspicious circumstances, assumptions and allegations arising from the report of investigation wing without conducting necessary enquiries himself and without bringing any circumstantial evidence on record. The facts brought on record by him are not sufficient enough to prove that the client code modifications in the case of the appellant are not done so as to rectify any error which may have occurred while punching the orders by the broker M7s. B.P. Equities P. Ltd. but are on account of facilitating losses and evasion of tax. It is observed that while the report in the matter pertained to March 20210, the trades of the appellant had taken place in January 2009. Hence, it cannot be presumed that the appellant was part of the tax evasion racket that took place in March 2010.

5.1.3 It has also been observed that the appellant had incurred losses to the extent of Rs.9,65,772/- for the transactions made in F&O trading through the share broker M/s. B.P. Equities P. Ltd. during the period from 20.01.2009 to 31.01.2009. However, during the F.Y.2008-09 the appellant had earned the net profit of Rs.14,59,988.56/- through trading in F&O business (after adjustment of above mentioned loss) and paid a total tax of Rs.2,41,442/- during the year. The appellant has rightfully contended that if he had intention of evasion of tax by availing benefit of client code modification and incurring losses then he would have done it against the whole amount of profit earned by him during the relevant financial year and would not have paid any taxes. Rather he had shown net profit of Rs. 14,59,988.56/- and had paid the relevant tax thereon. Hence, the disallowance made by the AO on account of client code modification to the tune of Rs.8,80,324/- is held to be unwarranted and is deleted. Therefore, the ground of appeal is allowed.”

8. Bare perusal of the impugned order passed by Ld. CIT(A) goes to prove that it is a fact on record that “when the AO during the course of assessment proceedings has not been provided with the details of “Client Code Modification” i.e. from which code to which code the transactions have been shifted, the details of scrip in which client code has been modified, the detail of the parties involved in modification and further investigation show that the loss of someone else had been shifted to the assessee one cannot come to the definite conclusion that the “Client Code Modification” was done to evade the tax.” However, when we examine

assessment order it has come on record that the assessee claimed that the client code 43334 as mentioned in annexure 1 does not belong to the assessee whereas the client code of the assessee is 7550 and if the code has been changed it is due to mistake committed by the broker namely Adroit Financial Services Pvt. Ltd. and not the assessee. These are the submissions of the assessee which have never been investigated by the AO nor by the Ld. CIT(A).

10. Again para 4.5 of the assessment order shows that AO reached the conclusion that the assessee's client code is 43334 and the transaction in question pertains to the assessee only. All these facts go to prove that the AO has proceeded on the assumptions and these facts also have not been got investigated by the Ld. CIT(A) during appellate proceedings. Rather Ld. CIT(A) has proceeded merely on the basis of contentions raised by the assessee without any verification of facts by the AO.

11. In these circumstances, we are of the considered view that when investigation has not been carried out as to what was the client code of the assessee, how he has booked the loss. When the assessee himself has come up with a specific contention that if the client code has been changed it is due to mistake committed by broker "Adroit Financial Services Pvt. Ltd." and not the assessee, the issue has not been investigated in entirety, rather both AO as well as Ld. CIT(A) proceeded on the basis of assumptions and surmises. When all the transactions carried out by the assessee during the year under assessment carried through his brokers are duly detailed with NSE, the complete investigation is required to be

done. Moreover in para 4.5 AO has also come up with observations that client code 43334 also belongs to the assessee, which fact also remained uninvestigated if the assessee was operating through two client code one 7550 and two 43334.

12. In the circumstances, we hereby set aside the order passed by the Ld. CIT(A) and remit the file back to the AO to investigate in accordance with the observation made in the preceding paras and decide afresh after providing opportunity of being heard to the assessee. Resultantly, appeal filed by the Revenue is allowed for statistical purposes.

Order pronounced in the open court on 12.07.2022.

**Sd/-
(GAGAN GOYAL)
ACCOUNTANT MEMBER**

**Sd/-
(KULDIP SINGH)
JUDICIAL MEMBER**

Mumbai, Dated: 12.07.2022.

* Kishore, Sr. P.S.

Copy to: The Appellant
The Respondent
The CIT, Concerned, Mumbai
The CIT (A) Concerned, Mumbai
The DR Concerned Bench

//True Copy//

By Order

Dy/Asstt. Registrar, ITAT, Mumbai.