

IN THE INCOME TAX APPELLATE TRIBUNAL  
“SMC” BENCH, MUMBAI  
BEFORE SHRI PRASHANT MAHARISHI, ACCOUNTANT MEMBER &  
SHRI PAVAN KUMAR GADALE, JUDICIAL MEMBER

ITA No. 1205/Mum/2020

(A.Y: 2011-12)

ITO, Ward – 12(3)(3) 224, 2 <sup>nd</sup> Floor, Aayakar Bhavan, MK Road, Mumbai – 400020.	Vs.	M/s. Mahavir Investments & Consultancy Pvt Ltd., Gokul Bldg, Shop No. 4, Shimpoli Road, Borivali (W), Mumbai – 400092
स्थायी लेखा सं./जीआइआर सं./PAN/GIR No. : AACCM6358E		
Appellant	..	Respondent

Appellant by :	Ms.Kavita Kaushik.DR
Respondent by :	Mr.Arpan Mehta.AR

Date of Hearing	08.06.2022
Date of Pronouncement	17.06.2022

आदेश / O R D E R

**PER PAVAN KUMAR GADALE JM:**

The revenue has filed the appeal against the order of the Commissioner of Income Tax (Appeals)-20, Mumbai passed u/s 143(3) r.w.s 147 and 250 of the Act. The revenue has raised the following grounds of appeal:

1. "Whether on the facts and in the circumstances of the case, the Ld. CIT(A) justified in deleting the addition of Rs.3,80,105/- towards disallowance of losses claimed by the

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*assessee without appreciating the fact that the transactions pertaining to kadamb Constructions Ltd. (now known as KCL Infra Projects Ltd.) was in the nature of organized tax-evasion scam"*

*2. "On the facts and circumstances of the case, the Honble ITAT is requested to entertain this appeal though the tax effect is below the monetary limit prescribed in the CBDT's Circular no.17/2019 dated 08.08.2019 as it is in the nature of organized tax evasion activity as mentioned in circular No.23/2019 dated 06.09.2019»*

*3. The appellant prays that the order of the Ld.CIT(A) on the grounds be set aside and that of the Assessing Officer be resorted.*

*4. The appellant craves leave to amend or alter any grounds or add a new ground which may be necessary.*

2. The brief facts of the case are that the assessee company is engaged in the business of commodities brokers, dealing in commodity. The Assessing Officer (A.O) has received the information from AIR / NMS data that the assessee has done commodity exchange contract trading and has not filed the return of income. The A.O. find as per the information received from the CBDT, New Delhi and DDIT (Inv), Thane that the assessee is beneficiary of one of the penny stock

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KCLIPL and that the company has admitted the market price of KCLIPL share was manipulated deliberately by some of the operators and script has been used by the operators, entry /exit providers to claim business loss / LTCG / STCG for the propose of introducing unaccounted cash in the books of accounts or to create the fictitious losses. The A.O has recorded reasons for reopening of assessee and issued notice u/s 148 of the Act. In compliance to notice, the assessee has filed the return of income electronically on 14.11.2018 disclosing a total income of Rs.27,977/-. Subsequently, the notice u/s 143(2) and 142(1) of the Act are issued. The A.O find that the assessee is a beneficiary of entry under the client code modification (CCM) facility and asked to produce the details of clients and the information of public transactions.

3. During the assessment proceedings, the A.O observed that the assessee has booked a bogus loss using CCM of Rs. 3,18,105/- and to test check the genuineness has issued the notice u/s 133(6) of the Act on the broker and no reply was received. The

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assessee has submitted the details vide letter dated 31.01.2018 and the A.O. has dealt on the facts with respect to trading of the scripts and the CCM and was of the opinion that the transactions are prejudicial and non genuine and therefore the denied the claim of loss of Rs. 3,88,105/- and assessed the total income of Rs.4,16,049/- and passed the order u/s 143(3) r.w.s 147 of the Act dated 07.12.2018.

4. Aggrieved by the order, the assessee has filed an appeal before the CIT(A), the CIT(A) considered the grounds of appeal, submissions of the assessee and findings of the AO. Further the CIT(A) was not convinced with the action of the AO and observed that the order cannot be sustained and directed the A.O to delete the addition and allowed the assessee appeal. Aggrieved by the CIT(A) order, the revenue has filed an appeal before the Honble Tribunal.

5. At the time of hearing, the Ld. DR submitted that the CIT(A) has erred in granting the relief to the assessee though the AO has dealt on the issues and after inquiries made the addition.

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6. Contra, the Ld. AR submitted that the AO has recorded the reasons in respect of penny stock and made an addition considering the fact that it is a client code manipulation (CCM) and supported the order of the CIT(A).

7. We heard the rival submissions and perused the material on record. The sole crux of the disputed issue envisaged by the Ld. DR that the CIT(A) has erred in deleting the addition of bogus loss claimed by the assessee in the commodity transaction. We find the AO has recorded the reasons on trading of the penny stock but addition is based on the CCM. At this juncture, we considered it appropriate to refer to the observations of the CIT(A) at page 5 Para 5.1 of the order which is read as under:

*5. Decision:*

*5.1 I have considered the appellant's submission. I find that the AO has contended that the appellant had claimed fictitious loss of Rs. 3,80,105/- through misuse of Client Code Modification. In pages 5 to 16 of the order, the AO has discussed the modus operandi of Client Code Modification. However, the AO has not mentioned the*

*details of transactions in respect of which the client codes were manipulated and modified. The AO has not mentioned particulars of those transactions such as the date of transaction, the name of the person to whom the appellant's profit was transferred/from whom loss was transferred to the appellant. The AO has also not clearly stated whether profit was transferred out or close was transporting through Client Code Modification. In the opening sentence of para 4.1 of his order, the AO has stated that the appellant "has obtained entry of Rs. 3,80,105/- by dubiously brought in net of Rs. 3,88,105/- by misusing Client Code Modification (Client Code Modification) facility" (emphasis supplied). In the opening sentence of para 4.17 the AO has stated that "it is therefore held that the loss of Rs. 3,80,105/- shifted out in the case of the assessee are treated as fictitious and non-genuine". Now, if loss was actually shifted out through manipulation of Client Code as held by the AO, that would lead to increase of appellant's total income. Therefore, I find that the reasoning of the AO is flawed.*

8. The Ld.DR submits that there is a tax evasion as the assessee has claimed the fictitious loss. The Ld. DR could not controvert the observations of the CIT(A) with any new cogent material or information to take different view. We find CIT(A) dealt on facts and submissions and passed a reasoned order. Accordingly, we do not find any infirmity in the order

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of the CIT(A) and up hold the same and dismiss the grounds of appeal of the revenue.

9. In the result, the appeal filed by the revenue is dismissed.

Order pronounced in the open court on 17.06.2022.

Sd/-  
(PRASHANT MAHARISHI)  
**ACCOUNTANT MEMBER**

Sd/-  
(PAVAN KUMAR GADALE)  
**JUDICIAL MEMBER**

Mumbai, Dated 17.06.2022

KRK, PS

**आदेश की प्रतिलिपि अग्रेषित/Copy of the Order forwarded to :**

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

आदेशानुसार / BY ORDER,

सत्यापित प्रति //True Copy//

1.

( Asst. Registrar)  
ITAT, Mumbai