

आयकर अपीलीय अधिकरण 'बी' न्यायपीठ चेन्नई में।
IN THE INCOME TAX APPELLATE TRIBUNAL
'B' BENCH, CHENNAI

माननीय श्री महावीर सिंह, उपाध्यक्ष एवं
माननीय श्री मनोज कुमार अग्रवाल, लेखा सदस्य के समक्ष।
BEFORE HON'BLE SHRI MAHAVIR SINGH, VICE PRESIDENT AND
HON'BLE SHRI MANOJ KUMAR AGGARWAL, AM

आयकर अपील सं./ ITA No.124/Chny/2021
(निर्धारण वर्ष / Assessment Year: 2009-10)

&

आयकर अपील सं./ ITA No.125/Chny/2021
(निर्धारण वर्ष / Assessment Year: 2012-13)

M/s. Money Managers No.7, 7 th Cross Street, 2 nd Floor, Shenoy Nagar, Chennai – 600 030.	बनाम/ Vs.	ACIT Central Circle-1(2), Chennai.
स्थायी लेखा सं./जीआइ आर सं./PAN/GIR No. AALFM-0825-G		
(□ पीलार्थी/ Appellant)	:	(प्रत्यर्थी / Respondent)

अपीलार्थी की ओरसे/ Appellant by	:	Shri Y. Sridhar (C.A) – Ld. AR
प्रत्यर्थी की ओरसे/ Respondent by	:	Shri R. Bhoopathi (JCIT) –Ld. DR
सुनवाई की तारीख/ Date of Hearing	:	18-08-2022
घोषणा की तारीख / Date of Pronouncement	:	07-09-2022

आदेश / O R D E R

Manoj Kumar Aggarwal (Accountant Member)

1. Aforesaid appeals by assessee for Assessment Years (AY) 2009-10 & 2012-13 arises out of separate orders of learned first appellate authority. The appeal for AY 2009-10 arises out of the order of learned Commissioner of Income Tax (Appeals)-18, Chennai [CIT(A)] dated 26-02-2021 in the matter of assessment framed by Ld. Assessing Officer [AO] u/s. 143(3) r/w s. 147 of the Act on 30-12-2016. The grounds taken by the assessee for AY 2009-10 read as under:

1. The Learned Commissioner of Income-tax (Appeals) ('Ld. CIT(A)') has erred in law and facts in circumstances of the case.
 2. The Ld. CIT(A) has erred in completing the assessment without considering information, submissions placed on the records.
 3. The appellant is a partnership firm engaged in the business of money lending, trading in shares and is a member in multi-commodity exchange and filed its return of income on 29-09-2009 admitting a loss of Rs.2,38,12,420/. The assessment was completed u/s 143(3) accepting the returned loss. Subsequently, the case was reopened after expiry of four years from passing order u/s 143(3) to verify the client code modification (i.e., shifting profit by utilizing client code modification). The assessment was completed u/s 143(3) r.w.s. 147 by disallowing the loss to the extent of Rs.1,25,13,940/-.
 4. The appellant wishes to state that reopening beyond 4 years is not sustainable where the reasons recorded by the Assessing Officer nowhere states that there was failure on the part of the assessee to disclose fully and truly all material facts necessary for the assessment. Further, the impugned notice u/s 148 was issued merely on account of changed opinion as no fresh tangible material was available with the Assessing Officer to issue the impugned notice. Therefore, the notice was without jurisdiction and the assessment order passed by the Assessing Officer was also bad in law.
 5. Without prejudice to the legality of reopening the assessment, the appellant wishes to state that addition on modifying the client code is only on assumption and surmise which is not permissible under law.
 6. The appellant is trading in shares through its broker M/s. Aryan Shares and Stock Brokers Limited. The brokers executed the share transactions as per the instructions of the appellant.
 7. It is pertinent to note that all the transactions has been duly accounted in the books of accounts maintained by the appellant, and the profit has been generated on accounting of actual trade, have been offered as income for the purpose of transaction. The appellant is not aware of any client code modification and has never requested for any such modification.
 8. Further, the appellant was not allowed to cross examine the party to whom it was alleged to have transferred the profit to. Failure to give the assessee the right to cross examine the opposite party is breach of principles of natural justice.
 9. Considering the above, prima facie, we are of the view that the impugned notice is without jurisdiction as it lacks reason to believe that income chargeable to tax has escaped assessment.
 10. Considering the above submissions made and the judicial pronouncements, it is prayed to your good self to kindly quash the disallowance made and render justice.
 11. For the above reasons and other reasons that may be adduced at the time of hearing, the addition made by the Assessing Officer may kindly be deleted and justice be rendered.
 12. The Appellant craves leave to amend, alter or delete any of the above grounds of appeal.
2. The Ld. AR advanced legal arguments assailing the validity of reassessment proceedings and also advanced arguments on merits.

The Ld. AR submitted that the reasons to reopen the case were never supplied to the assessee which would vitiate the assessment proceedings. The same has been controverted by Ld. Sr. DR. Having heard rival submissions and after perusal of case records, our adjudication would be as under. The assessee being resident firm is stated to be engaged in trading of shares and commodities.

Assessment Proceedings

3.1 The original return of income as filed by the assessee admitting loss of Rs.238.12 Lacs was scrutinized u/s 143(3) on 30.11.2011. However, the case was reopened and notice u/s 148 was issued on 30.03.2016 which is beyond 4 years from end of relevant AY i.e., 2009-10.

3.2 The reason to reopen the case was the allegation of Ld. AO that the assessee was beneficiary of 'client code modification' as done by certain brokers. The said fact was stated to have come to light due to investigation findings of the department wherein certain data was collated and the beneficiaries of 'client code modification' (CCM) were identified. It was alleged that the assessee was one of the beneficiaries and accordingly, the case was reopened to disallow the loss claimed by the assessee on such transactions.

3.3 The assessee, vide reply dated 11.04.2016, offered original return of income in response to notice u/s 148. At the same time, the assessee sought reasons from Ld. AO which led to reopening of concluded assessment. The reasons were apparently not communicated to the assessee but Ld. AO only show caused assessee on 09.12.2016 as to why the income should not be assessed at higher figures on account of 'client code modification'. On the basis

of analysis of data as received by Ld. AO from investigation wing, Ld. AO held that the assessee received fictitious loss under these transactions overlooking the arguments of the assessee that the assessee was not aware of any client code modification and no such request was ever placed by the assessee with its broker. Finally, the loss of Rs.125.13 Lacs was disallowed and assessed loss was reduced to Rs.112.98 Lacs.

Appellate Proceedings

4. The Ld. CIT(A) dismissed the legal ground raised by the assessee on the ground that Ld. AO had recorded due satisfaction to the effect that the assessee has booked fictitious losses though client code modification that was brought to the notice of AO by investigation directorate of Ahmedabad wing. The Ld. AO had prima facie reason to believe that the income had escaped assessment. There was no change of opinion as alleged by the assessee, The Ld. AO, on the basis of information received, came to a conclusion that there was escapement of income and there was failure on the part of the assessee to disclose full and true disclosure of particulars for the assessment of the income. Regarding objections of the assessee that the reasons were not supplied by Ld. AO, reliance was placed on the decision of Hon'ble High Court of Madras in the case of **Home Finders Housing Ltd. V/s ITO (93 Taxmann.com 371)** which held that non-compliance of procedure as laid down by Hon'ble Supreme Court in GKN Driveshafts India Pvt. Ltd. would be procedural irregularity which could be cured. Therefore, the legal grounds were dismissed and the quantum additions were confirmed considering the facts of the case. Aggrieved, the assessee is in further appeal before us.

Our findings and Adjudication

5. The factual position that the reasons recorded for reopening the reassessment proceedings were never communicated to the assessee, remain undisturbed before us. There is nothing in the orders of lower authorities which would establish that such reasons were ever supplied to the assessee. In fact, such a plea was raised by the assessee during appellate proceedings even and still the reasons were not supplied. In such a case, the assessment proceedings would be rendered nullity as held by Hon'ble Karnataka High Court in **PCIT V/s V. Ramaiah (103 Taxmann.com 201)**. The Special Leave Petition (SLP) against this decision stood dismissed by Hon'ble Supreme Court which is reported at 262 Taxman 16. The Hon'ble High Court of Karnataka, considering the decision of Hon'ble High Court of Madras in **Home Finders Housing Ltd. V/s ITO (93 Taxmann.com 371)** (as referred in the impugned order), found the same to be distinguishable as under: -

8. The decision relied upon by the learned counsel for the Revenue is distinguishable on facts. The order which was to be passed by assessing authority as preliminary objection of assessee, once the assessee has raised the objection to such reassessment proceedings, the meeting of such objections in the main reassessment order, could be procedural aspect of the matter, but the recording of the reasons before the initiation of the reassessment proceedings and communication thereof to the assessee is sine qua non, as held by Hon'ble Supreme Court and that goes to the root of the matter and confers or deprives the assessing authority of the jurisdiction to undertake such reassessment proceedings, as the case may be.

9. In the present case, admittedly, such reasons were not supplied to the assessee during the contemporary period before going ahead with the reassessment proceedings. Therefore, the Tribunal in our opinion was perfectly justified in quashing such reassessment order

We find that the decision of Hon'ble High Court of Madras in **Home Finders Housing Ltd. V/s ITO (93 Taxmann.com 371)** deal with a

situation wherein the objections raised by the assessee were not disposed-off by the revenue. Under these circumstances, the matter was remanded back by Hon'ble Court to the file of Ld. AO. It was noted by Hon'ble Court in para-18 that the disposal of the objections was a procedural requirement to appraise the assessee of the actual grounds which made the AO to arrive at a prima facie satisfaction that there was escapement of income warranting reopening the assessment proceedings. The same is not the case here. Therefore, the ratio of this decision, in our considered opinion, does not apply to the facts of present case. Consequently, the reassessment proceedings could not be held to be valid in the eyes of law and therefore, we quash the same. Consequently, the adjudication on merits has been rendered academic in nature. The appeal stand allowed.

6. Assessment Year 2012-13

6.1 In this year also, the original return of income as filed by the assessee was scrutinized u/s 143(3) on 07.03.2015. However, the case was reopened and notice u/s 148 was issued on 30.03.2019 which is beyond 4 years from end of relevant AY i.e., 2012-13. The reasons were communicated to the assessee and the assessee objected to the same on ground that there was no tangible material. Further, there was no failure on the part of the assessee to disclose fully and truly the material facts.

6.2 The reassessment proceedings were triggered pursuant to investigation findings in the case of one Shri Naresh Jain group who was searched by the department on 19.03.2019. It was alleged that the group manipulated the prices of various shares to provide bogus entries of Capital Gains, business losses etc. For the same, the scrip of Nyssa

Corporation Ltd. was used by the group. It transpired that the assessee sold the shares of this entity during this year for sale consideration of Rs.33.82 Lacs and incurred business loss of Rs.24.77 Lacs. On the basis of investigation findings as well as the statement of Shri Naresh Jain & ors., it was alleged by Ld. AO that the loss as claimed by the assessee was not genuine. Therefore, the loss was held to be non-genuine despite the assertion of the assessee that the loss was genuine and the transactions were carried out through registered stock broker at Stock Exchange as evidenced by contract notes. Finally, the loss was disallowed and added to the income of the assessee.

6.3 The legal ground raised by the assessee were dismissed by learned first appellate authority who held that Ld. AO correctly exercised his jurisdiction while reopening the case of the assessee. The grounds, on merits, were also dismissed in the light of various judicial pronouncements as well as by applying the theory of surrounding circumstances, human conduct, preponderance of human probabilities etc. Aggrieved, the assessee is in further appeal before us.

Our findings and Adjudication

7. Upon due consideration of factual matrix, it could be noted that the assessee is dealer in shares and securities. The income so earned by the assessee was assessed as well as accepted as business income / loss. The assessee has dealt in substantial number of scrips during the year. The original return of income as filed by the assessee was scrutinized u/s 143(3) on 07.03.2015. During the course of assessment proceedings, various details were called from the assessee which were duly supplied. The assessee, vide reply dated

16.02.2015, furnished audited financial statements containing sale and purchase transactions for AYs 2011-12 & 2012-13, break up of gross receipts and various other documents as required by Ld. AO. On the basis of the same, the assessment was framed on 07.03.2015 after making disallowance u/s 14A. Apparently, no fault was found by Ld. AO in the trading transactions of the assessee. The transaction carried out by the assessee in the scrip under consideration also form part of its financial statements.

8. Thereafter, the case was reopened pursuant to the search action on Shri Naresh Jain Group on 19.03.2019 which was a subsequent event. On the basis of investigation findings, it came to light that the scrip of M/s Nyssa Corporation Ltd. was used by the tainted group to secure benefits for the intended beneficiaries. The only reason, as apparent from recorded reasons as placed on record, to reopen the case of the assessee is that the assessee sold the shares of this entity for sale consideration of Rs.33.82 Lacs but the return of income filed by the assessee does not contain the above transactions. Accordingly, a belief was formed that the income escaped assessment. However, we find that the whole premise to reopen the case and arrive at formation of belief is fallacious one. The belief stem from the fact that the return of income does not contain the said transactions which run contrary to facts on record. The assessee is a dealer in shares and it has dealt in number of shares which form part of tis financial statements. The shares under consideration were sold through registered stock broker at the Stock Exchange which are duly evidenced by the contract notes. The transactions certainly form part of assessee's books of accounts. In such a case, the allegation made by

Ld. AO is wholly erroneous and based on fallacious assumption of facts.

9. It could also be noted that the only basis to disallow the loss by Ld. AO is the statement made by tainted group during search operations. However, any linkage of the assessee with that group was nowhere established and no finding was rendered that the assessee connived / colluded with the tainted group to secure business losses. The additions are merely on the basis of suspicions, conjectures and surmises and therefore, not sustainable in law considering the fact that the transactions were carried out by the assessee through registered stock broker at recognized stock exchange. The onus was on revenue to disprove the assessee's transactions and the same, in our considered opinion, could not be discharged by the revenue.

10. Considering the entirety of facts and circumstances of the case, finding substance in legal grounds as well as in grounds on merits, we direct Ld. AO not to disallow the business loss thus claimed by the assessee. The appeal stand allowed.

11. Both the appeals stand allowed in terms of our above order.

Order pronounced on 07th September, 2022.

Sd/-
(MAHAVIR SINGH)
उपअध्यक्ष / VICE PRESIDENT

Sd/-
(MANOJ KUMAR AGGARWAL)
लेखक सदस्य / ACCOUNTANT MEMBER

चेन्नई / Chennai; दिनांक / Dated : 07-09-2022
EDN/-

आदेश की प्रतिलिपि ञ ग्रेषित/Copy of the Order forwarded to :

1. अपीलार्थी/Appellant 2. प्रत्यर्थी/Respondent 3. आयकर आयुक्त (अपील)/CIT(A) 4. आयकर आयुक्त/CIT 5. विभागीय प्रतिनिधि/DR 6. गार्ड फाईल/GF