

THE INCOME TAX APPELLATE TRIBUNAL
“A” Bench, Mumbai
Shri B.R. Baskaran (AM) & Shri Pavan Kumar Gadale (JM)

I.T.A. No. 1593/Mum/2021 (A.Y. 2009-10)

Ankit Girishkumar Vasani B-705, Vandana Apartment Gorai-I, Borivali West Mumbai-400 092. PAN : AFKPV5001K (Appellant)	Vs.	ITO-35(1)(2) Pratyakshakar Bhavan C-12, BKC Bandra East Mumbai-400 051. (Respondent)
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Assessee by	Shri Vishnu Agarwal
Department by	Shri Manoj Sinha
Date of Hearing	14.09.2022
Date of Pronouncement	21.09.2022

O R D E R

Per B.R.Baskaran (AM) :-

The assessee has filed this appeal challenging the order dated 12.08.2021 passed by Ld CIT(A), National Faceless Appeal Centre, Delhi and it relates to the assessment year 2009-10. The assessee is aggrieved by the decision of Ld CIT(A) in confirming the addition relating to disallowance of loss in trading in shares and derivatives amounting to Rs.1,24,17,318/-. The assessee is also challenging the validity of re-opening of assessment u/s 147 of the Act.

2. The facts relating to the above said issue are stated in brief. The assessee is an individual and is a trader and investor in shares and commodities. During the year under consideration, he had incurred loss of Rs.1,24,17,318/- in trading in shares and commodities. The AO received information from Investigation wing of Income tax department, Ahmedabad that the assessee has obtained fictitious transactions to generate loss of Rs.1,24,17,318/-. Hence the AO reopened the assessment by issuing notice

u/s 148 of the Act on 29-03-2016. The AO completed the assessment to the best of his judgement u/s 144 of the Act by disallowing the above said loss.

3. In the appellate proceedings before Ld CIT(A), the assessee submitted that he has maintained proper books of accounts and they have been duly audited. He further submitted that all his trading transactions are duly supported by the broker notes entered in the recognised stock exchange. It was submitted that the allegation was that the stock broker has carried out client code modification and hence the transactions entered through client code modification was bogus in nature. The assessee submitted that the modifications, if any, have taken place at the end of the stock broker and the assessee is not concerned about the same. Accordingly, it was contended that the disallowance of loss claimed by the assessee is liable to be deleted. The Ld CIT(A) did not agree with the contentions of the assessee and accordingly confirmed the order of the AO. Aggrieved, the assessee has filed this appeal before the Tribunal.

4. The Ld A.R submitted that the assessee has carried out share trading transactions with four brokers, out of which the transactions entered with one broker was held to be bogus. He submitted that the AO has accepted the trading transactions entered with other brokers. He submitted that the assessee has made a turnover of Rs.95.26 crores, out of which there were loss in certain transactions and profit in other transactions. Considering the overall activities of the assessee, there is no reason to suspect the loss incurred by the assessee. He further submitted that client code modification happens at the end of the stock broker and the assessee is no way related to the same. Further, the client code modification is carried out to correct the usual human error and such kind of modifications upto certain level is also permitted by SEBI. The Ld A.R further placed his reliance on the decision rendered by Hon'ble jurisdictional Bombay High Court in the case of Coronation Agro Industries Ltd (2017)(82 taxmann.com 75)(Bom), wherein

the Hon'ble Bombay High Court held that the client code modification done by assessee's broker could not be ground to believe that there had been any escapement of income. Accordingly, the Ld A.R submitted that there is not reason to suspect the loss declared by the assessee and in any case, the reopening of assessment on the basis of suspicion is also bad in law as per the decision rendered by Hon'ble Bombay High Court. He also submitted that the loss incurred by the assessee is a genuine loss and there is no reason to disallow the same.

5. The Ld D.R, on the contrary, supported the order passed by Ld CIT(A). He further submitted that the matter may be restored to the file of the AO for examining the various contentions of the assessee.

6. We heard rival contentions and perused the record. We noticed earlier that the AO has reopened the assessment on the basis of information supplied by the investigation wing of the department that the assessee has generated fictitious loss. It is stated that the assessee is a beneficiary of client code modification, which has resulted in loss. The question as to whether the information received regarding client code modification could be a reason for reopening of assessment was examined by the Hon'ble Bombay High Court in the case of Coronation Agro Industries Ltd (supra) and it was held as under:-

“(3) The reasons in support of the impugned notice relies upon the information received from the Principal Director of Income Tax that the petitioner has benefited from a client code modification by which a profit of Rs.22.50 lakhs was shifted out by the petitioner's broker, resulting in reduction of the petitioner's taxable income. The only basis for forming the belief is the report from the Principal Director of Income Tax and the application of mind to the report of the Assessing Officer along with the record available with him. This information and application of mind has led the Assessing Officer to form a reasonable belief that there is not only an escapement of income but there has been failure to truly and fully disclose all material facts and information as the modus operandi of shifting profits was not known to the Revenue as not disclosed by the petitioner when the Assessing Officer passed the order in regular assessment proceedings.

(4) We note that the reasons in support of the impugned notice accept the fact that as a matter of regular business practice, a broker in the stock exchange makes modifications in the client code on sale and/or purchase of any securities, after the trading is over so as to rectify any error which may have occurred while punching the orders. The reasons do not indicate the basis for the Assessing Officer to come to reasonable belief that there has been any escapement of income on the ground that the modifications done in the client code was not on account of a genuine error, originally occurred while punching the trade. The material available is that there is a client code modification done by the Assessee's broker but there is no link from there to conclude that it was done to escape assessment of a part of its income. Prima facie, this appears to be a case of reason to suspect and not reason to believe that income chargeable to tax has escaped assessment.

5. In the above view, 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.”

The facts in the present case are identical with the facts in the case decided by Hon'ble Bombay High Court. Accordingly, we hold that the reopening of assessment is bad in law. On merits also, we notice that the claim of the assessee is duly supported by various evidences and further the code modifications carried out by the stock broker should not affect the claim of the assessee unless it is proved that the assessee has colluded with the stock broker in carrying out the modification, which is not the case here. Accordingly, we are of the view that the AO could not have disallowed the loss claimed by the assessee. Accordingly, we quash the orders passed by the tax authorities.

7. In the result, the appeal filed by the assessee is allowed.

Order pronounced in the open court on 21.09.2022.

Sd/-
(PAVAN KUMAR GADALE)
JUDICIAL MEMBER

Sd/-
(B.R. BASKARAN)
ACCOUNTANT MEMBER

Mumbai; Dated : 21/09/2022

Copy of the Order forwarded to :

1. The Appellant
2. The Respondent
3. The CIT(A)
4. CIT
5. DR, ITAT, Mumbai
6. Guard File.

//True Copy//

BY ORDER,

(Assistant Registrar)
ITAT, Mumbai

PS