

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

Before Sh. C. N. Prasad, Judicial Member

Dr. B. R. R. Kumar, Accountant Member

ITA No. 7958/Del/2018 : Asstt. Year : 2009-10

Ashari Agencies Ltd., 601, Disco Compound, G.T. Road, Ghaziabad-201001	Vs	DCIT, Circle-1, Ghaziabad-201001
(APPELLANT)		(RESPONDENT)
PAN No. AAACL2207R		

Assessee by : None

Revenue by : Sh. Kanav Bali, Sr. DR

Date of Hearing: 12.09.2022

Date of Pronouncement: 23.11.2022

ORDER

Per Dr. B. R. R. Kumar, Accountant Member:

The present appeal has been filed by the assessee against the order of Id. CIT(A), Muzaffarnagar dated 14.09.2018.

2. The notices issued by the Tribunal have returned with the remarks that "no such person in the address". It is the responsibility of the assessee to inform the postal authorities with regard to the change of address and also to notify the Tribunal about the new address. Since, the assessee fail to do so, the matter is decided to be adjudicated based on the facts available on record.

3. Following grounds have been raised by the assessee:

"1. That the Ld. CIT(A) erred both on facts and in law in holding that the re-assessment proceedings u/s 147/148 of I.T. Act are valid, when the conditions

present for invoking these provisions were totally lacking in the present case.

2. That the addition of Rs. 1092899 is wrong, as no income was escaped assessment and the addition deserves to be deleted.

3. That the business loss incurred was a genuine loss on the facts and should have been allowed.

4. That the addition made is bad as no opportunity was given to rebut the case of the broker, which forms the basis of the addition."

4. The assessee filed original return of income on 24.08.2009 declaring total business loss of Rs. 51,50,042/-. Information was received from Assistant Director of Income Tax (Investigation), Unit-1(3), Ahmadabad, regarding tax evasion through Client Code Modification during F.Y. 2008-09 pertaining to A.Y. 2009-10. The report gave not only the name of the beneficiaries, which also included the name of the assessee, it also provided detailed modus operandi of creating fictitious losses and gains.

5. The ADIT(Investigation), Ahmadabad has carried out investigation in the case of 12 brokers and as a result of investigation, it has been found that the assessee has obtained fictitious losses of Rs. 10,92,899/- through M/s Composite Securities Limited by modification of client code in dealing with shares. The AO after considering the said information and confronting the specific details to the assessee has inferred that the assessee has misused the client code modification and has got fictitious losses of Rs. 10,92,899/- and has made the addition accordingly. The Id. AR during the appellate proceedings before the Id. CIT(A) has argued that the addition

made by the AO was without any basis and no cross-examination has been allowed by the AO. It was stated that the transactions in future derivatives have been carried out only from 20.03.2009 to 26.03.2009, therefore, such loss has occurred during the month of March only. Before the Id. CIT(A), the Id. AR has argued that there was no relation of Smt. Uma Agarwal with the assessee, in whose name transactions have been initially carried out in the Exchange by the broker but subsequently modified in the name of the assessee.

6. It is noted that the assessee has got losses of Rs. 10,92,899/- through M/s Composite Securities Ltd. (Broker) in FY 2008-09. These losses have occurred on account of 19 transactions carried out in the last week of March, 2009 through the Exchange. The all 19 transactions have been initially carried out through the Exchange in the name of Smt. Uma Agarwal but later the client code was modified and name of the assessee was entered by the broker as a client. It is also relevant that on all such 19 instances, losses have occurred. Not even a single-transaction has resulted into profit from transaction in the securities. The specific information relevant to the assessee has been confronted by the revenue to the assessee. The modus operandi has been unearthed during the Survey u/s 133A of the Act conducted by the Investigation Wing, Ahmadabad. These observations when seen in totality and by following the principle of preponderance of probability corroborate the inference of the AO that the assessee has received fictitious losses as above through the misuse of client code modification.

7. In view of the facts and discussion as above, the Id. CIT(A) held that the AO was justified in making addition of Rs.10,92,899/-. Having gone through the record before us, in the absence of any material contra, we find no reason to interfere with the order of the Id. CIT(A).

8. In the result, the appeal of the assessee is dismissed.
Order Pronounced in the Open Court on 23/11/2022.

Sd/-

(C. N. Prasad)
Judicial Member

Dated: 23/11/2022

Subodh Kumar, Sr. PS

Copy forwarded to:

1. Appellant
2. Respondent
3. CIT
4. CIT(Appeals)
5. DR: ITAT

Sd/-

(Dr. B. R. R. Kumar)
Accountant Member

ASSISTANT REGISTRAR