

आयकर अपीलीय अधिकरण
मुंबई पीठ " सी "
श्री विकास अवस्थी, न्यायिक सदस्य एवं
श्री एस. रिफौर रहमान, लेखा सदस्य के समक्ष
IN THE INCOME TAX APPELLATE TRIBUNAL
MUMBAI BENCH " C", MUMBAI
BEFORE SHRI VIKAS AWASTHY, JUDICIAL MEMBER &
SHRI S.RIFAUR RAHMAN , ACCOUNTANT MEMBER
आअसं.1410/मुं/2021 (नि.व. 2010-11)
ITA NO.1410/MUM/2021(A.Y.2010-11)

Plaza Securities Limited,
8-B, Rajbahadur Motilal Mansion,
11/43 Tamarind Street,
Fort, Mumbai 400 023
PAN: AAACP-8335-L

..... अपीलार्थी /Appellant

बनाम Vs.

The DCIT, Circle – 10(3)(2),
5th Floor, Aaykar Bhavan, M.K.Road,
Mumbai 400 020.

..... प्रतिवादी/Respondent

अपीलार्थी द्वारा/ Appellant by : S/ Shri N.R. Agarwal and
Pranav Shroff
प्रतिवादी द्वारा/Respondent by : S/Shri R.A. Dhyani and
Soumendu Dash

सुनवाई की तिथि/ Date of hearing : 08/07/2022

घोषणा की तिथि/ Date of pronouncement : 04/10/2022

आदेश/ ORDER

PER VIKAS AWASTHY, JM:

This appeal by the assessee is directed against the order of Commissioner of Income Tax (Appeals), National Faceless Appeal Centre, Delhi dated 06/08/2021 for the Assessment Year 2010-11.

2. The solitary ground raised by the assessee in appeal is against the addition made on account of client code modification.

3. Shri N.R. Agarwal appearing on behalf of the assessee submits that assessment for Assessment Year 2010-11 in the case of assessee was reopened on the ground that the assessee has indulged in unauthorized client code modification. The Id. Authorized Representative for the assessee submitted that the assessee is engaged in trading of shares and securities at Stock Exchange through brokers. The assessee is not a broker. The Assessing Officer in reassessment proceedings made addition of Rs.40,75,369/- on account of client code modifications allegedly made to transfer fictitious profits and losses. The Id. Authorized Representative for the assessee submitted that a perusal of the assessment order would show that the Assessing Officer has made addition merely on suspicion without there being any evidence to substantiate that the assessee has indulged in shifting profits or losses through client code modifications. The Id. Authorized Representative for the assessee pointed that in para-4 of the assessment order the Assessing Officer has wrongly recorded the fact that the broker has admitted to have earned commission income from 0.5% to 2% on the amount of such fictitious profit and losses. There is no statement of admission by broker or assessee on record. If there is any such admission, the copy of the same has not been provided to the assessee. The Id. Authorized Representative for the assessee submits that there was no search or survey action by the Department either on the assessee or the broker of the assessee. The Id. Authorized Representative for the assessee admitted that during the period relevant to assessment year under appeal, in the months of April to September the broker of assessee had carried out client code modifications on the instructions of the assessee. The

total numbers of client code modifications during the relevant period were 519. The total number of transactions were approximately 6,00,000. The client code modifications was carried out merely on 0.099% of total transactions. Therefore, the number of client code modification transactions is miniscule part of the total number of transactions. The Id. Authorized Representative for the assessee pointed that as per the observations of Assessing Officer client code modifications results in shifting of profits, whereas in the case of assessee the transaction of client code modifications have been done in the case of losses as well. All the clients have accepted client code modifications and have filed confirmations. The Id. Authorized Representative for the assessee referred to the confirmations at page 1 to 26 of the Paper Book. The Id. Authorized Representative for the assessee further submitted that client code modifications are permitted by the SEBI and BSE provided client code modifications are carried out within the time limit. Where the client code modifications are carried out with ulterior motive, the brokers are subject to penal provisions in accordance with SEBI circular. In the case of assessee no penalty has ever been levied on broker for carrying out client code modifications. The Id. Authorized Representative for the assessee submitted that observations made by the Assessing Officer and the CIT(A) with respect to client code modifications in their respective orders are not specific to the case of the assessee. They have made general remarks on the modus operandi for unauthorized client code modifications. The Id. Authorized Representative for the assessee in support of his submissions placed reliance on the following decisions:

- (i) DCIT vs. Vipul D Shah in ITA No.5688/Mum/2017 for A.Y. 2010-11 decided on 03/07/2019

(ii) DCIT vs. S.B. Securities Pvt. Ltd. in ITA No.7346/Mum/2017 for A.Y. 2009-10 decided on 30/07/2019.

4. Per contra, Shri R.A. Dhyani representing the Department vehemently defended the impugned order and prayed for dismissing the appeal of assessee. The Id. Departmental Representative submits that the assessee has indulged in carrying out client code modifications with an objective to transfer fictitious losses and profits. The SEBI has issued specific guidelines and purposes for which client code modifications can be carried out. The reason given by the assessee for carrying out client code modifications does not fall within the specified SEBI guidelines. The Id. Departmental Representative further pointed that during assessment proceedings the assessee had admitted that the transaction of client code modifications were not genuine and were actually manipulated.

5. Rebutting the submissions made on behalf of the Revenue, the Id. Authorized Representative for the assessee submitted that during the course of reassessment proceedings the assessee vide letter dated 30/03/2016 (at page 521 of the Paper Book) the assessee had conveyed that client code modifications were undertaken to the extent of Rs.40,75,639/- and had submitted the xerox copies of client code modification sheets. However, in the last line of the said communication it was erroneously mentioned that addition of Rs.40,75,639/- can be done. Inadvertently, the word "if" was missed to qualify the remaining part of the sentence. The intention of the assessee was never to admit the addition proposed by the Assessing Officer. If that be so, the assessee would have never filed appeal before the CIT(A) and thereafter, before the Tribunal.

6. We have heard the submissions made by rival sides and have examined the orders of authorities below. The addition has been made on account of client code modifications in the hands of assessee primarily for the reason that the assessee has carried out client code modifications for transfer of fictitious profits and losses. It is an undisputed fact that client code modifications is legally permissible and SEBI has issued client code modification policy and the same has been amended from time to time. The client code modifications policy as per SEBI circular CIR/DNPD/6/2011 dated July 05th 2011 is reproduced herein below:

“ Objective

To frame the guidelines for modification to client codes post trade execution and reporting of such Client Code Modifications.

2. Brief about Client Code Modification:

Client Code Modification means modification / change of the client codes after execution of trades. Stock Exchanges provide a facility to modify any client code after the trade has been executed to rectify any error or wrong data entry done by the dealers at the time of punching orders. However, such Client Code modification is subject to certain guidelines as to the time limit within which the client code modification is to be carried out, terminal / system on which such modifications can be done etc. The facility is mainly to provide a system for modification of client codes in case "genuine errors" in punching / placing the orders. It is to be used as an exception and not a routine. To prevent misuse of the facility Stock Exchanges levy penalty / fine for all non-institutional client code modifications.

3. Scope of the Policy:

This policy covers all the Client Code Modifications carried out / to be carried out in any of the client accounts controlled by DFSL, subject to the guidelines issued by the SEBI / Stock Exchanges from time to time, in any segment of any exchange for which DFSL is a member broker.

4. "Error Trades" *means the trades which will be modified / to be modified / allowed, to be modified subject to guidelines of the SEBI / Stock Exchanges and this policy. For the purpose of this Policy, only the following types of trades shall be modified / allowed to be modified:*

In case of NSE (NOTE: no consistent pattern in such modifications):

- i. client code/name and modified client code/name are similar to each other but such modifications are not repetitive,*
- ii. Relative Code (spouse, dependent parents, dependent children and HUF) as defined under the Companies Act, 1956.*

In Case of BSE:

- i. Punching error / typing error of client codes due to any genuine error or mistake in order entry, while punching the order, by any of dealer,*
- ii. Trade entered for wrong client due to any miscommunication from the client / authorized representative of the client,*
- iii. Modification within family members*
- iv. Institutional trades modified to broker error/pro account*

In Case of MCX-SX

- i. Punching error / typing error of client codes due to any genuine error or mistake in order entry, while punching the order, by any of dealer.*
- ii. Trade entered for wrong client due to any miscommunication from the client / authorized representative of the client.*

5. General Conditions:

- (i) The facility for Client Code Modification can be used only in case of Error Trade.*
- (ii) The Client Code Modification shall be carried out only on the designated system and / or as per the process as may be prescribed by SEBI / Stock Exchange,*
- (iii) No code modification will be effected in back office.*

6. Place for Client Code Modification:

Any Client Code Modification shall, subject to compliance of this policy, be carried out by RMS at HO of all the Error Trades happened on NSE,BSE and MCX-SX.

7. Penalty

In case of the Client Code Modification will be done by shifting of the trade(institutional or non-institutional) to the error account of DFSL and arising cost of the trades in error account will be subsequently liquidated / closed out in the market and in no case will be shifted to some other client code.

In case of any violation resulting in penalty same will be recovered from the Sub Broker/ Authorized Person and/ or client. All are requested to take notice of SEBI circular no. CIR/DNPD/6/2011 and communication issued by exchanges from time to time in this regard."

From bare perusal of the above policy it is evident that client code modification is permissible in case of genuine error in punching/placing orders. It has to be used in exceptional circumstances and not in routine manner. To prevent the misuse of client code modification facility, Stock Exchange levy penalty.

7. In the present case, it is an undisputed fact that the assessee has carried out client code modifications in respect of the transactions aggregating to Rs.40,75,639/-. The assessee has carried out client code modifications through its broker Prakash K. Shah Shares & Securities Pvt. Ltd. The assessee has furnished details of client code modifications carried out during the period relevant to the assessment year under appeal. The assessee has pointed that client code modification have been made in respect of related as well as unrelated parties. It is not only the transaction of profits but transaction with losses also wherein client code modifications have been carried out. A perusal of the assessment order reveals that the Assessing Officer has made addition in respect of client code modifications carried out by the assessee without examining the genuineness of transaction. The Assessing Officer examined the issue through lens of suspicion. The observation made by Assessing Officer is merely on surmises and conjectures making general observation. The assessee during the relevant period has purportedly carried out six lacs transaction. The client code modifications have been done in respect of 519 transactions. If that be so, then the ratio of client code modifications carried out by the assessee to the ratio of total number of transactions is miniscule.

8. The Assessing Officer has not referred to any documentary evidence in the case of assessee indicating that the client code modifications carried out by the assessee were with the ulterior motive of suppressing taxable income. There is no allegation/addition made by Assessing Officer to suggest that assessee has indulged to providing bogus profits/losses by charging commission. The Assessing Officer has explained modus operandi of transferring profits/losses through client code modifications without giving specific instances in the case of assessee. Similarly, the First Appellate Authority while dealing with the issue has failed to point out the misuse of client code modifications facility with particular reference to the transactions carried out by the assessee. The observations made by CIT(A) in the impugned order are generic. In the light of facts discussed above, addition on account of misuse of client code modification facility is unsustainable. Hence, the impugned order is set-aside and appeal by the assessee is allowed.

Order pronounced in the open court on Tuesday the 04th day of October, 2022.

Sd/-

(S.RIFAUR RAHMAN)

लेखा सदस्य/ACCOUNTANT MEMBER

मुंबई/ Mumbai, दिनांक/Dated 04/10/2022

Vm, Sr. PS(O/S)

Sd/-

(VIKAS AWASTHY)

न्यायिक सदस्य/JUDICIAL MEMBER

प्रतिलिपि अग्रेषितCopy of the Order forwarded to :

1. अपीलार्थी/The Appellant ,
2. प्रतिवादी/ The Respondent.
3. आयकर आयुक्त(अ)/ The CIT(A)-
4. आयकर आयुक्त CIT
5. विभागीय प्रतिनिधि, आय.अपी.अधि., मुंबई/DR, ITAT,
Mumbai
6. गार्ड फाइल/Guard file.

BY ORDER,

//True Copy//

(Dy./Asstt. Registrar)/Sr. Private Secretary
ITAT, Mumbai