

**IN THE INCOME TAX APPELLATE TRIBUNAL,  
MUMBAI BENCH “SMC”, MUMBAI**

**BEFORE SHRI KULDIP SINGH, JUDICIAL MEMBER**

**ITA No.2125/M/2021  
Assessment Year: 2010-11**

Ms. Meena A. Ruia, C-1603, Oberai Splendor, JVLR, Jogeshwari (East), Mumbai – 400 060 <b>PAN: AABPR2621P</b>	Vs.	Income Tax Officer- 20(2)(1), Piramal Chambers, Lalbaug, Parel, Mumbai - 400012
(Appellant)		(Respondent)

**Present for:**

Assessee by : Shri Ashok Sharma, A.R.  
Revenue by : Shri Rajendra Chandekar, D.R.

Date of Hearing : 03 . 11 . 2022  
Date of Pronouncement : 13 . 01 . 2023

**O R D E R**

**Per : Kuldip Singh, Judicial Member:**

The appellant, Ms. Meena A. Ruia (hereinafter referred to as ‘the assessee’) by filing the present appeal, sought to set aside the impugned order dated 27.09.2021 passed by the National Faceless Appeal Centre(NFAC) [Commissioner of Income Tax (Appeals), Delhi] (hereinafter referred to as CIT(A)) qua the assessment year 2010-11 on the grounds inter-alia that :-

*“1. On the facts & in the circumstances of the case and in law, the learned CIT (Appeal) erred in confining the Reopening of Assessment.*

*2. On the facts & the circumstances of the case and in law, the learned CIT (Appeal) erred in confirming addition of Rs.508293/- u/s 68 of Income Tax Act, 1965*

*3. The Appellant craves, leave to add, alter or modify any ground of appeal before or at the time of hearing of appeal.”*

2. Briefly stated facts necessary for consideration and adjudication of the issues at hand are: assessee's return of income filed declaring total income at Rs.3,45,664/- was processed under section 143(1) of the Income Tax Act,1961 (for short 'the Act') and subsequently the case was reopened on the basis of information received from Directorate of Income Tax (Investigation) (DIT) (Inv.), Ahmedabad that assessee was involved in client code modification (CCM) through brokers JL Shah Securities Pvt. Ltd. The assessee was one of the beneficiaries who have taken losses of Rs.1,00,000/- and above. Then case was reopened after initiating proceedings under section 147/148 of the Act. The Assessing Officer (AO) noticed that the assessee has claimed total profit and loss from the activities in shares to the tune of (-) Rs.5,08,293/-. On failure of the assessee to prove the genuineness of the transactions the assessee was show caused by issuing notice under section 142(1) dated 20.12.2016 as to why the amount of Rs.5,08,293/- be not added under section 68 of the Act. The assessee filed reply. Declining the contentions raised by the assessee the AO proceeded to hold that "it is proved that CCM code has been misused by brokers/clients in order to evade tax by way of clandestine shifting of profits and loss rather than utilizing it as a facility provided by Securities and Exchange Board of India (SEBI) to correct genuine punching error and thereby made an addition of Rs.5,08,293/- for the year under assessment being unexplained cash credit and framed the assessment under section 143(3) read with section 147 of the Act at the total income of Rs.8,53,957/-.

3. The assessee carried the matter before the Ld. CIT(A) by way of filing appeal who has confirmed the addition by dismissing the appeal. Feeling aggrieved with the impugned order passed by the Ld. CIT(A) the assessee has come up before the Tribunal by way of filing present appeal.

4. I have heard the Ld. Authorised Representatives of the parties to the appeal, perused the orders passed by the Ld. Lower Revenue Authorities and documents available on record in the light of the facts and circumstances of the case and law applicable thereto.

5. Undisputedly, during the year under assessment the assessee entered into certain trades in shares and securities on NSE through its brokers. It is also not in dispute that the assessee has claimed loss of Rs.5,08,293/-, which the AO disallowed on the ground that the transaction was non genuine and has been manipulated by CCM.

6. Bare perusal of the impugned order passed by the Ld. CIT(A) confirming the order of AO qua the addition made by resorting to the non genuine CCM shows that the AO as well as the Ld. CIT(A) have extensively brought on record the modus operandi as to how the brokers and companies have been resorting to CCM by entering into non genuine transactions. However, no substantive evidence has been brought on record in the form of copy of accounts, brokers statement, which have also not been given to the assessee despite demand.

7. The AO recorded para 5.1 giving detail as extracted from the information received from DIT(Inv.), which information was collected on the basis of statement of some brokers but the said statement has not seen the light of the day nor the same has been supplied to the assessee nor any action has been taken by the Revenue against the said brokers nor any detail as to why any such action was not taken against the brokers has been brought on record.

8. Merely on the basis of report of DIT(Inv.) and by explaining the modus operandi as to how the profits and losses are booked by the companies as well as brokers by entering into non genuine transactions by resorting to CCM, any addition made to the income of the assessee is not sustainable in the eyes of law.

9. When the assessee during the course of assessment proceedings has not been provided with the details of "Client Code Modifications" i.e. from which code to which code transaction has been shifted, the details of the scrips in which client code has been modified, the details of the parties involved in modification, one cannot come to the definite conclusion that CCM was done to evade tax.

10. The assessee has also brought on record ledger copy of the brokers showing complete details of his transactions at the NSE. Moreover, a person transacting through a registered broker cannot be said to have any access to the terminal of the registered broker whether the exchange might be a stock exchange or a commodity exchange and as such allegation of the Revenue Authority that the assessee has modified the client code are ex facie not sustainable.

The assessment order passed by the AO as well as impugned order passed by the Ld. CIT(A) are on the basis of surmises, hence not sustainable in the eyes of law.

11. Hon'ble Bombay High Court in case of Pr. Commissioner of Income Tax vs. Pat Commodity Services Pvt. Ltd. in ITA Nos.1257 of 2016 & 1383 of 2016 decided on 15<sup>th</sup> January 2019 the identical issue in favour of the assessee by returning following findings:

“3. *The respondent assessee is a private limited company engaged in the business of providing commodity services to its clients. In the return of income filed by the assessee for the Assessment Year 2006-07, the Assessing Officer noticed that there were instances of client code modifications. The Assessing Officer believed that the same was done to indulge in circular trading to pass on profits or losses to the clients of the assessee company as per requirements. After hearing the assessee, the Assessing Officer made additions in the income of the assessee on such basis. The issue eventually reached to the Tribunal. The Tribunal did accept the Revenue's theory of misuse of clients code modification facility. However, the Tribunal accepted the assessee's explanation and discarded the Revenue's theory that profit of the assessee's company were passed on to the clients. It was also noticed that the Revenue has not contended that the client code modification facility is often misused by the assessee to pass on losses to the investors, who may have sizable profit arising out of commodity trading against which such losses can be set off. The Revenue normally points out number of such instances of client code modifications as well as nature of errors in filling of the client code. At any rate, what can be taxed in the hands of the present assessee is the income escaping assessment. Even if the Revenue's theory of the assessee having enabled the clients to claim contrived losses, the Revenue had to bring on record some evidence of the income earned by the assessee in the process, be it in the nature of commission or otherwise. In the present case, the Assessing Officer has added the entire amount of doubtful transactions by way of assessee's additional income, which is wholly impermissible. We do not know the fate of the individual investors in whose cases, the Revenue could have questioned the artificial losses. Be that as it may, we do not think entertaining these appeals would serve any useful purpose.*”

12. In these circumstances, I am of the considered view that when investigation has not been carried out as to what was the

client code of the assessee, how he has booked the loss then how he has been fastened with the liability of making addition of the loss claimed by him. Moreover, it is case of the assessee that if any such client code has been changed it must be due to mistake committed by the brokers and not the assessee. Even statement of the brokers has not been supplied to the assessee. Moreover, when undisputedly all the transactions have been carried out by the assessee during the year under consideration through his brokers duly detailed with National Stock Exchange (NSE) the complete investigation was required to be done by the AO. However, the AO except explaining the modus operandi as to how the profit and loss are booked by the company in connivance with brokers by way of CCM no substantive evidence has been brought on record. In these circumstances addition made by the AO and confirmed by the Ld. CIT(A) is not sustainable in the eyes of law, hence ordered to be deleted.

13. Resultantly, appeal filed by the assessee is hereby allowed.

**Order pronounced in the open court on 13.01.2023.**

**Sd/-  
(KULDIP SINGH)  
JUDICIAL MEMBER**

Mumbai, Dated: 13.01.2023.

\* Kishore, Sr. P.S.

Copy to: The Appellant  
The Respondent  
The CIT, Concerned, Mumbai  
The CIT (A) Concerned, Mumbai  
The DR Concerned Bench

//True Copy//

By Order

Dy/Asstt. Registrar, ITAT, Mumbai.