

**IN THE INCOME TAX APPELLATE TRIBUNAL, ‘SMC’ BENCH  
MUMBAI**

**BEFORE: SHRI KULDIP SINGH, JUDICIAL MEMBER**

**ITA No.612/Mum/2023  
(Assessment Years :2010-11)**

Parmatma Investments Private Limited, Flat No. 4, 4 <sup>th</sup> Floor, West Hill Building, 27 Nepean Sea Road, Near Bank of Baroda, Mumbai-400026.	Vs.	ITO-3(2)(4), Mumbai Room No. 1628, 16 <sup>th</sup> Floor, Air India BLDG, Nariman Point, Mumbai.
<b>PAN/GIR No. AAACP152B</b>		
<b>(Appellant)</b>	..	<b>(Respondent)</b>

Assessee represented by	Shri Rajesh Shah
Revenue represented by	Shri Joginder Singh, Sr. AR
Date of Hearing	08/05/2023
Date of Pronouncement	08/05/2023

**ORDER**

**PER KULDIP SINGH (J.M):**

The Appellant, Parmatma Investments Private Limited (hereinafter referred to as the ‘assessee’) by filing the present appeal, sought to set aside the impugned order dated 08.02.2023 passed by the National Faceless Appeal Centre (NFAC), Delhi [hereinafter referred to as the ‘CIT(A)’] qua the assessment order for Assessment year 2010-11 on the ground inter-alia that:-

*“ 1. On the facts and circumstances of the case, CIT(A) erred passing an ex-parte order on 08.02.2023 though the appellant had asked an adjournment up to 09.02.2023. The appellant was not provided an opportunity to represent the case. The order is required to be set aside to the assessing officer.*

*2. On the facts and circumstances of the case and in law, the AO did not provide any material of the basis of which AO came to conclusion that there is a client code modification of Rs.31.25,085.*

*The Appellant has no information in respect of the code modification alleged to be carried out. There are no such entry in the account of said M/s Integrated Masters Securities Pvt. Ltd.*

*3 On the facts and circumstances of the case and in law, the AO as well as NFAC (CIT(A)) did not provide information in respect of client code modification of Rs.31,25,085 to rebut the allegation made in the order and hence the case required to be set aside.*

*The appellant be provided with full details in respect of alleged so called code modification entries. The appellant states that it is not beneficiary to any such transaction.*

*4. On the facts and circumstances of the case and in law, the reopening of the assessment is bad in law.*

*5. On the facts and circumstances of the case and in law, the addition made by the AO in respect of NSE future loss amounting to Rs. 31,25,085 is bad in law and not based on facts.*

*6. On the facts and circumstances of the case and in law, the AO wrongly added commission of Rs.62,502 though no such amount was paid nor any queries were raised during the assessment proceedings. The CIT (A) erred in not considering the same by passing an ex-parte order.*

*7 On the facts and circumstances of the case and in law, the AO wrongly disallowed an amount of Rs.36,288 under S 14(A) of the Act and CIT(A) erred in not considering the fact that the provisions are not applicable. The CIT (A) erred in not considering the same and passing the an ex-parte order.*

*8. The appellant craves leave to add, amend, modify, cancel and or substitute any of the grounds of the appeal.”*

2. Briefly stated, facts necessary for consideration and adjudication of the issues at hand are : The assessee company is into the business of dealing in shares and securities. During the year under consideration, the assessee filed its return of income declaring loss of Rs. 23,42,446/-, which was processed under section 143(1) of the Income Tax Act, 1961 (in short, “the Act”). Subsequently on receipt of the information from DIT ( I &C) , Mumbai that fictitious profit and losses is created by some broker by misusing the client code modification (CCM) in F & O segment on National Stock Exchange (NSE) during March, 2010 and the assessee is one such beneficiary, assessment was reopened by initiating the proceedings under section 147/ 148 of the Act. From the profit and loss account the AO noticed that the assessee has shown loss from NSE future trading amounting to Rs. 51,15,300/- from commodity trading of Rs. 42,463/- and speculation loss of Rs. 9,78,071/-. Declining the contention raised by the assessee AO proceeded to make addition of Rs. 62,502/- as unexplained expenditure of the assessee by way of commission to the broker in taking fictitious loss to the tune of Rs. 31,25,085/-. The AO also made addition of Rs. 36,288/- by way of disallowance under section 14A of the Act and thereby framed assessment under section 143 r.w.s. 147 of the Act.

3. Assessee carried the matter before the Ld. CIT(A) by way of filing appeal who has confirmed the disallowance by dismissing the appeal filed

by the assessee. Feeling aggrieved with the impugned order passed by the Ld. CIT(A), assessee has come up before the Tribunal by way of filing the present appeal.

4. I have heard the Ld. Authorised representative of the parties to the appeal, perused the order passed Ld. Lower Revenue Authorities and material available on record in the light of the case law applicable.

5. At the very outset, it is brought to the notice of the Bench by the Ld. AR for the assessee that impugned order is passed by Ld. CIT(A) at back of the assessee without providing opportunity of being heard and without deciding the case on merits, which fact is not controverted by the Ld. DR for the Revenue.

6. On perusal of the impugned order passed by Ld. CIT(A) particularly para-2 shows that two opportunities were stated to have been given to the assessee, but he has not given any response and thereby proceeded to dismiss the appeal filed by the assessee for non-prosecution.

7. We are of the considered view that apparently assessee has not been provided with adequate opportunity of being heard as it is a fact on record that the assessee had moved an application for adjournment with the Ld. CIT(A), as is evident from e-proceedings response acknowledgement, available at page 14 of the paper book wherein it is mentioned by the assessee that CA is out of station to be back by on 08.02.2023 so we would request you for adjournment of 15 days. Strangely enough no

reference of this adjournment application moved by the assessee has been given in the impugned order by Ld. CIT(A). To impart the justice and to decide the issue once for all and to stop multiplicity of proceedings the assessee is entitled for adequate opportunity of being heard. Consequently order passed by Ld. CIT(A) is hereby set aside to be decided afresh by him by providing opportunity of being heard to the assessee.

9. Resultantly, appeal filed by the assessee is allowed for statistical purposes.

Order pronounced in the open court on 08/05/2023.

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

Mumbai; Dated 08/05/2023  
Santosh, Sr. PS

**Copy of the Order forwarded to :**

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

BY ORDER,

//True Copy//

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

		Date	Initial	
1.	Draft dictated on	09/05/2022		Sr.PS
2.	Draft placed before author	10/05/2023		Sr.PS

3.	Draft proposed & placed before the second member			JM/AM
4.	Draft discussed/approved by Second Member.			JM/AM
5.	Approved Draft comes to the Sr.PS/PS			Sr.PS/PS
6.	Kept for pronouncement on			Sr.PS
7.	File sent to the Bench Clerk			Sr.PS
8.	Date on which file goes to the AR			
9.	Date on which file goes to the Head Clerk.			
10.	Date of dispatch of Order.			
11.	Dictation Pad is enclosed	Yes		