

अपीलीय अधिकरण, 'बी' न्यायपीठ, चेन्नई
IN THE INCOME TAX APPELLATE TRIBUNAL
'B' BENCH, CHENNAI

श्रीमहावीर सिंह, उपाध्यक्ष एवं श्री मनोज कुमार अग्रवाल, लेखा सदस्य के समक्ष
BEFORE SHRI MAHAVIR SINGH, VICE PRESIDENT AND
SHRI MANOJ KUMAR AGGARWAL, ACCOUNTANT MEMBER

आयकर अपील सं./ITA No.: 297/CHNY/2023

निर्धारण वर्ष /Assessment Year: 2010-11

Shri Jagadeesan
Chandramouli,
A5, No.43, Srivatsam
Thirumalai Pillai Road,
T.Nagar,
Chennai – 600 017.

The Income Tax Officer,
v. Corporate Ward 5(1),
Chennai.

PAN: ADHPC 9237F

(अपीलार्थी/Appellant)

(प्रत्यर्थी/Respondent)

अपीलार्थी की ओर से/Appellant by
प्रत्यर्थी की ओर से/Respondent by

: None
: Shri D. Hema Bhupal, JCIT

सुनवाई की तारीख/Date of Hearing : 26.06.2023
घोषणा की तारीख/Date of Pronouncement : 26.06.2023

आदेश /ORDER

PER MAHAVIR SINGH, VICE PRESIDENT:

This appeal filed by the assessee is directed against the order of the Commissioner of Income Tax (Appeals), National Faceless Appeal Centre (NFAC), Delhi in Appeal No.CIT(A), Chennai-2/10399/2016-17 dated 13.01.2023. The assessment was framed by the Income Tax Officer, Non-Corporate Ward-1(5), Chennai for

the assessment year 2010-11 u/s.143(3) r.w.s. 147 of the Income Tax Act, 1961 (hereinafter the 'Act') vide order dated 31.03.2016.

2. The only issue in this appeal of assessee is as regards to the order of CIT(A) confirming the action of the AO in not allowing business loss claimed by assessee on Client Code Modification and disallowed by holding the same as fictitious loss of Rs.69,01,036/-.

3. At the outset, it is noticed that the AO noted that a complaint was received by the Directorate that fictitious profit and/or losses were created by some brokers by misusing the Client Code Modification facility in F & O segment on NSE during March, 2010. Accordingly, the Directorate of Income-tax, Mumbai has sent a list of client code modification beneficiaries, which includes the assessee Shri Chandramouli. In the list sent through a CD the name of the assessee Shri J. V. Chandramouli, comes under both categories viz., 'Original Client name' (10 occasions) and 'Modified Client Name' (5 occasions) and the broker's name is M/s. Twenty First Century Shares & Securities Ltd. In total, there are 15 occasions where the client names and codes were modified. The AO noted that due to the above said client code modifications the assessee Shri J.V. Chandramouli had made a fictitious loss of Rs.69,01,036/- during

the financial year 2009-10 relevant to assessment year 2010-11. In the F & O segment, the total number of trade modified in the name of the assessee was 2146, the quantity of shares modified was Rs.26,80,228 and the value of trade modified was Rs.87,02,64,801. The resultant loss due to client code modification was Rs.69,01,036/-. When this was pointed out to the assessee although the assessee's counsel Shri R. Viswanathan appeared but could not furnish any explanation or any evidence with regard to the above loss claimed. As the assessee has not furnished any explanation with regard to the client code modification nor file any evidence to establish the genuineness of loss, the AO treated this loss as fictitious loss and disallowed a sum of Rs.69,01,036/-. Aggrieved, assessee preferred appeal before CIT(A). The CIT(A) fixed the appeal on four occasions as under:-

Sl.No.	Date of issue of hearing notice	Date of hearing fixed	Date of response / Remarks	Status of notice issued on Income-tax Portal (ITBA)
1	26/12/2020	31/12/2020	No response	Delivered to moulijc@yahoo.com
2	04/03/2021	19/03/2021	No response	
3	09/12/2022	16/12/2022	No response	
4	06/01/2023	12/01/2023	No response	

Since there was no response, the CIT(A) decided ex-parte just simpliciter confirmed the action of the AO by following the decision of Hon'ble Punjab & Haryana High Court in the case of Rakesh

Gupta vs. CIT, [2018] 93 taxmann.com 271. Aggrieved, assessee is in appeal before the Tribunal.

4. Now before us, assessee in his grounds of appeal has claimed as under:-

“Further during the period of notice sent by the Ld CIT(A) Faceless to for the Appeal proceedings I could not reply to the notice, as from 2016 to 2021 I was incarcerated hence could not file particulars in Appeal hearing, the fundamental issue loss on account of client code modification was not claimed as Return filed belatedly.

5. We noticed that the order of CIT(A) is ex-parte for the reason that the appeal was fixed during Covid-19 period except on two occasions i.e., 09.12.2022 & 06.01.2023. We noticed that although the assessee has not availed opportunity but in any case, in the interest of justice, we should allow one more final opportunity to the assessee to furnish explanation with regard to the client code modification or file evidence to establish the genuineness of loss. Hence, in term of the above, we restore this matter back to the file of the AO, who will allow reasonable opportunity of being heard to the assessee and assessee will also file the complete detail in regard to share transactions and reason for client code modification. The AO will consider those reasons and will decide the issue on merits and as per law. In term of the above, we restore this issue back to

the file of the AO and the appeal of the assessee is allowed for statistical purposes.

6. In the result, the appeal filed by the assessee is allowed for statistical purposes.

Order pronounced in the open court on 26th June, 2023 at Chennai.

Sd/-

(मनोज कुमार अग्रवाल)

(MANOJ KUMAR AGGARWAL)

लेखा सदस्य/ACCOUNTANT MEMBER

चेन्नई/Chennai,

दिनांक/Dated, the 26th June, 2023

Sd/-

(महावीर सिंह)

(MAHAVIR SINGH)

उपाध्यक्ष /VICE PRESIDENT

RSR

आदेश की प्रतिलिपि अग्रेषित/Copy to:

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|-------------------------|--------------------------|---------------------|
| 1. अपीलार्थी/Appellant | 2. प्रत्यर्थी/Respondent | 3. आयकर आयुक्त /CIT |
| 4. विभागीय प्रतिनिधि/DR | 5. गार्ड फाईल/GF. | |