

IN THE INCOME TAX APPELLATE TRIBUNAL
PUNE BENCH "SMC", PUNE

BEFORE SHRI INTURI RAMA RAO, ACCOUNTANT MEMBER

आयकर अपील सं. / ITA Nos.399 & 400/PUN/2023
निर्धारण वर्ष / Assessment Years : 2009-10 & 2012-13

Dinesh Mulji Patel, Ground Floor, Ishwari Apartment, Bagmar Lane, Tilakwadi, Nashik- 422002. PAN : AIGPP8011N	Vs.	ITO, Ward-2(2), Nashik.
Appellant		Respondent

Assessee by : Shri Pramod Shingte
Revenue by : Shri Rajesh Gawali

Date of hearing : 19.06.2023
Date of pronouncement : 04.07.2023

आदेश / ORDER

PER INTURI RAMA RAO, AM:

These are the appeals filed by the assessee directed against the separate orders of the National Faceless Appeal Centre, Delhi ['NFAC'] dated 20.03.2023 and 08.03.2023 for the assessment years 2009-10 and 2012-13 respectively.

2. Since the identical facts and common issues are involved in both the above captioned appeals, we proceed to dispose of the same by this common order.

3. For the sake of convenience and clarity, the facts relevant to the appeal in ITA No.399/PUN/2023 for the assessment year 2009-10 are stated herein.

ITA No.399/PUN/2023, A.Y. 2009-10 :

4. Briefly, the facts of the case are that the appellant is an individual engaged in the business of dealing in land and trading in derivatives. The Return of Income for the assessment year 2009-10 was filed on 31.12.2009 disclosing total income of Rs.4,54,080/-. Against the said return of income, there was no scrutiny assessment. Subsequently, based on the information received from the office of the Pr.DIT (Investigation), Ahmedabad that the appellant is a beneficiary of fraudulent transactions known as “Client Code Modification”, the modus operandi of the said scheme was set out by the Assessing Officer vide para 3.1 of the assessment order. Based on this information, a notice u/s 148 of the Income Tax Act, 1961 (‘the Act’) was issued on 30.03.2016. In response to the said notice u/s 148, the appellant filed the return of income on 20.06.2016 declaring same income as declared in the original return of income. Against the said return of income, the assessment was

completed by the Income Tax Officer, Ward-2(2), Nashik ('the Assessing Officer') vide order dated 26.12.2016 passed u/s 143(3) r.w.s. 147 of the Act bringing tax of Rs.2,74,015/- as unexplained income.

5. Being aggrieved, an appeal was preferred before the NFAC contending that the very initiation of proceedings u/s 147/148 of the Act are bad in law. The Assessing Officer ought not to have made the addition without confronting the material relied upon by him. However, the NFAC taking note of the fact that the brokering firm, namely, Kantilal Chhaganlal Securities Pvt. Ltd. was levied penalty for indulging in the Client Code Modification, confirmed the addition.

6. Being aggrieved, the assessee is in appeal before this Tribunal in the present appeal.

7. The ld. AR submits that there was no reason to believe that the income chargeable to tax had escaped assessment in the absence of any link between the information obtained from the Pr.DIT (Investigation), Ahmedabad and escapement of its income to assessment. He further submitted that the Assessing Officer had not

confronted the information received from the Pr.DIT (Investigation), Ahmedabad. He finally submits that there was no information that the assessee is engaged in the business of indulging in Client Code Modification and there was also no transaction which are resulted in gain or loss of Rs.2,74,015/-. He also filed a statement of transactions, as undertaken by the assessee with said brokering firm in order to show that none of the transactions resulted in loss or profit of Rs.2,74,015/-. In support of the said contention, he placed reliance on the decision of the Hon'ble Bombay High Court in the case of Coronation Agro Industries Ltd. vs. DCIT, 82 taxmann.com 75 (Bom.).

8. On the other hand, ld. Sr. DR placed reliance on the orders of the lower authorities.

9. I heard the rival submissions and perused the material on record. The Assessing Officer reopened the assessment merely on the ground that the appellant had benefited from the Client Code Modification by which profits of certain amount were shifted out by the assessee resulting in deduction of assessee's taxable income. Even before me, the Department could not prove from the material

received from Pr.DIT (Investigation), Ahmedabad that the assessee is the beneficiary of such Client Code Modification. Thus, there is no live link between the information received by the Assessing Officer from the Pr.DIT (Investigation), Ahmedabad and the belief found by the Assessing Officer that income had escaped assessment. The Jurisdictional High Court in the case of Coronation Agro Industries Ltd. (supra) held that Client Code Modification done by the assessee's broker could not be lead to believe that there had been an escapement of assessment and, accordingly, quashed the reassessment proceedings. The ratio of the Jurisdictional High Court in the case of Coronation Agro Industries Ltd. (supra) is squarely applicable to the facts of the present case. Accordingly, I am of the considered opinion that the re-assessment proceedings initiated u/s 147 is bad in law. Therefore, the assessment made by the Assessing Officer becomes nullity in law. Thus, the grounds of appeal filed by the assessee stand allowed.

10. In the result, the appeal filed by the assessee in ITA No.399/PUN/2023 for A.Y. 2009-10 stands allowed.

ITA No.400/PUN/2023, A.Y. 2012-13 :

11. Since the facts and issues involved in both the above captioned appeals of the assessee are identical, therefore, our decision in ITA No.399/PUN/2023 for A.Y. 2009-10 shall apply *mutatis mutandis* to the appeal of the assessee in ITA No.400/PUN/2023 for A.Y. 2012-13 respectively. Accordingly, the appeal of the assessee in ITA No.400/PUN/2023 for A.Y. 2012-13 stands allowed.

12. To sum up, both the above captioned appeals of the assessee stands allowed.

Order pronounced on this 04th day of July, 2023.

Sd/-
(INTURI RAMA RAO)
ACCOUNTANT MEMBER

पुणे / Pune; दिनांक / Dated : 04th July, 2023.

Sujeet

आदेश की प्रतिलिपि अग्रेषित / Copy of the Order forwarded to :

1. अपीलार्थी / The Appellant.
2. प्रत्यर्थी / The Respondent.
3. The Pr. CIT concerned.
4. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, "SMC" बेंच, पुणे / DR, ITAT, "SMC" Bench, Pune.
5. गार्ड फ़ाइल / Guard File.

आदेशानुसार / BY ORDER,

// True Copy //

Senior Private Secretary
आयकर अपीलीय अधिकरण, पुणे / ITAT, Pune.