

**IN THE INCOME TAX APPELLATE TRIBUNAL “A” BENCH KOLKATA**

**BEFORE SHRI RAJPAL YADAV, VICE PRESIDENT  
AND SHRI GIRISH AGRAWAL, ACCOUNTANT MEMBER**

**ITA No.477/Kol/2023  
Assessment Year: 2010-11**

Nikhil Parekh 3A, Upper Wood Street, Theatre Road, Kolkata- 700017. (PaN: AKJPP5964B)	Vs.	Assistant Commissioner of Income-tax, Circle-32, Kolkata.
<b>(Appellant)</b>		<b>(Respondent)</b>

**Present for:**

Appellant by : Shri Avijit Chaklader, Accountant (office staff)  
Respondent by : Shri B. K. Singh, JCIT, Sr. DR

Date of Hearing : 25.07.2023  
Date of Pronouncement : 11.10.2023

**ORDER**

**PER GIRISH AGRAWAL, ACCOUNTANT MEMBER:**

This appeal filed by the assessee is against the order of Ld. CIT(A), National Faceless Appeal Centre (NFAC), Delhi vide order No. ITBA/NFAC/S/250/2022-23/1050864519(1) dated 16.03.2023 passed against assessment order by ITO, Ward-33(1), Kolkata u/s. 143(3) of the Income-tax Act, 1961 (hereinafter referred to as the “Act”), dated 04.03.2013 for AY 2010-11.

2. Assessee has raised the following grounds of appeal:

*“1. The Ld. CIT(Appeals) was wrong and unjustified in upholding the addition for Rs.3,73,132/- made by the A.O. for alleged bogus loss without considering the point raised by the appellant in his submission that the A.O. did not give details of loss to the appellant. He failed to appreciate that no such loss of Rs.3,73,132/- was incurred by the appellant, The addition was made on the*

*basis of misinformation and without any corroborative material. Therefore addition is liable to be deleted.*

*2. For that Ld. CIT (Appeals) erred in not disposing the Ground No.1 taken by the appellant against initiation of reopening proceeding U/s.147. He did not discuss at all this issue in his decision. Therefore, the order of the Ld. CIT (Appeals) is wrong, unjustified and bad-in-law.*

*3. The appellate order passed by the Ld. CIT (Appeals) without giving proper hearing and opportunity of being heard is wrong, unjustified, arbitrary against the principle of natural justice hence bad-in-law.*

*4. Without prejudice - FOR that the initiation of reopening proceeding by alleging that to avoid the imposition of tax appellant has shown bogus loss is wrong and without any basis because the appellant filed Income Tax Return showing loss of Rs. (-) 1,19,46,682/- and original assessment was made at loss of Rs.1,13,08,468/-. Thereafter even after addition of Rs.3,73,132/- in order u/s.147/143(3) the income is loss. There could not be any provocation for the appellant to indulge in bogus transaction. Therefore there was no cause for showing bogus loss.”*

3. Brief facts of the case are that assessee filed his return of income, reporting loss of Rs.1,19,46,682/-. Assessment was completed u/s.143(3) on 04.03.2013 at a total income of (-) Rs.1,13,08,468/-. Thereafter a notice u/s.148 dtd.28.03.2016 was issued, reopening the assessment u/s. 147. The assessee objected to initiation of proceedings u/s. 147 and requested for supply of reasons recorded for issue of notice u/s.148. Ld. AO supplied the same on 15.06.2016 whereupon the assessee filed his objection on 08.07.2016. Assessee filed his explanation on 13.06.2016 and 13.12.2016 in response to notices u/s.142(1). Ld. AO completed the assessment by making addition of Rs.3,73,132/-. Aggrieved, assessee went in appeal before the Ld. CIT(A) who sustained the addition made by the Ld. AO. Aggrieved, assessee is in appeal before the Tribunal.

4. Before us, Ld. Counsel submitted that Ld. A.O. has made the addition of Rs.3,73,132/- without confronting the assessee the details of transactions in which the said loss was incurred and how it was incurred. Assessee has all along denied having incurred any such loss as alleged by way of client code modification. Assessee had requested

the Ld. A.O. in his letter dtd.13.06.2016 to furnish full details of the transaction in which the alleged loss was incurred. According to the Ld. Counsel, no such details of transactions were furnished to the assessee so as to enable him to file a detailed and proper reply in the matter. However, assessee from his side furnished all the details of share transaction done by him during the F.Y.2009-10 (Asst. Yr. 2010-11). Addition of Rs.3,73,132/- was made by merely referring to the report of DIT (Inv) which was a general report and did not have any specific transaction done by the assessee. Ld. Counsel asserted that since no loss as alleged by Ld. A.O. was incurred by the assessee addition of Rs.3,73,132/- on account of such presumptive figure is wrong, illegal and requires to be deleted. According to him, assessee also requested for furnishing details of specific transactions which led to initiation of proceedings u/s.147 or to drop the proceedings u/s. 147. However, no such details of the alleged transaction was furnished by the Ld. AO.

4.1. Assessee deny and dispute that there is or could be any reason whatsoever to believe that any income chargeable to tax for the Asst. Yr.2010-11 has escaped assessment or that there was any omission or failure on the part of the assessee to disclose fully or truly any material fact necessary for his assessment. The alleged belief does not exist and is a mere pretence. Ld. Counsel stated that an assessment duly made u/s. 143(3) of the Act cannot be reopened under section 147 merely upon a vague report and/or the basis of assumptions, presumptions, surmises and conjectures. Ld. AO however, proceeded to continue the assessment without furnishing details of information to the assessee regarding transactions which resulted in a loss of Rs.3,73,132/-. According to the Ld. Counsel, it appears that such proceedings u/s.147 were initiated merely on the basis of incomplete/general information from the office of DIT (Inv),

Ahmedabad. Neither details of the alleged transaction were furnished to the assessee nor copy of information received from DIT (Inv), Ahmedabad was confronted to the assessee. He strongly submitted that information received by the Ld. AO did not have any basis or evidence to suggest the bogus loss was taken by the assessee. In fact the assessee has been denying right from the beginning that no such loss as alleged in the reasons was incurred by him and therefore question of reopening of assessment for such presumptive loss cannot be done.

5. Per contra, Ld. Sr. DR placed reliance on the orders of the authorities below.

6. We have heard the rival contentions and perused the material available on record. We have carefully gone through the impugned assessment order as well as the decision arrived at by the Ld. CIT(A). Evidently, it is noted that Ld. AO has nowhere recorded the details of amount of loss of Rs.3,73,132/- which has been alleged as bogus loss claimed by the assessee by way of client code modification. There is nothing discernible either from the order of Ld. AO or from the order of Ld. CIT(A) as to which client code, by which broker, on which stock exchange was undertaken, in respect of which scrip or derivative so as to allege that assessee has claimed this bogus loss. Further, we note that assessee had originally filed his return with a loss of Rs.1,19,46,682/- and was assessed u/s. 143(3) at a loss of Rs.1,13,08,468/- which was allowed to be carried forward for set off in subsequent years. Addition made by the Ld. AO by alleging the claim of bogus loss by the assessee of Rs.3,73,132/- still leads to have the loss scenario in the hands of the assessee.

6.1. The observations and findings arrived at by Ld. CIT(A) are also general and vague in nature whereby it is stated that "*as per AO,*

*investigating authorities has prepared the report on the basis of data received from SEBI and after considering the statement of entry operator who managed the whole affairs and provided entries in the form of bogus loss by using client code modification as a tool for booking loss in share transaction. The assessee also failed to furnish all relevant details along with documentary evidences. In my considered opinion, AO is right in this observation. The information about client code modification data comes after detailed investigation. Moreover, the assessee has not proved how all the security transactions entered by him can be considered genuine or beyond doubt. Hence, addition of Rs.3,73,132/- made by AO for bogus loss is upheld.”*

7. Assessee has claimed that he furnished all the details of share transactions done by him. There was no such loss transaction which was executed by him as alleged by the Ld. AO. This contention of the assessee has not been controverted by the Ld. AO nor by the Ld. CIT(A) by placing on record any specific material or details pertaining to this loss of Rs.3,73,132/-. In this respect, ld. AO has made a very generic statement that assessee is one of the beneficiary of the client code modification done during the year.

7.1. Ld. AO has also alleged that in order to negate the income, assessee has shown bogus loss to hide and conceal the income so as to avoid imposition of tax thereon. We fail to understand this observation of the Ld. AO when the assessee is already in loss and by booking such alleged bogus loss how would he negate the income to conceal it for avoiding imposition of tax thereon.

8. Considering the overall factual matrix and the general and casual approach adopted by the authorities below, we find favour with the submissions made by the Ld. Counsel, to delete the addition so

made amounting to Rs.3,73,132/-. Accordingly, grounds taken by the assessee in this respect are allowed.

9. In the result, appeal of the assessee is allowed.

Order is pronounced in the open court on 11th October, 2023.

Sd/-  
(Rajpal Yadav)  
Vice President

Sd/-  
(Girish Agrawal)  
Accountant Member

Date:11<sup>th</sup> October, 2023

JD, Sr. P.S.

Copy to:

1. The Appellant:
  2. The Respondent:
  3. CIT(A), NFAC, Delhi
  4. CIT,
  5. DR, ITAT, Kolkata Bench, Kolkata
- //True Copy//

By Order

Assistant Registrar  
ITAT, Kolkata Benches, Kolkata