

**IN THE INCOME TAX APPELLATE TRIBUNAL
MUMBAI BENCH "SMC", MUMBAI**

BEFORE SHRI.NARENDER KUMAR CHOUDHRY (JUDICIAL MEMBER)

I.T.A. No.2238/Mum/2023
(Assessment year : 2009-10)Mrs.Rajani S Iyer
14/222, Bhaskar Bhavan, Sri
Balchandra Road, Matunga,
Mumbai-400 019**PAN : AAOPI9178D**
APPELLANTvs Income Tax Officer-20(3)(2)
Aayakar Bhavan,
2nd Floor, M.K. Road,
Mumbai-400 020**RESPONDENT**Present for the Assessee
Present for the DepartmentShri Haridas Bhat
Ms. Smitha V NairDate of hearing 05/10/2023
Date of pronouncement 23/11/2023**ORDER****Per N.K. Choudhry (JM):**

This appeal has been preferred by the Assessee against the order dated 25/04/2023 impugned herein passed by the National Faceless Appeal Centre (NFAC) Delhi / Ld. Commissioner of Income Tax (Appeal) [in short, Ld. Commissioner] under section 250 of the Income-tax Act, 1961 (in short, the Act) for the A.Y.2009-10.

2. The brief facts of the case are that the Assessee being an individual, declared its loss of Rs.7,46,724/- by filling her return of income on dated 24/09/2009 which was processed under section 143(1) of the Act. Subsequently, on the information received from the office of the Pr. Director of Income-tax (Inv.) Ahmedabad vide letter No.PDIT(Inv)/AHD/CCM/Dissemination/15-16 dated 08/03/2016 to the effect that the Assessee is one of the beneficiaries on account of Client Code Modification at Rs.1,73,75,445/- for F.Y. 2008-09, the case of the Assessee was reopened u/s 147 after recording reasons for reopening and notice under section 148 was issued. Consequently the Assessee was asked to furnish certain details which the Assessee explained as below:-

"Details of sham transactions in which code modification has been done is available only with the broker/BSE and the report of the same can be called from them as assessee having no record of the same.

With reference to loss of Rs. 1,73,75,445/-, through changes in client code modification we would like to state that we have executed all the transactions through broker and it is not duty of client to see what changes are done by broker in system of stock exchange as client have no access to system. All the entries in our client code were made as per the contracts and bills of our brokers and our client has no knowledge of the changes made and also our client had neither made payment nor received payments for the trade from the broker. The transactions mentioned by your goodself, were neither mandated by our client nor the same has been informed to us by the broker, accordingly no payments or receipts were made by us or made to us. Our client is not in a position to understand the said transactions, never done by his

consent and hence no question of making addition to our clients income arises. "

2.1 The AO in order to verify the transactions, also issued a notice under section 133(6) of the Act to the broker, M/s 21st Century Shares & Securities Ltd, somehow the same was returned unserved by the postal authority. The Assessing Officer after considering the facts and circumstances of the case, observed that the Assessee's AR filed a letter dated 01/12/2016 wherein it was stated that as per the data provided, there is a profit of Rs.35,65,474/- as per client code modification. The Assessing Officer, therefore, ascertained the modus operandi adopted by the brokers indulging in "Client Code Modification" methodology wherein the loss / profit from vacuum. To put it differently, he observed, this is not an existing loss / profit but created loss / profit. The Assessing Officer also observed that the client code modification facility as approved by SEBI and provided by the Exchanges to brokers is meant to rectify genuine mistakes of punching of orders of a particular trade given by a particular client in its particular account maintained with the broker. In this facility the broker can change the client code of a particular trade and transfer the trade from one account to another account during the trading hours and time permitted by the Stock Exchange. After the trading hours, the modification of client code is made by submitting to the Stock Exchange to modify the client code in the exchange data. The Stock Exchange then records this data as client code modification data. Many brokers misused this facility of CCM for creating artificial losses/profits and providing such fictitious profits/losses to various clients by charging some commission. An expert opinion was obtained from NSE

to indicate the existence of genuine and non-genuine client code Modification. NSE has broadly distinguished the genuine and non-genuine CCM as under;

Genuine client code modification

“As per the NSE any client code modification would constitute -as genuine client code modification in which the following errors/mistakes are rectified.

- a) *Error due to communication and for punching or typing such that the original client code/name and the modified client code/name are similar to each other.*
- b) *Modification within relatives (Relative for this purpose would mean "Relative" as defined under the Companies Act, 1956)*
- c) *Any similar genuine error:*

Non genuine client code modification

As per the NSE any client code modification to rectify the errors/mistakes other than mentioned above would constitute non genuine client code modification. The NSE also mentioned some most popular non genuine types of errors/mistakes which used for non-genuine client code modification. The non-genuine errors mentioned by the NSE are as under:

- a) *Percentage of modified traded value is significantly higher than the total traded value of any trading members/clients,*
- b) *Number of modified trades is significant to total number of trades of any trading members/clients.*
- c) *Profit/loss arising on account of all modifications by trading member/client is significant in comparison to the profit/loss in the trades where no modifications have been cameo out*
- d) *Profit/loss arising due to modification is significant*

- e) *Trades have been modified to unrelated parties.*
- j) *Both buy and sell leg of different trades have been modified to same client*
- g) *The same sets of clients are observed to be making profit/loss due to the modifications carried out.*
- h) *Total number of trade modifications increased before closing of the financial year.”*

4. The Assessing Officer ultimately added the amount of Rs.35,65,470/- to the total income / loss returned by the Assessee by observing that the DIT(I&CI) has carried out the enquiries with the brokers where they have admitted to giving of such fictitious loss / profit to the beneficiaries.

5. The Assessee being aggrieved with the assessment order preferred first against before the Ld. Commissioner, who dismissed the same against which further aggrieved, the Assessee is in appeal before this Tribunal and raised the following main ground of appeal:

“1. The Learned Assessing Officer while passing assessment order has added Rs.35,65,474/- based on information received from Pr. Director of Income Tax (Inv.) ignoring the fact that None of this transaction was related to assessee and books of accounts reflect true & correct position hence addition of Rs.35,65,474/- is completely unjustified.”

6. Heard the parties and perused the material available on record. It appears from the orders passed by the authorities below that the total value of the trade modified as observed by the Assessing Officer was of Rs.8,16,33,257/- which was carried out in the name of the Assessee, in which the Assessee has earned profit of Rs.35,65,474/- but the same was treated as un-explained income under section 68 of the Act and said profit of Rs.35,64,474/- as alleged, obtained by the Assessee through Client Code modification. The Assessee before the authorities below claimed that the Assessee has executed all the transactions through broker and it is not the duty of the client to see what changes are done by broker in system of Stock Exchange as the Assessee has no access to system. All the entries in the client code were made as per the contracts and bills of the brokers and the Assessee has no knowledge of the changes made and also had neither made payment nor received any payments for the trade from the broker. The Ld. Commissioner considered the claim of the Assessee; however, not found acceptable on the ground that the Assessee was fully aware that the client modification was being done in her case and the net profit obtained by her after following the modus operandi detailed in the order was totally bogus. In the analysis of the details of shares modified shows that the total number of shares transacted for obtaining these entries was for 4,48,345/- and the total value of the trade modified was Rs.8,16,39,257/- which clearly indicate that the Assessee was fully aware that the broker was indulging in client modification for her and now showing ignorance about the transaction is just an afterthought. Therefore, the decision of the Assessing Officer is right and legal, hence, no need for interference.

I have given thoughtful consideration the orders passed by the Authorities below and observe that in the commercial transaction(s), if carried out through broker or agent, generally, the Assessee / shareholder gives power to the broker/agent to make the transaction(s) on their behalf as the case may be. But the Assessee in this has claimed that she was not aware about the changes made by the broker in the client code modification and has neither made any payment nor received any payment for the trade from the broker, therefore, the situation necessitates to un-earth the reality by conducting deep verification of the factual aspects of this case. I observe that though the notice under section 133(6) of the Act was issued to the broker, M/s 21st Century Shares & Securities Ltd; however, the same was returned un-served by the postal authority. Therefore, the Assessing Officer should have given an opportunity to the Assessee to produce such broker and / or to file the relevant documents in order to verify the claim made by the Assessee to the effect that that all the entries in the client code were made as per the contracts and bills of client / brokers and also to the effect as to whether the Assessee has made any payment or received any payment for the trades from the broker. Hence, for the just decision of the case and for the ends of justice, I am inclined to remand the instant case to the file of the Assessing Officer for determination afresh specifically, the claim of the Assessee that all the entries in the client code were made as per the contracts and bills of brokers and Assessee has no knowledge of changes made and neither made any payment nor receive any payment for the trade form the broker. I clarify that the primary onus would be on the Assessee to substantiate its claim. Accordingly, the case is remanded to the file of the Assessing Officer.

7. In the result, the appeal of the Assessee is allowed for statistical purpose in the aforesaid terms.

Order pronounced in the open Court on 23/11/2023.

Sd/-

**(NARENDER KUMAR CHOUDHRY)
JUDICIAL MEMBER**

Pavanan

प्रतिलिपि अग्रेषित Copy of the Order forwarded to :

1. अपीलार्थी/The Appellant ,
2. प्रतिवादी/ The Respondent.
3. आयकर आयुक्त CIT
4. विभागीय प्रतिनिधि, आय.अपी.अधि., मुंबई/DR, ITAT,
Mumbai
6. गार्ड फाइल/Guard file.

BY ORDER,

//True Copy//

Asstt. Registrar / Senior Private
Secretary, **ITAT, Mumbai**