

आयकर अपीलीय अधिकरण, कोलकाता पीठ 'सी', कोलकाता

IN THE INCOME TAX APPELLATE TRIBUNAL “(C)” BENCH: KOLKATA
श्री राजपाल यादव, उपाध्यक्ष(कोलकाता क्षेत्र) एवं श्री राजेश कुमार, लेखा सदस्य के समक्ष
[Before Shri Rajpal Yadav, Vice-President (KZ) & Shri Rajesh Kumar, Accountant Member]

I.T.A. No. 1017/Kol/2023
Assessment Year : 2009-10

Swastik Securities & Finance Ltd. (PAN: AACCS 7515 B)	Vs.	DCIT, CC-1(2), Kolkata
Appellant / (अपीलार्थी)		Respondent / (प्रत्यर्थी)

Date of Hearing / सुनवाई की तिथि	28.11.2023
Date of Pronouncement/ आदेश उद्घोषणा की तिथि	21.12.2023
For the Appellant/ निर्धारिती की ओर से	Shri Manoj Kataruka, A.R
For the Respondent/ राजस्व की ओर से	Shri Arup Chatterjee, Addl. CIT

ORDER / आदेश

Per Rajesh Kumar, AM:

This is the appeal preferred by the assessee against the order of the Ld. Commissioner of Income Tax (Appeals)- 20, Kolkata [hereinafter referred to as 'Ld. CIT(A)'] dated 05.09.2023 for the assessment year 2009-10.

2. The only issue praised by the Counsel of the assessee is against the confirmation of addition of Rs. 56,67,177/- by Ld. CIT(A) as made by the AO on account of shifting of income by client code modification.

3. Facts in brief are that the assessee filed return of income on 30.09.2009 declaring total income of Rs. 72,210/- which was processed u/s 143(1) of the Act on

30.10.2010. Thereafter the case of the assessee was reopened u/s 147 of the Act by issuing notice u/s 148 of the Act on 30.03.2016 after AO received information from office of DDIT(Inv) Wing-1(3), Ahmedabad that the assessee company has indulged in manipulation of its taxable income to reduce the tax liabilities by use of client code modification amounting to Rs. 56,67,177/- in F & O segment in trades made with M/s Indianivesh Securities Pvt. Ltd. The AO on the basis of Investigation Wing Report came to the conclusion that the transactions made by the registered broker were not genuine as the said brokers has to face penal action from market regulator i.e SEBI for indulging in such malpractices vide order dated 29.05.2014. The AO also noted that in February, 2012 the membership of such stock broker was cancelled by NSE for various irregularities. Finally the AO relying on the principle of preponderance of human probabilities and the decision of Hon'ble Apex court in the case of Sumati Dayal vs. CIT [1995] 214 ITR 801 (SC) treated the transactions as non-genuine and disallowed loss of Rs. 56,67,177/- by adding the same to the income of the assessee vide order dated 10.11.2016 passed u/s 147 /143(3) of the Act by rejecting the contentions of the assessee that the transactions were genuine as carried out by the registered broker. Pertinent to state that the assessee is in business of investments and during the year has carried out huge transactions of purchase and sale of shares/securities.

4. The Ld. CIT(A) dismissed the appeal of the assessee by observing and holding as under:

“3.3. I have carefully considered the facts of the case and the submissions of the appellant. Information was received from Ahmedabad Investigation Wing regarding client code modification indulged in by various brokers to pass on undue benefits to its clients in lieu of some commission. While doing transactions on stock exchanges client code is punched. Each client of a broker is first verified and each client's KYC s maintained at broker's offices. Every client is issued a distinct client code and as per SEBI regulations each transaction on stock exchange should contain the client cede of the person whose orders have been executed on the stock exchange. Transactions on stock exchange may result in profits for some clients and losses for others. Unscrupulous clients may desire to have either only profit or only losses in their transactions on stock exchanges. For this purpose they approach their brokers, who in turn manipulate the client code of other clients, with their consent, to pass on the profit or loss earned by them to some other clients. Client code modification is a mechanism provided by the stock exchanges to rectify any genuine error which may occur while punching client code. However, this facility has been misused to artificially transfer profits and / or losses of one

client to the other by modifying the client code. SEBI had conducted in depth enquiry into the matter and shared the report with the investigation wing. M/s Indianivesh Securities Pvt. Ltd., broker of the assessee was also one of the accused in this matter. In its reply appellant has not said anything about client code modification. Its submissions on issues of borrowed satisfaction are not relevant. Appellant has not denied the incidence of client code modification, neither provided any explanation in this regard. On the other hand, SEBI, the Watchdog of the Securities Market, has arrived at the conclusion after thorough enquiry. Hence, the evidence collected by SEBI cannot be brushed aside. Appellant's contention that all the' trades are genuine and executed on stock exchanges, are pot relevant. Transactions are definitely executed on the stock exchanges but after that through manipulation the resultant income/loss is transferred to another client through client code modification. Appellant is silent on the main issue. As appellant has failed to satisfactorily explain the purpose of client code modification, I do not find any infirmity in the order of the Assessing Officer. Hence, additions of Rs. 56,67,177/- is confirmed.

5. After hearing the rival contentions and perusing the material on record, we find that the assessee is engaged in business of purchase and sale of share and securities during the year. The assessee has sold all the shares and securities to the tune of Rs. 30,44,10,646.35/- whereas the purchase were Rs. 7,99,71,923.28/- and loss in share trading in F & O segment MTM based was Rs. 18,16,26,178.83/-. During the year the assessee returned net profit before tax of Rs. 72,207.33/-. The assessee carried out these transactions through various brokers one of whom was Indianivash Securities Pvt. Ltd. Allegations by the AO are that the assessee through client code modification has shifted its income to the tune of Rs. 56,67,177/- through the said broker as is apparent from the report of the Investigation Wing of DDIT, Unit-1(3), Ahmedabad which stated that the assessee has reduced his taxable income through client code modification through the above broker. The AO has not carried out any further independent verification into the issue and merely relied on the report of Investigation Wing. The assessee on the other hand furnished before the AO various documents in respect of purchase and sale of shares and transactions in F & O segment through the said brokers which were duly executed on the recognized stock exchange. In our opinion, investigation into the issue by the AO to justify the said addition towards shifting income through client code modification is not correct as the AO has only relied on the DDIT report without doing any further verification into the allegation. In our opinion when the AO has received any such information from any quarter , he is duty bound to investigate the same further and record a substantive findings and not otherwise. The case of the assessee finds support from the following decisions:

- i) PCIT,Jaipur vs Gyandeeep Khemka in D.B.Income Tax AppealNo.38/2019(Raj)
- ii) PCIT vs. Pat Commodity Services Pvt. Ltd. in ITA NO. 1257 & 1383/2016(Bom)
- iii) Excellent Shares & Finance Services (P) Ltd. and Pashupati Derivatives & Commodities (P) Ltd. vs. ITO in ITA No. 7002/Mum/2018, 7004/Mum/2018 & 7005/Mum/2018 dated 18.01.2021.
- iv) Chintan Jaswantbhai Shah vs. ITO reported in 87 ITR 228 (Ahd. Trib)
- v) Decent Financial Services (P) Ltd. vs. DCIT reported in 35 NYP TTJ 849 (Del-Trib)
- vi) Sri Harish Kumar Biyani vs. ACIT in ITA NO. 2547/Kol/2019 dated 14.02.2020.
- vii) Aereo Dealcomm (P) Ltd. vs. ITO in ITA No. 2484/Kol/2019 dated 29.05.2020.
- viii) ITO vs. Abhishek Fincap Services (P) Ltd. in ITA No . 2750/Del/2017 dated 13.09.2017.

In all the above decisions it has been held that the addition cannot be made on the basis of DDIT report into the shifting of income through client code modification alone where the AO has not carried out any further independent verification into the matter. In the present case also the assessee has maintained all the books of account and also furnished all the documents qua the F & O segment done through the said broker. We also note that the AO has not doubted the F & O transactions loss incurred to the tune of Rs. 18,16,26,178.83/- and has doubted only the transactions through M/s Indianivesh Securities Pvt. Ltd. registered broker that too on DDIT Report. Under these facts, we are not in a position to sustain the order of Ld. CIT(A) which has also discussed DDIT report by SEBI without giving any independent finding on the issue. Accordingly we set aside the order of authorities below and direct the AO to delete the addition.

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

Order is pronounced in the open court on 21st December, 2023

Sd/-
(Rajpal Yadav /राजपाल यादव)
Vice-President /उपाध्यक्ष

Sd/-
(Rajesh Kumar / राजेश कुमार)
Accountant Member / लेखा सदस्य

Dated: 21st December, 2023

SM, Sr. PS

Copy of the order forwarded to:

1. Appellant- M/s Swastik Securities & Finance Ltd. , 29A, Weston Street, 3rd Floor, Room No. C2, Kolkata-700069
2. Respondent – DCIT, CC-1(2), Kolkata
3. Ld. CIT(A)- 20, Kolkata
4. Pr. CIT- , Kolkata
5. DR, Kolkata Benches, Kolkata (sent through e-mail)

True Copy

By Order

Assistant Registrar
ITAT, Kolkata Benches, Kolkata