

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

**BEFORE SHRI N. K. CHOUDHRY, JM**

I.T.A. No. 1606/Mum/2023  
Assessment Year: 2010-11)

**Dy. CIT-32(1)**

Room No. 121, 1<sup>st</sup> Floor,  
G-Block, Kautliya Bhavan,  
Bandra Kurla Complex,  
Mumbai-400051.

Vs.

**Viresh Pravin Shah,**

701, Pushpa Vatsalyam,  
Hatkesh CHS, Plot No. 10, Vile  
Parle (W), Mumbai-400056.

**Appellant)**

:

PAN No. **AACPS1571N**

**Respondent)**

**Appellant/ Department by  
Assessee/Respondent by**

:  
:

Sh. Anurag Tripathi, Ld. Ld. DR  
Sh. Ketan Vajani, Ld. CA

**Date of Hearing  
Date of Pronouncement**

:  
:

18.12.2023  
21.12.2023

O R D E R

**Per N. K. Choudhry, JM:**

The Department/Appellant herein has preferred this appeal against the order dated 15.03.2023 impugned herein passed by National Faceless Appeal Centre (NFAC), Delhi/ Ld. Commissioner of Income Tax (Appeals)-37 {in short 'Ld. Commissioner' } u/s 250 of the Income Tax Act 1961 (in short 'the Act').

**2.** In this case, on the information received from the Director of Income Tax to the effect "*that some brokers by misusing the Client Code Modification Facility (for short 'CCMF') in F & O segment of National Stock Exchange (for short 'NSE') during March 2010 generated fictitious Profit & Loss. As per the information, these profit &*

*losses was given to different client /beneficiaries according to their requirement. From the list of beneficiaries who had taken fictitious losses and profits, it seems that the Assessee is one of the beneficiary who has taken losses to the tune of Rs. 67,00,488/- or more."* the assessment of the Assessee was re-opened u/s 147 of the Act by recording the reasons for reopening. Accordingly notice under section 148 dated 30.03.2015 was issued and served upon the Assessee on 04.04.2015, in response to which the Assessee vide letter dated 17.04.2015 requested to treat the ITR already filed on 18.09.2010, in compliance to the notice under section 148 of the Act. The Assessee before the AO also produced the statement of total income, Profit & Loss A/c and copy of Audit report.

**2.1** In order to cross verify the claim of the Assessee, the AO by issuing a notice under section 133(6) of the Act to NSE raised specific query whether any Client Code Modification, has been carried out by the broker while doing share transactions. The NSE vide letter dated 25.02.2016 supplied the information wherein M/s Pranav Securities Pvt. Ltd. with T.M. Code 07143 stated to has been burdened with cost of Rs. 6,16,000/- for Client Code Modification.

**2.2** Considering the report/information of the SEBI, the AO observed that the facts reveal that the Assessee's involvement is not confirmed in Client Code Modification, but broker from whom the Assessee made purchases is involved in such gain and penalty also levied by NSE on this account and from the information available on record, therefore it is clear that the Assessee has obtained loss to the tune of Rs. 54,29,959/- in share trading and Rs. 55,60,770/- in F & O segment .

**2.3** The AO ultimately held that the Assessee has obtained loss in lieu of gain/profit to the extent of Rs. 54,29,959/- in trade segment. Therefore, the Assessee has shown loss instead of gain/profit of the similar amount, therefore, there is payable effect to the income i.e. ( Rs. 54,29,959/- + Rs. 54,29,959/- = Rs. 1,08,59,918/- ), therefore, an amount of Rs. 1,08,59,918/- is reduced from carry forward loss from trade loss brought forward. The similar loss obtained from F & O segment of Rs. 55,60,770/- is also reduced from the trade loss. The balance loss allowable to the Assessee to carry forward for the subsequent year after reducing total loss, restricted to Rs. 23,22,142/-. In effect the AO made the addition of Rs. 1,64,20,688/- on account of alleged fictitious loss incurred by the Assessee in share trading and F & O segment.

**3.** The Assessee being aggrieved challenged the said addition before the Ld. Commissioner, who vide impugned order deleted the said addition by concluding as under:

*"5. Ground No. 2(a-g): In this ground the appellant is contesting the Ld. AO making an addition of Rs.1,64,20,688/- on account of fictitious loss incurred by the appellant in share trading and F&O segment. The appellant has submitted that, during the year under consideration, he had not carried on any transaction with M/s Pranav Securities Pvt. Ltd. in the trading segment and the d. AO's presumption that the appellant had reduced a profit of Rs.54,29,959/- to a loss and accordingly making an addition of Rs.1,08,59,918/-being twice the amount of Rs.54.29,959/-) is not substantiated by any evidence. Further, the appellant also submitted that he had not carried out any transactions in F&O segment with M/s Pranav Securities during the month of March 2010. On perusal of the reasons recorded by the Ld. AO notes that the appellant had taken profit/loss to the tune of Rs. 67,00,488/- in the F&O segment. Whereas in the assessment order the Ld. AO states that the appellant has obtained loss in lieu of profit to the extent of Rs.54,29,959/- and the appellant had shown*

*a loss of Rs.55,60,770/- from the F&O segment. However, there is no details correlating the said amounts with the transactions in the books of account of the appellant. Further, it is noted that the Ld. AO had not called for any information from M/s Pranav Securities Pvt. Ltd. to verify if the said profit and loss have been duly incurred in the account of the appellant. Accordingly, I find the additions made by the Ld. AO are not substantiated with any evidence therefore the Assessing Officer is directed to delete the addition of Rs.1,64,20,688/- on account of fictitious loss incurred by the appellant in share trading and F&O segment. The appeal on these grounds is **allowed**.*

*5.1 Ground No. 1(a-c): In view of the appeal being allowed on ground 2 and 3 this ground is now purely academic and hence does not require separate adjudication."*

**4.** The Assessee being aggrieved is in appeal before us.

**5.** Heard the parties and perused the material available on record. The Appellant mainly focused that the Ld. Commissioner erred in deleting the addition made by the AO without appreciating the involvement of the Assessee in the misuse of Client Code Modification Facility to obtain fictitious losses. As I have already observed that the AO himself has specifically noted in the order that the involvement of the Assessee in Client Code Modification is not confirmed, hence, this ground of appeal has no essence.

Secondly, the Appellant also claimed that the Ld. Commissioner is not justified in deleting the addition without appreciating that the NSE has levied penalty on the broker from whom the Assessee has made transactions of shares and F & O. I observe that the Ld. Commissioner in its order categorically held that on perusal of reasons recorded by the AO notes that the Assessee had taken profit/loss to the tune of Rs.67,00,488/- in the F & O segment. Whereas in the assessment order, the AO states that the Assessee has obtained loss in lieu of profit to the

extent of Rs. 54,29,959/- and had shown a loss of Rs. 55,60,770/- from the F & O segment, however, there is no details co-relating the said amounts with the transaction in the books of account of the Assessee. The Ld. Commissioner also observed that the AO failed to call for any information from M/s Pranav Securities Pvt. Ltd. to verify, if the said profit & loss have been duly incurred in the accounts of the Assessee. The Ld. Commissioner also considered the aspect qua claim of the Assessee that during the year under consideration, the Assessee has not carried out of any transaction with M/s Pranav Securities Pvt. Ltd. in the trade segment and presumption to the effect that the Assessee had reduced the profit of Rs. 54,29,959/- to a loss and accordingly making the addition of Rs. 1,08,59,918/- (being twice the amount of Rs. 54,29,959/-) is not substantiated by any evidence. The Assessee also claimed that he has not carried out any transaction in the F & O segment with M/s Pranav Securities Pvt. Ltd. during the month of March 2010.

On overall consideration, I observe that the Ld. Commissioner rightly concluded that there are no linkages between the reasons recorded and the conclusion drawn and/or addition made by the AO. It is also a fact that though as per information supplied by NSE vide letter dated 25.02.2016, the penalty of Rs. 6,16,000/- was levied against M/s Pranav Securities Pvt. Ltd. (broker of the Assessee for Client Code Modification), however, the involvement of the Assessee in Client Code Modification is not confirmed as observed by the AO himself. Even otherwise I also do not find any perversity, improperity and illegality in the impugned order, hence on the aforesaid analyzations, am inclined not to interfere in the conclusion drawn by the Ld. Commissioner in deleting the addition under consideration.

**8.** In the result, appeal filed by the Appellant stands dismissed.

*Order is pronounced in the open court on 21-12-2023.*

Sd/-  
**(N. K. CHOUDHRY)**  
**Judicial Member**

*Pavanan, Sr.PS.*

**Copy of the Order forwarded to :**

1. The Appellant
2. The Respondent
3. DR, ITAT, Mumbai
4. Guard File
5. CIT

BY ORDER,

(Dy./Asstt.Registrar)  
**ITAT, Mumbai**