

**IN THE INCOME TAX APPELLATE TRIBUNAL  
MUMBAI BENCH "B" MUMBAI**

**BEFORE SHRI OM PRAKASH KANT (ACCOUNTANT MEMBER)  
AND  
SHRI RAHUL CHAUDHARY (JUDICIAL MEMBER)**

**ITA No. 125/MUM/2022  
Assessment Year: 2010-11**

Bharat Vanmalibhai Modiya,  
503, Shree Krishna Bhuvan,  
Dixit Road, Vile Parle (E),  
Mumbai-400057.

**Vs.**

Income Tax Officer 25(2)(2),  
Kautilya Bhavan, DGIT  
(Vigilance) (West) Avenue 3,  
Near Videsh Bhavan, G Block  
BKC, Bandra Kurla Complex,  
Bandra East, Mumbai-400051.

**PAN NO. AAWPM 1067 D  
Appellant**

**Respondent**

Assessee by : Mr. Bharat Kumar  
Revenue by : Mr. Ashok Kumar Ambastha, DR

Date of Hearing : 12/03/2024  
Date of pronouncement : 13/03/2024

**ORDER**

**PER OM PRAKASH KANT, AM**

This appeal by the assessee is directed against order dated 06.12.2021 passed by the Ld. Commissioner of Income-tax (Appeals) – National Faceless Appeal Centre, Delhi [in short ‘the Ld. CIT(A)’] for assessment year 2010-11, raising following grounds:

*1. On the facts and circumstances in the case in law, Ld. CIT(A) erred in confirming reopening the case on reasons which were in general nature.*



2. *On the facts and circumstances in the case in law, Ld. CIT(A) erred in confirming reopening of the case on the basis of borrowed satisfaction.*
3. *On the facts and circumstances in the case in law, Ld. CIT(A) erred in confirming reopening without application of mind.*
4. *On the facts and circumstances in the case in law, Ld. CIT(A) erred in confirming reopening without establishing nexus with Assessee in Manipulation.*
5. *On the facts and in the circumstances of the case and in law, the Ld. CIT (A) erred in confirming addition of Income of Rs. 34,33,074/- (64,34,831/- minus 30,01,757/-).*
6. *On the facts and circumstances in the case in law, Ld. CIT(A) erred in not allowing set off carry forward losses of Rs. 26,94,470/- and carry forward depreciation of Rs. 9270/-*
7. *The assessee craves leave to add, alter or amend the existing grounds of appeal on or before the date of hearing."*

2. Briefly stated facts of the case are that the assessee filed original return of income for the assessment year under consideration on 26.09.2010 declaring total income of Rs.3,19,500/- which was processed u/s 143(1) of the Income-tax Act, 1961 (in short 'the Act'). Subsequently, on the basis of the information received from the office of the DGIT Investigation Wing, Mumbai, the Assessing Officer recorded reasons to believe that income escaped assessment and issued notice u/s 148 of the Act on 28.03.2015. In response, the assessee filed a letter dated 30.03.2015 stating to treat the original return of income filed as in compliance to notice u/s 148 of the Act. The Assessing Officer completed the reassessment proceedings on 28.03.2016 wherein he made addition for the benefit taken by the assessee by way of client code modification while trading in shares amounting to



Rs.63,08,657/- . The Ld. CIT(A) also upheld the addition and justified the reassessment proceedings u/147 of the Act.

3. Aggrieved, the assessee is in appeal before the Tribunal by way of grounds raised as reproduced above.

4. We have heard rival submission of the parties and perused the relevant material on record. In ground Nos. 1 to 4, the assessee has challenged the validity of the reassessment proceedings. The Ld. CIT(A) has dismissed the above grounds observing as under:

*“8.1 Grounds of appeal 1-4 challenge the legality of the notice issued u/s 148 and the reassessment completed under section 147 of the Act. The appellant has stated that the notice is a defective notice which is issued without any application of mind and that the reasons recorded by the Assessing Officer does not satisfy the requirements of Section 147 of the Act. The assessment order has been perused and it is seen that the reason for reopening is on the basis of information received from the Investigation wing, Mumbai as per which the appellant has been mentioned by name as being a beneficiary of fictitious profits and losses created by some Brokers by misusing the "Client Code Modification Facility in F & O segment on NSE during March, 2010. On the basis of this information the AO had reason to believe that income had escaped assessment and was justified in reopening proceedings under section 147. In this regard reliance is placed on the case of Vasudev Fatandas Sawlani Vs Santosh Kumar, 2018-TIOL-2305-HC-AHM-IT, of Gujarat High Court wherein the appellants writ petition was dismissed by the Hon'ble court by holding that when issuing notice for re-opening assessment, the AO is only required to show reasonable belief that income escaped assessment & is not required to establish the same beyond reasonable doubt. Accordingly these grounds of appeal are dismissed.”*

4.1 Before us, the Ld. Counsel for the assessee has challenged the reassessment proceedings on the reason that the Assessing Officer did not apply his mind while recording reasons to believe. The Ld. Counsel submitted that in the reasons recorded the Assessing



Officer has nowhere mentioned the name of the brokers through whom client code modification was alleged to be carried out by the assessee. He further submitted that the Assessing Officer has nowhere recorded that client code modification was not in the normal course and it was with any ulterior motive. In support of contention, he relied on the decision of the Tribunal in the case of **M/s Excellent Shares & Finance Services Pvt. Ltd. (Formerly known as Pashupati Shares & Finance Services Pvt. Ltd.) v. The Income Tax Officer 13(1)(3) in ITA No. 7003/Mum/2018** for assessment year 2010-11. Before us, the Ld. Counsel for the assessee has filed a comparison of reasons recorded in the case of the assessee and in the case of M/s Excellent Shares & Finance Services Pvt. Ltd. (supra), which is reproduced as under:

**Comparison of reasons**

| <b>Reasons in case of Bharat Modiya for the AY 2010-11</b>  | <b>Reasons in case of M/s Excellent Shares &amp; Finance Services Pvt. Ltd for the A Y 2010-11</b>   |
|---|--|
| <p><i>"In this case information was received from the office of DIT (Inv.) (Int. &amp; CR), Mumbai vide letter No. DIT (I &amp; CI)/CCM/2014-15 dated 27th February, 2015 that fictitious profits and losses were created by some Brokers by misusing the "Client Code Modification Facility in F &amp; O segment on NSE during March, 2010. The brokers were indulging in transferring the fictitious losses to different clients to reduce their tax liability and also fictitious profit to other clients. Accordingly, the client code modification transactions (CCM) data for F.Y.2009-10 was obtained from NSE and the CCM transactions received from NSE were further analyzed. Mapping of the data was done to ascertain the exact amount of fictitious profit/losses in each case. On detailed analysis it was established that the brokers had misused client code modification facility</i></p> | <p><i>"Information has been received from DIT (Intell. &amp; CR. Inv.), Mumbai, vide letter No. DIT (I &amp; CI)/CCM/2014-15 dated 27.02.2015 that fictitious profits and losses were created by some brokers by misusing the client code modification facility in F&amp;O segment on NSE during March, 2010. The brokers were alleged to be indulging in transferring the fictitious losses to different clients to reduce their tax liability and also fictitious profit to other clients. As per the information received by the DIT (I&amp;CI), Mumbai from NSE, Client Code Modification (CCM) data for F.Y. 2009-10, and the CCM transactions received from NSE were further analysed and the mapping of data was done to ascertain the exact amount of fictitious profits/losses in each case. On detailed analysis by the DIT (I &amp; CI), Mumbai, it was established that the brokers has misused client</i></p> |



and created non-genuine losses and profits. These losses and profits were given to different clients/beneficiaries according to their requirement- The assessee is also one of the beneficiaries who evaded tax through client mode modification during F.Y. 2009-10 for the relevant A.Y. 2010-11 on a profit of Rs. 63,08,657/- earned because of client code modification."

code modification facility and created non-genuine losses and profits. These losses and profits were given to different clients/beneficiaries according to their requirement. The clients have taken fictitious losses to set off against their profits with a view to reduce their tax liability. Some of the Client have confirmed that they have misused the facility of client code modification in order to create fictitious losses/profits. They have admitted that they have received commission at the rate varying from 0.5% upto 2% on the amount of losses/profits for transferring such losses/profits to their client. The names of such brokers are i) Transglobal Securities Ltd. ii) Crosseas Capital Services Pvt. Ltd. iii) Indianivesh Securities Pvt. Ltd. and iv) Anugrah Stock & Broking Pvt. Ltd. This CCM data are relating to the beneficiaries in whose account more than Rs. 25 lacs Losses/Profits have been generated through CCM. In this case, assessee has executed the transaction during the F.Y. 2009-10. As per the information received, assessee company is one of the beneficiaries and create fictitious Profit/Loss amounts to Rs. 1,12,08,455/- Assessee has modified 2,58,47,552 Quantity of shares and the value of shares modified as per the information was to the tune of Rs 2,23,01,04,598/- resulting into loss of Rs. 1,12,08,485/- due to client code modification".

4.2 The relevant para of the decision of the Tribunal in the case of M/s Excellent Shares & Finance Services Pvt. Ltd. (supra) is reproduced as under:

"7. As pointed out by the Ld. counsel, in the case of **M/s Coronation Agro Industries Ltd. us. DCIT (supra)**, the Hon'ble Bombay High Court has decided the identical issue in favour of the assessee and held the notice issued u/s 148 of the Act lacks reason to believe that the income chargeable to tax has escaped assessment holding as under:-

"2. This petition challenges notice dated 31st March, 2016 issued under Section 148 of the Income Tax Act, 1961. The impugned notice seeks. to reopen the assessment for Assessment Year 2009-10. The regular assessment proceedings were completed on 28th December, 2011 under Section 143 (3) of the Act.



3. The reasons in support of the impugned notice relies upon the information received from the Principal Director of Income Tax that the petitioner has benefitted from a client code modification by which a profit of Rs. 22.50 lakhs was shifted out by the petitioner's broker resulting in reduction of the petitioner's taxable income. The only basis for forming the belief is the report from the Principal Director of Income Tax and the application of mind to the report of the Assessing Officer along with the record available with him. This information and application of mind has led the Assessing Officer to form a reasonable belief that there is not only an escapement of income but there has been failure to truly and fully disclose all material facts and information as the modus operandi of shifting profits was not known to the Revenue as not disclosed by the petitioner when the Assessing Officer passed the order in regular assessment proceedings.

4. We note that the reasons in support of the impugned notice accept the fact that as a matter of regular business practice, a broker in the stock exchange makes modifications in the client code on sale and/ or purchase of any securities, after the trading is over so as to rectify any error which may have occurred while punching the orders. The reasons do not indicate the basis for the Assessing Officer to come to reasons do not indicate the basis for the Assessing Officer to come to reasonable belief that there has been any escapement of income on the ground that the modifications done in the client code was not on account of a genuine error, originally occurred while punching the trade. The material available is that there is a client code modification done by the Assessee's broker but there is no link from there to conclude that it was done to escape assessment of a part of its income. Prima facie, this appears to be a case of reason to suspect and not reason to believe that income chargeable to tax has escaped assessment.

5. In the above view, prima facie, we are of the view that the impugned notice is without jurisdiction as it lacks reason to believe that income chargeable to tax has escaped assessment."

8. The legal ground raised by the assessee is covered by the ratio laid down by the Hon'ble High Court discussed above. As per the law laid down by the Honble Court, the material available with the AO was not sufficient to form a belief that income chargeable to tax has escaped assessment. Hence, respectfully following the ratio laid down by the Hon'ble Court, we hold that the notice issued by the AO is bad in law. Since we have held the notice issued by the AO as without jurisdiction, the appellate proceedings has also become bad in law. Hence, we allow this ground of appeal of the assessee and set aside the impugned order passed by the Ld. CIT(A)."



4.3 We find that the Hon'ble Bombay High Court in the case of M/s Coronation Agro Industries Ltd. v. DCIT in Writ Petition No. 2627 of 2016 has held that the Assessing Officer has not indicated basis for arriving at reasonable believe that income escaped due to modification done in the client code was not on account of genuine error to the originally occurred while punching the trade. The client code modification is permitted by the SEBI in view of the genuine error while punching the transaction by the stock broker and therefore, the Assessing Officer was required to form his believe only on the basis of information as to whether there was any client code modification with ulterior motive and not carried out on account of genuine error committed by the broker. In view of the comparison of reasons recorded above we find that in the case of M/s Excellent Shares & Finance Services Pvt. Ltd.(supra) , the AO recorded the name of brokers who carried out client code modification but in the case in hand even the name of brokers have not been recorded by the AO in reasons recorded. The AO has particularly not mentioned whether the client code medication was done otherwise than genuine error of punching transactions in normal course of trade. Only such material could be relevant for forming belief that there was a tax evasion in the case and without which there is no relevant material to believe that income escaped assessment. In absence of any such information, the reasons to believe recorded by the assessee are based on presumption or guess work and without application of mind by the AO, therefore, the



reassessment notice issued on such reasons recorded is liable to be quashed. Accordingly, the reassessment proceedings are held to be void ab initio. The ground Nos. 1 to 4 of the appeal of the assessee are accordingly allowed.

5. Since, we have already quashed the reassessment proceedings, we are not adjudicated on the other grounds raised by the assessee and same are rendered only academic.

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

**Order pronounced in the open Court on 13/03/2024.**

**Sd/-**  
**(RAHUL CHAUDHARY)**  
**JUDICIAL MEMBER**

**Sd/-**  
**(OM PRAKASH KANT)**  
**ACCOUNTANT MEMBER**

Mumbai;  
Dated: 13/03/2024  
Rahul Sharma, Sr. P.S.

**Copy of the Order forwarded to :**

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

//True Copy//

BY ORDER,  
(Assistant Registrar)  
**ITAT, Mumbai**