आयकर अपीलीय अधिकरण, जयपुर न्यायपीठ, जयपुर
IN THE INCOME TAX APPELLATE TRIBUNAL, JAIPUR BENCHES,"B" JAIPUR

डा॰ एस. सीतालक्ष्मी, न्यायिक सदस्य एवं श्री राठोड कमलेश जयन्तभाई, लेखा सदस्य के समक्ष
BEFORE: DR. S. SEETHALAKSHMI, JM & SHRI RATHOD KAMLESH JAYANTBHAI,

आयकर अपील सं./ITA No. 38/JP/2024
निर्धारण वर्ष/Assessment Years : 2010-11

M/s Spectrum Foods Limited L-5, B-II, Surya House, Krishna Marg, C-Scheme, Jaipur	बनाम Vs.	The Income Tax Officer, Jaipur
स्थायी लेखा सं./जीआईआर सं./PAN/GIR No.: AADCS 3704 R		
अपीलार्थी/Appellant		प्रत्यर्थी/Respondent

निर्धारिती की ओर से/ Assessee by : Sh. S. L. Poddar, Adv.
राजस्व की ओर से/ Revenue by : Sh. Anup Singh (Addl. CIT)

सुनवाई की तारीख/ Date of Hearing : 02/04/2024
उदघोषणा की तारीख/Date of Pronouncement: 08/04/2024

आदेश/ ORDER

PER: RATHOD KAMLESH JAYANTBHAI, AM

This appeal filed by assessee is arising out of the order of the National Faceless Appeal Centre, Delhi dated 11/12/2023 [here in after (NFAC)/ ld. CIT(A)] for assessment year 2010-11 which in turn arise from the order dated 31.03.2016 passed under section 143(3)/147 of the Income Tax Act, by ITO, Ward –5(2), Jaipur.

2. In this appeal, the assessee has raised following grounds: -

"1. In the facts and in the circumstances of the case, the learned Commissioner of Income Tax (Appeals) has erred in confirming the action of the Learned AO in issuing notice u/s 148 of the Income Tax Act, 1961 which is void ab-initio deserves to be quashed.

2. In the facts and in the circumstances of the case, the learned Commissioner of Income Tax (Appeals) has erred in confirming the addition of Rs. 56,33,632/- made by the Learned AO on alleged bogus income from trading in securities.

3. In the facts and in the circumstances of the case, the learned Commissioner of Income Tax (Appeals) has erred in confirming the addition of Rs. 1,13,472/- made by the Learned AO on alleged commission payment of bogus profit in securities.

4. The assessee craves your indulgence to add amend or alter all or any grounds of appeal before or at the time of hearing."

3. Succinctly, the fact as culled out from the records is that the assessee company is engaged in the business of wholesale buying and selling of salt and also from buying and selling of shares and securities. For the year under consideration, the assessee filed return declaring total income of Rs. 1,23,940/- on 30/09/2010. In the case of the assessee, proceedings u/s 147 were initiated by the DCIT, Circle-6, Jaipur by issuance of notice u/s 148 dated 29/03/2015 on the ground that allegedly assessee obtained fictitious profits of Rs.56,73,633/- by misusing client code modification with the help of brokers. Assessment has been completed by ITO, Ward 5(2), Jaipur on total income of Rs.59,11,104/-, inter-alia, making addition of the alleged fictitious profits of Rs. 56,33,633/-

and also of Rs. 1,13,472/- on account of payment of commission for receiving the aforesaid fictitious profit.

4. Aggrieved from the order of the assessment, assessee preferred an appeal before the ld. CIT(A)/NFAC. Apropos to the grounds so raised the relevant finding of the ld. CIT(A)/NFAC is reiterated here in below:

> "4.3.1 Coming to the merits (grounds no. 2 & 3) of the additions of Rs. 56,73,632/- and Rs. 1,13,472/-, it is relevant to note that the AO in his order observed that the CD given by the Director (I&C), Mumbai contained a list of beneficiaries who had taken profit or loss book entries based on their requirement and the list specifically mentioned the appellant's name. The AO further noted that there were 1,04,000/- transactions that involved client code modification (CCM)by the two brokers, Maverick Share Brokers Pvt Ltd and Riddhi Brokers Pvt Ltd. The AO detailed the tactics used by both the brokers mentioned above and the appellant to avoid taxes. It was pointed out by the AO that the brokers referenced earlier changed the original client codes S- 109 and S-1, which were owned by M/s. Sandeep Stock Pvt Ltd to S-174 and S-103 which were connected to the appellant. In the process fake profit of Rs. 56,73,632/- was shifted to the appellant to set off brought forward losses. The AO found that the errors in the trading were not genuine but a mechanism devised by the brokers in collusion with the appellant to avoid taxes. Consequently, the AO added Rs. 56,73,632/- and Rs. 1,13,472/- as undisclosed income and unexplained expenditure respectively.
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> 4.3.2 The appellant has failed to controvert the findings of the AO except for stating that Rs.56,73,632/- was correctly recorded in it's account. Given the substantial numbers of errors, which reached upto 32% of all transactions, it is hard to believe that they were genuine. The repetition of same mistakes makes it harder to accept brokers' mistakes in making entries were genuine. It is beyond one's comprehension how similar types of mistakes occurred repeatedly with the same brokers and the appellant. In share transactions the brokers putting S-174 and S-103 instead original client code S-109 and S-1 respectively is unacceptable

because the chances of such an error occurring is rare and remote, if not impossible.

4.3.3 It is the appellant's duty to demonstrate that the brokers' errors in making entries were genuine particularly when the profit was transferred to the appellant's code for the appellant benefit. Simply saying that client code modification were genuine and transactions were duly recorded in its account does not suffice for the appellant to distance itself from this. It is evident from the record that client code was modified in F&O segment with mala fide intentions to generate false profit and set off brought forward losses available with the appellant with the objective to introducing unaccounted money into capital. Furthermore, in the appellate proceedings, the appellant has failed to furnish any submission or evidence in support of its argument that mistakes were genuine and no fake profit book entries were taken. Additionally, ENT the appellant failed to explain the sources of expenditure in form of commission paid to the brokers for providing fictitious profit entries.

4.3.4 Considering all the facts and the above discussion I do not find any infirmity in the AO's additions and therefore they are confirmed. Thus, the grounds No.2 and 3 of the appeal are dismissed."

5. As the assessee did not find any favour, from the appeal so filed before the ld. CIT(A)/NFAC, the assessee has preferred the present appeal before this Tribunal on the ground as reproduced hereinabove. To support the various grounds so raised by the ld. AR of the assessee, has filed the written submissions in respect of the various grounds raised by the assessee and the same is reproduced herein below:

"STATEMENT OF FACTS -

The assessee company is engaged in the business of wholesale buying and selling of salt and also from buying and selling of shares and securities. For the year under consideration, the assessee filed return declaring total income of Rs. 1,23,940/- on 30/09/2010. In the case of the assessee, proceedings u/s 147 were initiated by the DCIT, Circle-6, Jaipur by issuance of notice u/s 148 dated

29/03/2015 on the ground that allegedly assessee obtained fictitious profits of Rs.56,73,633/- by misusing client code modification with the help of brokers. Assessment has been completed by ITO, Ward 5(2), Jaipur on total income of Rs.59,11,104/-, inter-alia, making addition of the alleged fictitious profits of Rs. 56,33,633/- and also of Rs. 1,13,472/- on account of payment of commission for receiving the aforesaid fictitious profit.

2. The assessee, being aggrieved, filed appeal before the Learned CIT(A), who dismissed the same by order dated 11/12/2023. The Learned CIT(A) has passed ex-parte order without providing adequate opportunity to the assessee and confirmed the action of the Learned Assessing Officer.

3. Aggrieved with the order of the Learned CIT(A), the assessee is in appeal before the Hon'ble Tribunal. The individual grounds of appeal are discussed hereunder :-

Ground No.1

In the facts and in the circumstances of the case, the learned Commissioner of Income Tax (Appeals) has erred on confirming the action of the Learned Assessing Officer in issuing notice u/s 148 of the Income Tax Act, 1961 which is void ab initio and deserves to be quashed.

4. In this case, as mentioned in the assessment order, notice under section 148 was issued on 29/03/2015 by DCIT, Circle-6, Jaipur. The reasons on which notice was issued have also been reproduced in the assessment order on Page 1 and 2, which are as under :-

"On the basis of information brought on record, it is gathered that fictitious profits and losses were created by some brokers by misusing Client Code Modification facility in the F&O segment on NSE during March, 2010. The brokers were alleged to be indulging in transferring fictitious losses to different clients to reduce their tax liability and also fictitious profit to other clients. In some cases of brokers as well as clients, spot verification u/s 131(1A) was carried out and they confirmed having misused the facility of client code modification to create fictitious losses/profits. They admitted having received commission at the rate varying from 3% to 6%.

From the above enquiry, it is gathered that during the year under consideration, the assessee has taken entries of fictitious profit/losses of Rs. 56,73,633/- by misusing of facility of client code modification. The assessee has filed its return of income on 30/09/2010 declaring total income of Rs. 1,23,940/-. On perusal of return filed, it is noticed that net profit or loss from speculation business has been shown at NIL. Thus, I have reasons to believe that income of Rs. 56,73,633/- and commission paid thereon @ 3% i.e. Rs. 1,70,209/- has escaped assessment within the meaning of Sec. 147 of the Income Tax Act., 1961"

4.1 The perusal of the aforesaid reasons reveals the following :-

(a) Reasons have been recorded purely on general information and not on any specific information .

4.2 The reasons recorded in the case make it plain that some information was brought on record that some brokers were indulging in providing fictitious profits/losses to their clients by manipulating client code numbers. In the reasons it is not mentioned wherefrom the information was received and what was the source of it. Name and address of the brokers have also not been provided, who were alleged to be indulging in arranging fictitious profits and losses by manipulating and misusing the client code modification facility in F&O segment on NSE. It is also mentioned in a general way that in some cases of brokers as well as clients, spot verification under section 131(1A) was carried out. The information is very vague and ambiguous without giving any details and particulars about the brokers and clients who were subjected for spot verification and whether assessee was one among them. In the absence of this, the Learned Assessing Officer was not competent to have a satisfaction and reason to believe that the assessee was also subjected to spot verification and was found having misused the facility of client code modification. It is also not mentioned in the information on record whether the brokers of the assessee were also subjected to any interrogation and whether their statements were recorded.

4.3 It is apparent that it is only on the basis of very surface level and general information that the Learned Assessing Officer has recorded reasons that income to the tune of Rs. 56,73,633/- escaped in the case of the assessee. In fact, the Learned Assessing Officer had no material before him to reach to a conclusion that assessee was one among those clients who were getting benefit of the misuse of client code modification. The notice u/s 148 has been issued without there being any specific information about the assessee.

4.4 In similar circumstances, the proceedings have been quashed in the case of M/s Strategem Portfolio Pvt Ltd Vs. DCIT in I.T.A. No. 7878/Del/2019 dated 15/09/2020. The Hon'ble Tribunal held that there was no material to infer that such client code modification has been used with malafide purpose and there was no material before the Learned Assessing Officer to form a belief that income had escaped assessment on this account.

4.5 In view of the above, the Learned CIT(A) was not justified in sustaining the action of the Learned Assessing Officer in issuing notice u/s 148. The Learned CIT(A) is also wrong in observing that that the Learned Assessing Officer applied his mind and had a prima facie belief that income had escaped assessment. The Learned CIT(A) is further wrong in observing that the Income Tax Act does not prohibit the Assessing Officer from using borrowed information. The Learned Assessing Officer has not used borrowed information, but has taken action on the borrowed information without having his satisfaction after subjecting the information to verification. It is the borrowed satisfaction and not the borrowed information that has vitiated the assessment proceedings.

(b) The Learned Assessing Officer is not clear whether the assessee had obtained fictitious loss or profit

5. In the reasons recorded by the Learned Assessing Officer it appears that he was not having specific information whether assessee had obtained fictitious loss or profit. He has used the language as under :-

" From the above enquiry, it is gathered that during the year under consideration, the assessee has taken entries of fictitious profit/losses of Rs. 56,73,633/- by misusing of facility of client code modification."

In the face of this ambiguity and vagueness, the Learned Assessing Officer was not competent to take action under section 148. Before issuing notice u/s 148, the Learned Assessing Officer was required to be certain that it was income that escaped assessment. The reasons are not clear about it, hence, notice u/s 148 was issued without verifying the information by the Learned Assessing Officer and without causing any inquiry at his end. Had he carried out any verification or inquiry, he could have easily found out whether the assessee had taken alleged fictitious loss or profit. The above faulty recording of reasons makes it abundantly clear that the Learned Assessing Officer did not cause any inquiry at his end and has acted solely on the borrowed satisfaction, which is against the provisions of law. In support, the following case-law is quoted :-

(1) SIGNATURE HOTELS (P) LTD. vs. INCOME TAX OFFICER (2011) 338 ITR 51 (Delhi)

Reassessment—Reason to believe—Information received from Director of IT (Inv.) vis-a-vis accommodation entry—For reopening an assessment the AO must have "reason to believe" that certain income chargeable to tax has escaped assessment and such reasons are required to be recorded in writing by the AO—Sufficiency of reasons is not a matter which is to be decided by the writ Court but existence of belief can be subject-matter of scrutiny—Notice under s. 148 can be quashed if the "belief" is not bona fide or one based on vague, irrelevant and non-specific information—Basis of the belief should be discernible from the material on record which was available with the AO when he recorded the reason—There should be a link between the reasons and the material available with the AO—In the instant case, the first sentence of the reasons recorded by the AO states that information has been received from Director of IT (Inv.) that assessee has introduced unaccounted money amounting to Rs. 5 lacs during the relevant year as per the details given in the Annexure—Said Annexure mentions a cheque received by assessee from SS Ltd. and the account number—Last sentence states that as per the information the amount received was an accommodation entry—Aforesaid information and the reasons are extremely scanty and vague and do not satisfy the requirements of s. 147—There is no reference to any document or statement, except the Annexure—Said Annexure cannot be regarded as a material or evidence that prima facie shows or establishes escapement of income—Further, it is apparent that the AO did not

apply his own mind to the information and examine the basis of the information—He accepted the information in a mechanical manner—CIT also acted on the same basis by mechanically giving his approval—Company SS Ltd. had applied for and was allotted shares in the assessee company on payment of Rs. 5 lacs by cheque—SS Ltd. is an incorporated company and it has been allotted PAN—Facts on record do not show that SS Ltd. is a non-existing and a fictitious entity—Proceeding under s. 147 quashed.

(ii) Pr. CIT vs. G & G Pharma India Ltd (Delhi High Court) dated 08.10.2015

Reopening only on the basis of information received that the assessee has introduced unaccounted money in the form of accommodation entries without showing in what manner the AO applied independent mind to the information renders the reopening void.

(iii) ITO vs. M. B. Jewellers P. Ltd (ITAT Delhi)dt. 14.11.2014

A perusal of the above reasons demonstrate that the reasons recorded by the AO are not reasons acceptable to law. There is no independent application of mind. The AO had mechanically issued notices u/s 148 of the Act, on the basis of information allegedly received by him from the CIT, New Delhi 2. From the proforma for approval of notice, which is extracted above, it is clear that the AO was also not aware that the assessee had filed a return of income for the said AY. The ACIT has also not applied his mind. No satisfaction has been recorded by the Ld.ACIT. Only an approval is given. Thus in our view the reopening is bad in law (Signature Hotels (P) Ltd. Vs. ITO 338 ITR 51 (Delhi) followed).

(iv) ACIT vs. Devesh Kumar (ITAT Delhi)dt. 31.10.2014

Reopening solely on the basis of information received from the investigation wing & without independent application of mind is void.

(v) Unique Metal Industries vs Income Tax Officer (ITAT Delhi) dated 28.10.2015

Reopening solely on the basis of information received from another AO that the assessee has booked bogus bills but without independent application of mind to the information renders the reopening void.

(vi) CIT Vs. SFIL Stock Broking Ltd. (2010) 41 DTR 98 (Del)

Reassessment-Reason to believe-Reopening on directions of superior officers-50-called reasons recorded by the AO for reopening assessee's assessment comprises mere information received from Dy. Director of IT (Inv.) followed by directions of the very same officer and the Addl. CIT to initiate proceedings under s. 147- These cannot be the reasons for proceeding under s. 147/148-From the so-called reasons it is not at all discernible as to whether the AO has applied his mind to the information and independently arrived at a belief on the basis of the material before him that income had escaped assessment-Proceedings under s. 147/148 rightly quashed by Tribunal-No substantial question of law arises for consideration.

(vii) SARTHAK SECURITIES CO. (P) LTD. vs. INCOME TAX OFFICER (2010) 329 ITR 110 HIGH COURT OF DELHI

Where the identity of the companies who had invested in the shares of petitioner-company was not disputed and neither the reasons in the initial notice nor the communication providing reasons remotely indicated independent application of mind by AO, reassessment proceedings were unwarranted and notice issued under s. 148 was liable to be quashed.

viii) BAKULBHAI RAMANLAL PATEL vs. INCOME TAX OFFICER (HIGH COURT OF GUJARAT)(2011) 56 DTR (Guj) 212

AO has reason to suspect and not reason to believe that income chargeable to tax has escaped assessment and this is not a valid ground for reopening under s. 147

(ix) CIT Vs. Shree Rajasthan Syntex Ltd
Hon'ble Rajasthan High Court

(2008) 217 CTR (RAJ) 209

Re-opening of assessment on "borrowed satisfaction" by A.O. of lessor on the basis of opinion arrived at by the A.O. of lessee on the same set of documents was invalid.

(c) The reasons are not based on any inquiry or verification by the Learned Assessing Officer of the information so received. His satisfaction is based on information as received.

6. As discussed in the foregoing paras, before taking action u/s 148, it was incumbent upon the Learned Assessing Officer to verify the information received by him. He has not done anything. He has not tried to know whether any inquiry was conducted under section 131(1A) in the case of the assessee. He also did not bring on record whether the brokers of the assessee interrogated in the matter. Their statements are also not on record. The Learned Assessing Officer has also mentioned in the reasons in what way the client code modification facility was misused by him and which were the scripts in which it was done. In the absence of all this information, it is strange how the Learned Assessing Officer reached to the conclusion that there was escapement of income of Rs. 56,73,633/-. In these facts and circumstances of the case, the action of the Learned Assessing Officer in issuing notice u/s 148 is unlawful, illegal and unjust. The same deserves to be quashed.

The Learned CIT(A) was not justified in upholding the issuance of notice u/s 148. The Learned CIT(A) has wrongly observed that the Learned Assessing Officer utilized borrowed information, analysed it independently and applied his own

mind (Para 4.2.8 of the appellate order). In the entire assessment order, it is not discernible in what way the Learned Assessing Officer independently analysed the information or applied his mind to the reports received from DIT(I&CI), Mumbai. He has just acted up on the report as a thumb rule. The Learned Assessing Officer has not been able to controvert the reply submitted by the assessee. Since the Learned CIT(A) has passed the order ex-parte, therefore, he has tried to strengthen his order by making observations in favour of the Assessing Officer. The facts of the case speak loudly and clearly that no action u/s 148 was warranted. The same is required to be quashed.

Ground No.2

In the facts and in the circumstances of the case, the Learned Commissioner of Income Tax (Appeals) has erred in confirming the addition of Rs. 56,33,632/- made by the Learned Assessing Officer on alleged bogus income from trading in securities.

Facts of the case

7. In this case, the Learned Assessing Officer has made addition of Rs. 56,33,632/- on the ground that the assessee obtained fictitious profits through share brokers as under :-

(i)	Maverick Share Brokers Ltd	Rs.15,49,630/-
(ii)	Ridhi Share Brokers	Rs.41,24,002/-
		Rs.56,73,632/-

The main thrust of the Learned Assessing Officer in making the addition is that the aforesaid brokers by manipulating the client code modification facility arranged profits to the assessee. In the view of the Learned Assessing Officer the income shown by the assessee of Rs. 56,73,632/- is fictitious and in reality the assessee had introduced his own income from unexplained sources. While doing so, the Learned Assessing Officer has referred to the inquiry conducted by Director of Income Tax (I&CI), Mumbai, who had informed that certain brokers at the National Stock Exchange were manipulating client code modification facility. Some of these brokers as well as clients were subjected to spot verification and it was found out that they were indulging in misuse of client code modification facility and thereby arranging fictitious profits and losses.

7.1 The entire basis of the addition made by the Learned Assessing Officer is the general observations in the report of the DIT(I&CI), Mumbai. It has further been mentioned that the DIT(I&CI) Mumbai had forwarded a CD along with his letter dated 27/02/2015, which contained the names of brokers and clients, who had exploited the client code modification facility and earned fictitious profits and losses. It is the case of the Learned Assessing Officer that in this CD, name of the assessee was included, which disclosed that he had obtained above fictitious profits to the tune of Rs. 56,73,632/-. The action of the Learned Assessing

Officer in making the above addition and that of the Learned CIT(A) in sustaining the same is unlawful, illegal and unjust.

(a) Principles of equity and justice violated

8. It is submitted that in this case, the Learned Assessing Officer has referred to the report received from DIT(I&CI), Mumbai, who had forwarded a CD under a letter dated 27/02/2015, wherein the name of the assessee is alleged to be included in the list of recipients of fictitious profits on account of misuse of client code modification facility. In this regard, the Learned Assessing Officer has not bothered to furnish the report of the DIT(I&CI) or the list wherein the name of the assessee is alleged to be included. It is submitted that it was incumbent up on the Learned Assessing Officer to have disclosed the contents of the report of the DIT(I&CI) so that the assessee could have furnished a rebuttal. It is further submitted that the Learned Assessing Officer has mentioned that inquiries were conducted in respect of certain brokers and clients which confirmed the fact of misuse of client code modification facility in earning fictitious profits and losses. However, again the Learned Assessing Officer has not mentioned or disclosed name of any broker or client who were subjected to spot verifications. Further, the results of spot verifications have also not been disclosed. In view of this, the assessee was not in a position to furnish his defence or controvert the reports referred to by the Learned Assessing Officer. It is settled principles of law that no report adverse to the assessee can be put to use against the assessee unless the same is put to the test of examination by the assessee. In all these facts go to establish that the Learned Assessing Officer has not adhered to the principles of equity and justice. It is relevant to submit that in his letter dated 22/3/2016, the assessee had specifically requested to provide the copy of statements of the brokers who were examined by the DIT(I&CI). Request was also made for providing opportunity for cross-examination. This has gone in vain. Even the Learned CIT(A) has refrained himself in this regard. Therefore, the entire assessment proceedings stand vitiated and these deserve to be quashed. The following case-laws are quoted in support :-

(b) No evidence in the possession of the Assessing Officer regarding the allegation against the assessee of manipulating client code modification facility

9. It is further submitted that while making addition of Rs.56,73,632/-, the Learned Assessing Officer has harped again and again on the report received from DIT(I&CI), Mumbai. Except this, the Learned Assessing Officer has nothing in possession to establish that the assessee indulged in misuse of client code modification facility through his brokers. The Learned Assessing Officer does not have any evidence that the brokers, viz, Maverick Share Brokers Ltd and M/s Ridhi Share Brokers Ltd were indulging in manipulating and misusing client code modification facility. On his own, no inquiry has been done by the Learned Assessing Officer. He has not brought any material on record in support of the addition that he has made. The total base of the addition is report of the DIT(I&CI), Mumbai and alleged spot inquiries in respect of some clients and

brokers. It is submitted that not only the Learned Assessing Officer had not caused any inquiries, even the inquiries caused at Mumbai were not disclosed to the assessee. The entire addition has been made on assumption, presumption and on the basis of surface level evidences.

9.1 It is further submitted that during the course of assessment proceedings, the assessee had submitted reply under letter dated 22/03/2016, which has been quoted in the body of assessment order by the Learned Assessing Officer. In this letter, it was submitted that the assessee had earned profit from share trading through the brokers as under :-

M/s Maverick Share Brokers P.Ltd	Rs. 15,51,000
M/s Ridhi Share Brokers Ltd	Rs.1,74,10,000
Total	Rs.1,89,62,000

It was the case of the assessee that more profits have been disclosed from each of the brokers than what is alleged by the department. As against profit of Rs. 15,49,630/- from Maverick Share Brokers P.Ltd, the assessee had disclosed profit from this broker of Rs. 15,51,000/-, which is more. Similarly, as against profit of Rs. 41,24,002/- as per the Department from M/s Ridhi Share Brokers P. Ltd, the assessee has disclosed profit of Rs. 1,74,10,000/-, which is also more. The Department has alleged that from these two share brokers, the assessee had earned fictitious profit of Rs.56,73,632/- whereas the assessee has shown real income from these brokers of Rs.1,89,62,000/-. In these circumstances, when the assessee has shown more profits from the same share brokers, which stands fully accounted for in the books of accounts of the assessee, the Learned Assessing Officer was left with no ground for making the addition. By making the addition of Rs. 56,73,632/- on account of share trading profit from the aforesaid brokers, it is established beyond doubt that same income has been taxed twice. The Learned Assessing Officer did not bother nor undertook any exercise to verify that the profits received on share trading from the aforesaid brokers already stood included in the income of the assessee. However, the Learned Assessing Officer has himself observed that income from share trading was adjusted by the assessee against brought forward losses. The position being so, i.e. income already having been shown, there was no case for making any addition.

9.2 In his zeal to confirm the addition, the Learned CIT(A) has also not paid any attention to this fact. He has wrongly confirmed the action of the Learned Assessing Officer. The additions, therefore, deserve to be deleted.

(c) <u>The income from share trading through these brokers already stands accounted for in the books of the assessee</u>

10. It is further submitted that the Learned Assessing Officer has observed on Page 9 of the assessment order that the assessee obtained fictitious profits of

Rs. 56,73,632/- from share trading by way of misuse of client code modification facility in order to set off his earlier brought forward losses. The facts are that the brought forward losses already stood accepted by the Department of Rs.40,86,701/- and these have been adjusted during the year under consideration.

(d) Provisions of Sec. 68 are not applicable

11. It is further submitted that the addition has been made by the Learned Assessing Officer under section 68 of the IT Act, 1961 as observed by him on page No. 9 of the assessment order. It is submitted that provisions of Sec. 68 are not applicable in this case. The amount of Rs 56,73,632/- alleged by the Learned Assessing Officer to be fictitious income stands already included in the profit and loss account. As such, the Learned Assessing Officer was not competent to include the same again as income of the assessee under section. The provisions of Sec. 68 are applicable to credit entries in the account books of the assessee, which are not explained. In this case, there are no credit entries which have remained unexplained. The assessee has received profits which have been credited to the P&L account. The Learned Assessing Officer has erred in applying provisions of Sec. 68.

(e) Favourable case-laws

12. It is further submitted that on the issue of additions based on alleged manipulation of client code modification facility, there are several decisions in favour of the assessee, wherein such additions have been knocked down. The ratio of these decisions is fully applicable to the facts of the case of the assessee. Keeping in view these decisions, the additions made by the Learned Assessing Officer and so sustained by the Learned CIT(A) deserve to be deleted. The case-laws are quoted below :-

(1) ITO Vs. Abhishek Fincap Services P. Ltd
I.T.A. No.2750/Del/2017

Hon'ble ITAT, Delhi

"After considering the rival submissions, I do not find any merit in the appeal of the Revenue. The A.O. has not pointed out any basis or material or evidence to support his findings that assessee received any bogus entry of loss. The A.O. has not given any details how the addition has been worked-out to make the impugned addition against the assessee. The A.O. has not confronted any material or statement which may be incriminating in nature against the assessee so as to prove allegation of receiving accommodation entry of the loss. No material has been brought on record by the A.O. in support of his findings. There is no working given as to how the assessee has taken these loss entries. The Ld. CIT(A) on going through the statements of Kunal Khaleja and Subhash Chandra ITA.No.2750/Del./2017, which have been relied upon by the A.O., found that there is no co-relation between a sum of Rs.33,57,951 and the statements of the above broker with the assessee. The finding of fact recorded by the Ld.

CIT(A) have not been rebutted through any evidence or material on record. No information is available on record as to how the assessee company has taken loss from these client code modification. There is no working given in the assessment order as to how the impugned addition has been calculated by the A.O. and its basis. In the absence of any incriminating material available on record against the assessee, it is difficult to interfere with the findings of the Ld. CIT(A). It may also be noted here that even no details have been brought on record as to from whom assessee has taken the bogus entry of losses. Learned Counsel for the Assessee also demonstrated through P & L A/c that in assessment year under appeal the loss as compared to the earlier year has reduced to zero. Therefore, there is no question of making any addition against the assessee. The Ld. CIT(A) on proper appreciation of facts and material on record, correctly deleted the addition. Since the A.O. did not bring any evidence against the assessee to sustain the addition, therefore, there is no reason to remand back the matter to the file of the A.O. for reconsideration as is argued by the Ld. D.R. The departmental appeal fails and is dismissed.

6. In the result, appeal of the department is dismissed.

(2) ASSISTANT COMMISSIONER OF INCOME TAX vs. KUNVARJI FINANCE PVT. LTD.
Hon'ble ITAT AHMEDABAD BENCH 'A'
(2015) 40 ITR (Trib) 0064 (Ahmedabad), (2015) 170 TTJ 0345 (Ahd)
"11. The ld. CIT(A) in paragraph 4.13 of his order has also recorded the findings that "all transactions at the Commodities Exchanges have been duly accounted in the books of account maintained by the concerned parties. Such profits/loss has been duly accounted whenever the transactions have been closed. Thus, whatever profits have been generated or accounting of actual trade, have been offered and brought to the charge of tax in the cases of concerned assessees." These findings of fact recorded by the ld. CIT(A) has not been controverted by the Revenue at the time of hearing before us. When the transaction has been duly accounted for and the profit/loss has accrued to the concerned parties in whose names transactions have been closed, there cannot be any basis or justification for considering those profit/loss in the case of the assessee on the basis of mere presumption or suspicion. It is not the case of the Revenue that such alleged profit has actually been received by the assessee. In view of the totality of the above facts, we do not find any justification to interfere with the order of the CIT(A) in this regard and the same is sustained; and Ground Nos. 1 and 3 of the Revenue's appeal are rejected.

(3) M/s Noble Securities Alwar Vs. ITO, Ward 1(4), Alwar

Hon'ble ITAT, JAIPUR BENCH,JAIPUR

I.T.O. No911/JP/2016

"I have heard the rival contentions and perused the materials available on record. It is noted that the assessee is a partnership firm engaged in the business of trading of trading in shares. It is noted that the assessee itself is a client of M/s. Artistic Finance (P) Ltd. which carried out business on behalf of the assessee and the clients of the assessee. It is noted that every client is provided a unique code which is punched while making the transactions. It is noted that sometime the operating staff is not well versed with the system who at the time of making transactions in shares and in order to save time, prefixed the client code of the assessee in the system as default which sometime led to error in punching of client codes. In order to rectify the punching of client code, a facility i.e. Client Code Modification (in short CCM) is provided by the Stock Exchange till 4:15 PM of the trade day by itself which can be done only on written request by the client. It is also mentioned in Circular No. 974 dated 10.09.2009 of the National Securities Clearing Corporation Limited for its Futures & Options Segment (PB 25-26). The stock exchange has also drawn a list of the common violations committed and the applicable penalties (PB 21-24) where it is stated that "if the transfer of trades / errors at the time of order entries are in excess of 2% of the number of orders executed, fine of 0.1% of value of trades transferred is applicable". It is also noted from the records that the during the year the broker had carried out the broker had carried out 2380 modifications by using CCM facility which is only 0.18% of the total trades carried out by the broker during the year. It is noted that the assessee's client code was set as default in the system is for the convenience of the broker. The assessee has no control over the system. The client brings to the notice of the broker any mistake/ error in the client code. It may be noted that ITAT Ahemdabad Bench in the case of ACIT vs. Kunvarji Finance (P) Ltd. 119 ld. DR 1 had observed that the client code modification is permitted intra day i.e. on the same day. The relevant portion of the decision is as under:-

"As per Circular No. MCX/T&S/032/2007 dt. 22.01.2007 issued by the Commodity Exchange, client code modification is permitted intra- day i.e. on the same day. There is no penalty if the client code modification is upto 1 per cent of the total orders. In the present case, client code modifications made by the assessee being only 0.94 per cent i.e. less that 1 per cent of the total trading transactions, cannot be said to be unusually high or mala fide when the modification was made on the same day. Had the client modification been done after the transaction period when the price of the commodity had changed, then perhaps there could have been some basis to presume that client code modification was intentional. Even if the view of the Revenue is accepted that client code modification was done with mala fide intention, then the profit or loss accruing till the client code modification can be considered in the case of the assessee but the profit/loss arising after such modification can by no stretch of imagination be considered in the hands of the assessee. Moreover, CIT(A) having found that all transactions at the commodities exchange have been duly accounted in the books of account maintained by the concerned parties, there

cannot be any justification for considering that profit/loss in the case of the assessee on the basis of mere presumption or suspicion."

Respectfully following the decision of ITAT Ahemdabad Bench (supra), the Ground No. 2 and 2.1 of the assessee is allowed.

(4) Pr. CIT-13 Vs. Pat Commodity Services P. Ltd Hon'ble Bombay High Court I.T.A.No.1257/2016 order dt 15/1/2019

Ground No.3

In the facts and in the circumstances of the case, the Learned Commissioner of Income Tax (Appeals) has erred in confirming the addition of Rs.1,13,472/- made by the learned Assessing Officer on alleged commission payment of bogus profit in securities.

13. The Learned Assessing Officer has made addition of Rs. 1,13,472/- on the assumption and presumption that assessee paid this amount to the brokers for obtaining the alleged fictitious profit of Rs. 56,73,632/-. The Learned Assessing Officer has added the amount calculating the same @ 2% of the alleged fictitious profit.

The only ground of making the addition is that DIT(I&CI) Mumbai in his report had mentioned that during the course of spot verification, certain brokers and clients admitted of the transaction of commission varying from 3 to 6%. It is submitted that the Learned Assessing Officer is himself in a state of confusion as at what rate the commission was paid. In page 1 of the assessment order, the rate of alleged commission is 3 to 6%. In the reasons recorded, which have been produced on page 2 of the assessment order, the Learned Assessing Officer has calculated the escapement of income on account of such payment of commission @ 3%, i.e. Rs.1,70,209/-. However, again on page 3, the rate of commission is alleged 0.5% to 2%. The entire exercise is a figment of imagination. There is no material on record that assessee incurred any such expenditure. The statements of the brokers and clients confirming such commission have not been made available to the assessee. The assessee has not incurred any such expenditure because the assessee had not obtained any fictitious profit. The addition has been made totally on guess work and conjunction. The assessee has not incurred any such expenditure. Therefore, the provisions of Sec. 69 C are also not applicable. The addition deserves to be deleted.

Ground No.4

The assessee craves your indulgence to add, amend or alter all or any grounds of appeal before or at the time of hearing.

14. The Hon'ble Tribunal is requested to consider the additional grounds taken above and also the submissions made and case-laws cited and decide the appeal in favour of the assessee and oblige."

6. The ld. AR of the assessee in addition to the written submission so filed vehemently argued that the proceeding initiated against the assessee u/s. 147 of the Act is incorrect and is merely based on the information. The assessee has already offered the income in the regular books of accounts maintained by the assessee and thus there is no escapement of income as alleged by the revenue. Even on merit the case is covered by the various judgment cited in the written submission. Based on these argument he submitted that when the income is already offered in the book by the assessee there is no meaning to again add merely based on the information and the same is not tested. Even in that information the broker were indulged and not the assessee and therefore, the addition made by the ld. AO and sustained by the ld. CIT(A) is required to be deleted.

7. The ld DR is heard who relied on the findings of the lower authorities and submitted written submission the same is extracted here in below:-.

"Kindly refer to the subject cited above.

2. On perusal of the ld. CIT(A) order dated 11.12.2023, it is found that the assessee, despite being provided opportunity 6 times by the ld. CIT (A), chose not to appear before the ld. CIT(A). Generally it is seen that in similar circumstances i.e. in ex-party cases before the ld. CIT(A), the

Hon'ble bench remand back the matter to the ld. CIT(A). Hence following the consistency in approach of the bench, it is requested that the matter be restored to the file of the ld. CIT(A).

3. Moreover, on merit, the ground wise submission is as follows:

3.1 Ground No. 1 - "In the facts in the circumstances of the case, the learned Commissioner of Income Tax(Appeals) has erred in confirming the action of the Learned AO in issuing notice u/s 148 of the Income Tax Act, 1961 which is void ab-initio deserves to be quashed."

3.1.1 Despite the assesse had not made any submission before the ld. CIT(A), the ld. CIT(A) in the interest of justice, decided this ground on merit and the same is reproduced as given below:

"4.2.1. While non-compliance may be reason enough to dismiss the appeal, I think it would be appropriate to decide the case on its merit in the interest of justice. The appellant has raised 5 grounds to challenge the actions of the assessing officer (here in after referred as the AO), which are dealt below:-

4.2.2 As stated earlier, the appellant has not provided a submission supporting it's grounds of appeal, so the appeal will be decided based on grounds of appeal and submission made before the AO. In ground no. 1the appellant has challenged the validity of the reopening of the assessment under section 147 read with section 148 of the Income Tax Act, 1961(in short "the Act"), while in ground no 2 and 3 the appellant has challenged the merits of the addition made by the AO.

4.2.3 First, will deal with, legal issue raised by the appellant. The appellant has disputed the validity. of the of the reopening: of the assessment under section 147 of the Acc on the ground that the AO did not have any material and any evidence to assume jurisdiction under section 147 of the Act, which caused him to act without jurisdiction Furthermore, the appellant asserted that the AO formed a belief based on borrowed satisfaction that income chargeable to tax had escaped assessment within the meaning of section 147 of the Act. According to the appellant, the AO's decision to reopening of the assessment under section 147 of the Act was based on a change of opinion, which made it invalid. During the assessment proceedings, the appellant stated that the reopening of the assessment under section 147 read with section 148 of the Act was based on inaccurate information, which rendered the reopening of the reassessment invalid.

4.2.4. A letter dated 27/02/2015 from the Director (I&C), Mumbai was-received by the AO, which revealed that certain brokers were involved in transferring trade profits and losses from one client to another client account by amending client codes in 'Future and Option' segment in NSE under the pretence of correcting errors. The gain or loss book entries were then employed to evade tax. The letter stated that many persons utilized losses generated by unscrupulous brokers through mala fide modification of client codes to set off profit. Similarly, the brokers used CCM to shift profits from certain clients to set off the brought forward losses with the other clients. The purpose of shifting profit was to introduce unaccounted money under the grab of trading profit. To provide fictitious profits and losses book entries, share brokers charged client a commission ranging from 1% to 3%.

4.2.5 The letter mentioned earlier accompanied by a CD that contained the list of beneficiaries who received false profit or loss entries from brokers who took advantage of CCM facility provided by the SEBI to modify a genuine error that happens during the trading and generated such bogus entries. Upon examination of the CD, the AO observed the appellant was given false profit entries by the two brokers, M/s Maverick Share Brokers Pvt. Ltd and Riddhi Brokers Pvt. Ltd respectively. The brokers mentioned earlier, altered the original client code S-109 and S-1 that belonged to M/s Sandeep Stock Pvt Ltd to new client code CS 174 and S- 103 that belonged to the appellant. M/s Sandeep Stock Pvt Ltd suffered a loss of Rs.56,73,632/- in its client codes in share trading in FO segment in NSA, but the said brokers converted it into profit of equal amount and sifted the fake profit entries to the appellant. The client code e was modified by the brokers mentioned above on 05/04/2009 and 07/06/2009 for 104000 share transactions with a value of Rs.39,79,29,838/-. It is evident from the above that the letter and CD mentioned above gave specific information how the share brokers in collusion with the appellant altered the client code to generate false profit entries end enabled the appellant's tax evasion. As per the CD, the appellant was charged a commission by the brokers for providing false entries.

4.2.6 From the above, it can be discerned that the AO received specific information that the appellant's income chargeable to tax had escaped assessment under section of 147 of the Act. The information given to the AO in this was not vague or general, but rather specific. Furthermore, when he came across information the AO did not issue notice under section 148 of the Act rather, he examined the information, applied his mind to it and formed the prima facie belief that income chargeable to tax had escaped assessment within the meaning of section 147 of the Act. It is well settled that at the stage of reopening of assessment, the AO, based on information, to form a prima facie belief that income chargeable to tax has escaped assessment. It is also fairly settled that at the time of reopening of assessment what is required is "reason to believe" but not the establishment of fact of escapement of income. Sufficiency or correctness of information not a thing to be considered at the time of reopening of the assessment.

4.2.7. The record reveals that in the present case no notice under section 143(2) was issued indicating that the income declared in the return was accepted under Section 143(1) of the Act. Therefore, the principle of change of opinion that prevents the AO from reopening of the assessment is not applicable to this case.

4.2.8. Information can be derived from either internal or external source S. Tie income Tax Act, 1961 does not prohibit the AO from using borrowed information O form a belief that income chargeable to tax has escaped assessment. No evidence exists that the AO was directed to exercise power under section 147 of the Act. Although the AO utilized borrowed information, he analyzed it independently and applied his own mind, leading to the formation of belief that income chargeable to tax escaped assessment. Therefore, the AO cannot be said to have assumed jurisdiction under section 147 of the Act on borrowed satisfaction.

4.2.9. As already mentioned the AO reopened the assessment on the basis of information from the Director (I&C) Mumbai, which included the, appellant's name on a list of persons who received fake profit entries who misused the SEB's client code facility to enable those persons to evade taxes. Therefore the material given to the AO was directly linked-to the belief, that there was escarpment of income.

4.2.10. It is evident from the aforementioned that the AO had tangible material in his possession to form a belief that income chargeable to tax had escaped assessment within the meaning of section 147 of the Act. After taking into account all the aspects of the issue, I am of the view that the AO validly assumed the jurisdiction under section 147 of the Act. AS a result, the ground No.1 of the appeal is dismissed."

3.1.2) Further before the Hon'ble bench, the assessee has quoted 9 case laws in his support (cited on page no 8 to 13 of the assessee's submission). The submission on the same is as follows:

3.1.2.1) The aforesaid case laws cited by the assessee is entirely distinguishable on facts.
3.1.2.2) Most of the case laws are of non-jurisdictional High Court or ITAT, hence the same are not binding on the Hon'ble ITAT Bench.
3.1.3) The Ld. CIT(A) has dealt with the issue of sufficiency of reasons and application of mind by the AO while recording reasons in his order as mentioned in para 3.1.1 above.

3.1.4) The following case laws are filed to substantiate the findings of the ld. CIT(A) on the reasons recorded:

S.no.	Name of the case	Synopsis
1.	[1999] 236 ITR 34 (SC) SUPREME COURT OF INDIA Raymond Woollen Mills Ltd. v. Income-tax Officer	The Hon'ble SC held that in determining whether commencement of reassessment was valid, it has only to be seen whether there was prima facie some material on the basis of which the department could reopen the case. The sufficiency or correctness of material is not a thing to be decided at this stage.
2.	[2023] 148 taxmann.com 446 (Delhi) HIGH COURT OF DELHI Saif II Mauritius Company Ltd. v. Assistant Commissioner of Income-tax	Since no scrutiny assessment had taken place in instant case and there was prima facie material based on which reopening notice was issued within four years, sufficiency or correctness of material would not be considered at stage of issue of notice under section 148.
3.	[1999] 103 TAXMAN 562 (PAT.) HIGH COURT OF PATNA P.K. Haldar & Co. v. Commissioner of Income-tax	It is held that in writ petition arising out of notice under section 148, Court is not supposed to go into sufficiency or otherwise or correctness of materials leading to notice, but merely to see whether there is any material before Assessing Officer on basis of which he came to form reasonable belief that income had escaped assessment.
4.	[2002] 123 Taxman 756 (Calcutta) HIGH COURT OF CALCUTTA Ispat Industries Ltd. v. Deputy Commissioner of Income-tax	It is held that Court will only find out whether there was any prima facie material to reopen case and sufficiency or correctness cannot be gone into by Court.

5.	[2023] 153 taxmann.com 25 (Gujarat) HIGH COURT OF GUJARAT Akshat Pramodkumar Chaudhary v. Deputy Commissioner of Income-tax	Where Assessing Officer had received information from Investigation wing that assessee received accommodation entry in penny scrip, which was bogus in nature and addition was required to be made to total income of assessee and on basis of said material before it, he was satisfied to harbour reasons to believe that there was escapement of income and on such basis, he had exercised his powers under section 148, no fault could be found in such reassessment proceedings.
6.	[2022] 139 taxmann.com 198 (Gujarat) HIGH COURT OF GUJARAT Amar Jewellers Ltd. v.Assistant Commissioner of Income-tax	Where pursuant to survey under section 133A conducted by Investigating Wing on BAS, he admitted on oath that he was engaged in business of providing accommodation entries to beneficiaries in lieu of commission and had named applicant as one of recipients of accommodation entries and Assessing Officer after examining facts formed belief that income chargeable to tax had escaped assessment, proceedings of reassessment initiated in cases of applicant were justified.
7.	[2018] 94 taxmann.com 393 (Gujarat) HIGH COURT OF GUJARAT Amit Polyprints (P.) Ltd.v.Deputy Commissioner of Income-tax	Where reassessment proceedings were initiated on basis of information received from Investigation wing that assessee had received certain amount from shell companies working as an accommodation entry provider, reassessment could not be held unjustified.
8.	[2018] 91 taxmann.com 119 (Gujarat) HIGH COURT OF GUJARAT Aradhna Estate (P.) Ltd.v.Deputy Commissioner of Income-tax, Circle-1(1)	Where reassessment proceedings were initiated on basis of information received from Investigation wing that assessee had received certain amount from shell companies working as an accommodation entry provider, merely because these transactions were scrutinised by Assessing Officer during original assessment, reassessment could not be held unjustified.
9.	[2023] 152 taxmann.com 573 (SC) SUPREME COURT OF INDIA Ajay Gupta v. Income-tax Officer	SLP dismissed against order of High Court that where a reopening notice was issued on ground that assessee was beneficiary of accommodation entry in form of long-term capital gain (LTCG) on sale of shares which was claimed as exempt under section 10(38), since said transactions of sale and purchase of shares were admitted by assessee and it had not brought on record anything to suggest that reassessment proceedings were being undertaken in arbitrary manner, impugned reopening notice was justified.
10.	[2019] 101 taxmann.com 231 (Madhya Pradesh) HIGH COURT OF MADHYA PRADESH Etiam Emedia Ltd.v. Income-tax Officer-2(2)	Where Assessing Officer had specific information from DIT (Investigation) that assessee company was merely a dummy concern of a person who allegedly used dummy companies for routing his unaccounted money and, further, assessee also had certain amount of bogus share application, it could be said that there was material on basis of which notice under section 148 could be issued.
11.	[2020] 115 taxmann.com 338 (Delhi) HIGH COURT OF DELHI	Where reassessment notice was issued on basis of information received from DIT (Investigation) that a parent

	Experion Developers (P.) Ltd. v.Assistant Commissioner of Income-tax	company of assessee at Singapore had made an investment of huge amount in assessee company but said investing company did not appear to be carrying out any regular business activities and was floated to act as a conduit to funnel funds into Indian companies, impugned notice was justified.
12.	[2018] 91 taxmann.com 181 (Gujarat) HIGH COURT OF GUJARAT Jayant Security & Finance Ltd.v.Assistant Commissioner of Income-tax, officer Circle 1(1)	Initiation of reassessment proceedings on basis of information received from Investigation wing that assessee had received certain amount as a loan from a company, working as entry operator and earning bogus funds to provide advances to various person, was justified.
13.	[2012] 18 taxmann.com 83 (Delhi) IN THE ITAT DELHI BENCH Ms. Rainee Singh v.Income-tax Officer	Validity of reassessment where AO had received information from investigation wing regarding a bogus claim of long-term capital gains.
14.	[1995] 83 TAXMAN 194 (MAD.) HIGH COURT OF MADRAS Panchugurumurthy v. Commissioner of Income-tax	The Hon'ble High Court held that on going through the materials on record, produced by the department, it was clear that sufficient reasons had been recorded by the competent authority and the statutory approval had been obtained from the appropriate authority. Consequently, the general and vague allegation of mala fides and want of sufficient basis for the proposed action under section 148 had no basis in law. Further, as held earlier, the action initiated under section 148 could not be said to be prima facie illegal to warrant the interference of the Court.
15.	[2016] 72 taxmann.com 302 (Gujarat) HIGH COURT OF GUJARAT Peass Industrial Engineers (P.) Ltd. v. Deputy Commissioner of Income-tax	Where Assessing Officer had reopened assessee's assessment for assessment year 2012-13 for reasons that information was received from Competent Authority, Kolkata that one 'K' was very known entry operator and instant assessee was also a beneficiary of 'K' to extent of Rs. 183 lakhs pertaining to assessment year 2012-13, reasons were sufficient enough to reopen assessment.
16.	[2020] 114 taxmann.com 718 (Gujarat) HIGH COURT OF GUJARAT Purnima Komalkant Sharma v. Deputy Commissioner of Income-tax, Circle 1	Where evidence found during search in case of third party was sufficient to form belief that LTCG shown by assessee was in nature of accommodation entries and income to that extent had escaped assessment, issue of notice under section 148 was justified.
17.	[2022] 139 taxmann.com 409 (Gujarat) HIGH COURT OF GUJARAT Pushpa Uttamchand Mehta v. Income-tax Officer	Where Assessing Officer had information in form of accounts/documents received from Investigation wing that 'U' was a company run, managed and operated by entry providers and it was a penny stock and assessee had entered into transaction with 'U' to claim bogus capital gains, it could not be said that Assessing Officer, on absolutely vague or unspecific information initiated proceedings of reassessment without taking pains to form his own belief in respect of such materials.

18.	[2023] 153 taxmann.com 282 (Kolkata - Trib.) IN THE ITAT KOLKATA BENCH 'A' Tarasafe International (P.) Ltd. v. Deputy Commissioner of Income-tax	Where Assessing Officer found that assessee was beneficiary of bogus donation and was able to lay its hand on a large number of material and had recorded statements of founder and director of said institution as well as other persons, who have deposed during survey and post-survey inquiries regarding bogus loan given by assessee to said institution, sufficient material was available with Assessing Officer for forming an opinion that income had escaped assessment.

3.2 Ground No. 2 - "In the facts in the circumstances of the case, the learned Commissioner of Income Tax(Appeals) has erred in confirming the addition of Rs. 56,33,632/- made by the Learned AO on alleged bogus income from trading in securities"

3.2.1) The AO dealt with this ground in his order and the finding of the AO on the same is reproduced as given below:

"3.10 The explanation filed by the authorized representative of the assessee was duly considered but the reply filed by the authorized representative of the assessee was not found to be sustainable, because according to the information received from the Director of Income Tax (I&CI), Mumbai, some brokers have misused the client code modification facility in the F&0 Segment on the National Stock Exchange and have provided fake profit and loss entries to the beneficiaries on demand. Spot verification was conducted by the Deputy Director of Income Tax (I&CI) Unit-l, Mumbai under Section 131 (1A) of the Income Tax Act 1961 and during the investigation, it was confirmed that the brokers were placing fake profits/losses on the orders of the clients. The code modification facility has been misused. Since, the assessee is one of the beneficiaries of such fraudulent profits/losses; the assessee's case was opened for reassessment under section 147 of the Income Tax Act 1961. Later, during the investigation proceedings of the case, it was also found that the assessee had also obtained fake profit entry by getting the client code modified through a broker. On analysis of the original client code and the modified client code, it can be seen that there is no similarity between the original client code and the modified client code. Furthermore, the repetition of certain customer codes in the transaction clearly indicates that the transaction modifications were not the genuine ones they were intended for.

3.11 Vide this office letter dated 02.03.2016, the entry of loss from work in the F&0 Segment was erroneously mentioned whereas the assessee had entered profit from work in the F&O Segment amounting to Rs. 56,73,633/- was received. This fact was later clarified vide. this office letter 2887 dated 18.03.2016.

3.12 During the financial year under review by the assessee, M/s Maverick Share Brokers Ltd. And. M/s Riddhi Share Brokers Pvt. Ltd. A copy of the account and broker's statement in respect of the transactions done by the Company have been submitted according to which it has been shown that a net profit of Rs. 1,89,62,012/- has been earned during the financial year under review. However, the statement presented by them does not prove whether the fake profit entry amount of Rs. 56,73,633/- taken by the asses see by amending the original client code through the above two brokers is included in it or not. The authorized representative of the assessee has also not clarified the fact in his reply that

the fake profit entries obtained by amending the client code through brokers are included in the income received from shares. This fact was proved during the spot verification conducted by the Deputy Director of Income Tax (I&CI) Unit-l, Mumbai in the case of brokers and the brokers also accepted that at the request of the beneficiary, they generated the original client code as per their requirement. After modification, the profit/loss account has been provided to them on their demand, and in return for this work, they have received the commission in cash ranging from 0.5 percent to 2 per cent of the total entry price.

3.13 As discussed above, brokers frequently engaged in client code modification. As many as 20-30 percent of transactions were modified by brokers in some days. Whereas the customer code modification feature was only for Correcting genuine errors. The possibility of error in transactions at the rate of 20-30 percent cannot be accepted. Actually, these brokers were involved in arranging profit/loss as per the needs of the clients. During the course of business, it is the names of the brokers and their associated persons who are used to conduct such business. The facility of modification of customer code was misused to pass on fake profit/loss to the beneficiaries as per their requirement after the business period. Further, the assessee has not confirmed whether the order was placed by the modified customer or not.

3.14 In the case of the assessee, the brokers M/s Maverick Share Broker Ltd., and M/s Riddhi Broker Pvt. Ltd. changed the original client code S109 and S1 which belonged to M/s Sandeep Stock Pvt. Ltd. to new client code no. CS174 and S103 were made which belonged to the assessee and in the original client code, the total loss amount in the case of M/s Sandeep Stock Pvt. Ltd. was Rs. 56,73,632/-. By changing it to the assessee's code, entry of profit amounting to Rs. 56,73,632/- was available to the assessee. All these transactions were done by M/s Maverick Share Broker Ltd. and M/s Riddhi Broker Pvt. Ltd. on 05.04.2009 and 07.06.2009 respectively, in total shares 1,04,000 by amending the client code and the total amount has been changed in the trade value of Rs. 39,78,29,838/-, Thus the assessee has obtained fake profit entry to adjust the old losses in his regular business which is illegal. Therefore, keeping in view all the facts and circumstances of the case, the amount of fake profit taken by the assessee through brokers of Rs. 56.73,632/- was added to the total taxable income of the assessee considering it as income received from unexplained sources under section 68 of the Income Tax Act.

3.15 During the spot verification done by the Deputy Director of Income Tax (I&CI) Unit-l, Mumbai in the case of brokers, this fact was also proved that the original client code was amended as per the requirement of the beneficiary and the profit/loss was reported on his demand. In return for providing entries, a commission ranging from 0.5 percent to 2 percent of the total entry price is received. In the case of the assessee, M/s Maverick Share Brokers Ltd. and M/s Riddhi Broker Pvt. Ltd. amended the original client code and paid the assessee an amount of Rs. 56,73,632/-, on which 2 percent amount was Rs. 1,13,472/- Commission deemed to be paid out of income from unexplained sources Income Tax Act, is added to the total taxable income of the assessee under the provisions of section 69C of the Income Tax Act, 1961. Also, a separate notice is issued to initiate penalty proceedings under Section 271(1)(C) of the Income Tax Act 1961 in relation to furnishing wrong details of income."

3.2.2) Further despite the assesse had not made any submission before the ld. CIT(A), the ld. CIT(A) in the interest of justice, decided this ground on merit and the same is reproduced as given below:

"*4.3.1. Coming to the merits (grounds no. 2&3) of the additions of Rs. 56,73,632/- and Rs. 1,13,472/-, it is relevant to note that the AO in his order observed that the CD given by the Director (I&C),Mumbai contained a list of beneficiaries who had taken profit or loss book entries based on their requirement and the list specifically mentioned the appellant's name. The AO further noted that there were 1,04,000 transactions that involved client code modification(CCM)by the two brokers, Maverick Share Brokers Pvt Ltd and Riddhi Brokers Pvt Ltd. The AO detailed the tactics used by both the brokers mentioned above and the appellant to avoid taxes. It was pointed out by the AO that the brokers referenced earlier changed the original client codes S- 109 and S-1, which were owned by M/s. Sandeep Stock Pvt Ltd to S-174 and S-103 which were connected to the appellant. In the process fake profit of Rs. 56,73,632/- was shifted to the appellant to set off brought forward losses. The AO found that the errors in the trading were not genuine but a mechanism devised by the brokers in collusion with the appellant to avoid taxes. Consequently, the AO added Rs. 56,73,632/- and Rs. 1,13,472/- as undisclosed income and unexplained expenditure respectively.*

4.3.2 The appellant has failed to controvert the findings of the AO except for stating that Rs.56,73,632/- was correctly recorded in it's account. Given the substantial numbers of errors, which reached upto 32% of all transactions, it is hard to believe that they were genuine. The repetition of same mistakes makes it harder to accept brokers' mistakes in making entries were genuine. It is beyond one's comprehension how similar types of mistakes occurred repeatedly with the same brokers and the appellant. In share transactions the brokers putting S174 and S-103 instead original client code S-109 and S-1 respectively is unacceptable because the chances of such an error occurring is rare and remote, if not impossible.

4.3.3 It is the appellant's duty to demonstrate that the brokers' errors in making entries were genuine particularly when the profit was transferred to the appellant's code for the appellant benefit Simply saying that client code modification were genuine and transactions were duly recorded in its account does not suffice for the appellant to distance itself from this. It is evident from the record that client code was modified in F&O segment with mala fide intentions to generate false profit and set off brought forward losses available with the appellant with the objective to introducing unaccounted money into capital. Furthermore, in the appellate proceedings, the appellant has failed to furnish any submission or evidence in support of its argument that mistakes were genuine and no fake profit book entries were taken. Additionally, the appellant failed to explain the sources of expenditure in form of commission paid to the brokers for providing fictitious profit entries."

3.2.3) Further before the Hon'ble bench, the assessee has quoted 4 case laws in his support (cited on page no 25 to 31 of the assessee's submission). The submission on the same is as follows:

3.2.3.1) The aforesaid case laws cited by the assessee is entirely distinguishable on facts.

3.2.3.2) In the case of M/s Noble Securities Alwar vs ITO, Ward 1(4), Alwar (ITA No 911/JP/2016) Hon'ble ITAT, Jaipur Bench, Jaipur, it is stated that "if the transfer of trade/ errors at the time of order entries are in excess of 2% of the number of orders executed, fine of 0.1% of value of trades transferred is applicable". However in the instant case, the same is at 32 % i.e. beyond the limit. Hence the case is clearly distinguishable on facts.

3.2.3.3) 3 out of aforesaid 4 case laws of non-jurisdictional High Court or ITAT, hence the same are not binding on the Hon'ble ITAT Bench.

3.2.4) The following case laws (in favour of revenue) are also filed on the following issues:

3.2.4.1) The assessee's contension of non-furnishing of the reports received from DIT(I&CI) Mumbai and not providing the opportunity of cross examination, the following case laws are relied upon:

1. State Bank of Patiala v. S.K. Sharma AIR 1996 SC 1669.
2. M J James civil appeal no 8223 of 20089 SC dated 16.11.2021.
3. Kishanlal Agarwalla v. Collector of Land Customs AIR 1967 Cal 80.
4. State of J & K v. Bakshi Ghulam Mohammad AIR 1967 SC 122.
5. [2022] 139 taxmann.com 352 (Calcutta) HIGH COURT OF CALCUTTA Principal Commissioner of Income-tax v. Swati Bajaj.
6. [2022] 135 taxmann.com 252 (SC) SUPREME COURT OF INDIA T. Takano v. Securities and Exchange Board of India.
7. Rameshwar Lal Mali vs CIT 256 ITR 536 (Raj.).
8. Mahendra N. Chatterjee v. Collector of Central Excise.
9. Soman Citi v. JCIT in ITA No. 2960/Mum/2016
10. CIT Vs Metal Products of India (1984) 150 ITR 714 (P&H).
11. Ram Niwas Gupta, Dehradun v. DCIT, Dehradun on 6th February, 2019 in ITA No. 4881 to 4883/Del/2016 (Assessment Years: 2010-11, 2012-13 and 2013-14).
12. [2022] 136 taxmann.com 333 (SC) SUPREME COURT OF INDIA Securities and Exchange Board of India v. Mega Corporation Ltd:
13. Sh Satish Kishore Vs ITO and Naval Kishore Vs ITO (2019-TIOL-1760-ITAT-Del in ITA No. 1704-1705/Del/2019):
14. ITA No. 220/2019 CM No. 10774/2019 UDIT KALRA Vs INCOME TAX OFFICER

3.2.4.2) On preponderance of human probabilities Vs Direct Evidence Vs Circumstantial Evidence AND ONUS , the following case laws are relied upon:

1. [2016] 66 taxmann.com 288 (SC) SUPREME COURT OF INDIA Securities and Exchange Board of India v. Kishore R. Ajmera.
2. [2022] 139 taxmann.com 352 (Calcutta) HIGH COURT OF CALCUTTA Principal Commissioner of Income-tax v. Swati Bajaj.
3. [1985] 22 Taxman 11 (SC) SUPREME COURT OF INDIA McDowell & Co. Ltd. v. Commercial tax Officer.
4. [1971] 82 ITR 540 (SC) SUPREME COURT OF INDIA Commissioner of Income-tax v. Durga Prasad More.
5. [1995] 80 Taxman 89 (SC) SUPREME COURT OF INDIA Sumati Dayal v. Commissioner of Income-tax.
6. [2007] 161 Taxman 169 (SC) SUPREME COURT OF INDIA Commissioner of Income-tax v. P. Mohanakala.
7. [1977] 107 ITR 938 (SC) SUPREME COURT OF INDIA Roshan Di Hatti v. Commissioner of Income-tax.
8. [1963] 50 ITR 1 (SC) SUPREME COURT OF INDIA Kale Khan Mohammad Hanif v. Commissioner of Income-tax.
9. [2013] 29 taxmann.com 291 (Delhi) HIGH COURT OF DELHI Commissioner of Income-tax, Delhi-V N.R. Portfolio (P.) Ltd.
10. A. Govindarajulu Mudaliar v. CIT [1958] 34 ITR 802 (SC).
11. CIT v. Nova Promoters Finlease (P.) Ltd. [2012] 18 taxmann.com 217/206 Taxman 207/342 ITR 169 (Delhi).
12. CIT v. Oasis Hospitality (P.) Ltd. [2011] 9 taxmann.com 179/148 Taxman 247/333 ITR 119 (Delhi).
13. [2019] 109 taxmann.com 53 (SC) SUPREME COURT OF INDIA NDR Promoters (P.) Ltd.v. Principal Commissioner of Income-tax.
14. [2019] 112 taxmann.com 330 (SC) SUPREME COURT OF INDIA Suman Poddar v. Income Tax Officer.
15. The Hon'ble Supreme Court in Chuharmal v. CIT [1986] 38 Taxman 190/172 ITR 250.
16. Hemil Subhashbhai Shah vs DCIT, Ward-5(3)(1) Ahmedabad, ITA No.1121/Ahd/2018, [Asst.Year : 2014-15] AND ITA No.961/Ahd/2019, [Asst.Year : 2015-16], INCOME TAX APPELLATE TRIBUNAL “B” BENCH, AHMEDABAD dated 12.06.2023.
17. [2019] 109 taxmann.com 174 (Delhi - Trib.) IN THE ITAT DELHI BENCH 'G' Sandeep Bhargava v. Assistant Commissioner of Income-tax, Circle-60(1), New Delhi.
18. [2019] 106 taxmann.com 65 (Delhi - Trib.) IN THE ITAT DELHI BENCH 'SMC' Pooja Ajmani v. Income-tax Officer, Ward 20(4), New Delhi.
19. [1991] 56 TAXMAN 304 (CAL) HIGH COURT OF CALCUTTA Commissioner of Income-tax v. United Commercial & Industrial Co. (P.) Ltd.
20. [2019] 110 taxmann.com 307 (Delhi - Trib.) IN THE ITAT DELHI BENCH 'G' Satish

Kishore v. Income Tax Officer, Ward-47(2), New Delhi.

21. [2011] 43 SOT 544 (Delhi) IN THE ITAT DELHI BENCH 'B' Hersh W. Chadha v. Deputy Director of Income-tax, Circle-1(1), International Taxation.
22. [2003] 128 Taxman 621 (Delhi) HIGH COURT OF DELHI Sajan Dass& Sons v. Commissioner of Income-tax.
23. [1979] 2 Taxman 197 (SC) SUPREME COURT OF INDIA Indian & Eastern Newspaper Society v. Commissioner of Income-tax.
24. Mahindra & Mahindra Ltd v Union of India AIR 1979 SC 798.
25. The Hon'ble Delhi High Court in CIT(Addl) vs Jay Engineering Works Ltd (1978) 113 ITR 389 (Del).
26. Gadgil (SS) vs Lal & Co (1964) 53 ITR 231 (SC).
27. Mangilal Jain Vs ITO 315 ITR 105 the Hon'ble High Court of Madras.
28. Precision Finance P Ltd 208 ITR 465 the Hon'ble High Court of Calcutta.
29. Principal Commissioner of Income-tax (Central)-1 v. NRA Iron & Steel (P.) Ltd. [2019] 103 taxmann.com 48 (SC) Hon'ble Supreme Court.
30. [2018] 90 taxmann.com 147 (SC) SUPREME COURT OF INDIA Securities & Exchange Board of India v. Rakhi Trading (P.) Ltd
31. [1980] 4 Taxman 525 (Delhi) HIGH COURT OF DELHI Yadu hari Dalmia v. Commissioner of Income-tax.
32. [2013] 30 taxmann.com 292 (Delhi) HIGH COURT OF DELHI Commissioner of Income-tax v. Nipun Builders & Developers (P.) Ltd.
33. [1982] 134 ITR 119 (RAJ.)HIGH COURT OF RAJASTHAN Vimal Chandra Golecha v. Income-tax Officer.
34. [2018] 95 taxmann.com 327 (SC) SUPREME COURT OF INDIA Commissioner of Customs (Import), Mumbai v. Dilip Kumar & Company.
35. 2013-TIOL-128-ITAT-MUM IN THE INCOME TAX APPELLATE TRIBUNALBENCH 'A' MUMBAI ITA No.7024/Mum/2010Assessment Year: 2004-05 SHRI ARVIND M KARIYAA Vs ASSTT COMMISSIONER OF INCOME TAXCENTRAL CIRCLE-12.
36. [1973] 87 ITR 370 (SC) SUPREME COURT OF INDIA Commissioner of Income-tax v. S.P. Jain.
37. [2019] 109 taxmann.com 53 (SC) SUPREME COURT OF INDIA NDR Promoters (P.) Ltd.

    v. Principal Commissioner of Income-tax.
38. [1928] 3 ITC 48 (ALL.) HIGH COURT OF ALLAHABAD Bhagat Halwai.

39. 2019-TIOL-1973-ITAT-MAD IN THE INCOME TAX APPELLATE TRIBUNAL BENCH
'B' CHENNAI ITA No. 746/CHNY/2019 Assessment Year: 2012-13 SHRI ASHOK BATUKLAL MAKWANA Vs INCOME TAX OFFICER ITA No. 747/CHNY/2019 Assessment Year: 2015-16 SHRI ASHOK BATUKLAL MAKWANA Vs INCOME TAX
OFFICER.
40. IN THE INCOME TAX APPELLATE TRIBUNAL BENCH 'D' MUMBAI ITA No.6398/Mum/2012 Assessment Year: 2003-04 DISHA N LALWANI Vs INCOME TAX
OFFICER.

Respectfully submitted for your kind consideration."

7.1 In addition to the written submission so filed by the ld. DR submitted that as regards the grounds for re-opening of the case of the assessee he has relied upon the 14 case laws and based on that he supported the validity of the re-opening the case of the assessee by the revenue. He vehemently argued that ld. CIT(A) has decided the issue of the assessee even on merits of the case. He further submitted that how the circular of SEBI has been misused and the client code medication was used by the broker and has misused the provision of law. The facts of the case law relied upon by the assessee are different with the fact of the case. Therefore, relying on the Swati Bajaj case there is no merits in the arguments raised by the ld. AR of the assessee. The circular of the SEBI speaks about the percentage upto which the adjustment can be made whereas in this case the percentage of variation is more as detailed in the

orders of the lower authority. Based on the detailed investigation the brokers were surveyed and the information based on that the case of the assessee was re-opened since the assessee is one of the beneficiaries and therefore considering the finding recorded in the order of the lower authority he submitted that the appeal of the assessee has not merits and required to be dismissed.

8. We have heard the rival contentions and perused the material placed on record and also gone through the various judicial precedent cited by both the parties to drive home to their respective contentions. The brief facts of the case is that the assessee company is engaged in the business of wholesale buying and selling of salt and also from buying and selling of shares and securities. For the year under consideration, the assessee filed return declaring total income of Rs. 1,23,940/- on 30/09/2010. In the case of the assessee, proceedings u/s 147 were initiated by the DCIT, Circle-6, Jaipur by issuance of notice u/s 148 dated 29/03/2015 on the ground that allegedly assessee obtained fictitious profits of Rs.56,73,633/- by misusing client code modification with the help of brokers. Assessment has been completed by ITO, Ward 5(2), Jaipur on total income of Rs.59,11,104/-, inter-alia, making addition of the alleged fictitious profits of Rs. 56,33,633/-

and also of Rs. 1,13,472/- on account of payment of commission for receiving the aforesaid fictitious profit. The appeal of the assessee has been dismissed by the ld. CIT(A) ex-parte confirming the action of the ld. AO. The ld. DR argued that since the order of the ld. CIT(A) ex-parte the matter be remanded back to the file of the ld. CIT(A). Whereas the ld. AR of the assessee that the re-opening is made merely on the information based and the case of the assessee is covered by the various judgment on merits and therefore, there is no reason to give second inning in this case. The ld. DR submitted his submission one for re-opening of the case and another the merits of the case where in the he has emphasized that the ld. CIT(A) thought in the exparte order calculated, the tolerance limit @ 32 vide para 4.3.2 as relied by the ld. DR. He further submitted various decision that it is not necessary to given opportunity to cross examination and availability of report of Investigation wing. On the other hand, the ld. AR submitted that this percentage derived has no basis. But if the same is understood from the facts available at page 4 of the assessment order, the same is worked out as under :

Profit / volume = 56,73,633 / 39,78,29,838 in terms of percentage comes to 1.42 % of this volume reported in the order itself.

Thus, it the absence of the working in the order of the ld. CIT(A) the volume and percentage as computed be considered as the same is calculated based on the set of facts available on the assessment order.

9. With this brief facts of the case now let us try to understand the issue in this case which starts with client code modification. The **Client code modification** [CCM] refers to the alteration or change of client codes after the execution of trades. It is a process that allows rectification of errors or incorrect data entry made by dealers during order placement. The purpose of giving this leverage is to correct genuine errors in punching or placing orders. It is not meant for routine use but rather as an exception. Stock exchanges provide a facility for modifying client codes post-trade execution. However, this facility is subject to specific guidelines, including time limits and the system on which modifications can occur. To prevent misuse, non-institutional client code modifications may incur penalties or fines as per the guidelines. Here in this case the issue need to be analyzed based on the facts available on record. The impugned disputed is demonstrated by the ld. AO and the same is reproduced here in below :

Market	Broker I code	Broker 4, Name	Original client code	PAN	Original client name	Profit/ loss to original client because of client code modification	Modified client code	PAN	Modified client name	Profit/ loss to modified client because of client code modification
F&40	11604	Maverick Share Brokers Limited	S109	AAICS I 108A	Sandeep Stocks Private Limited	-15,49,630.00	CS174	AADCS3704R	Spectrum Foods Limited	15,49,630.00
F&O	13009	Ridhi Share Brokers Pvt Ltd.	SI	AAICS1108A	Sandeep Stocks Pvt. Ltd.	-41,24,002.50	5103	AADCS3704R	Spectrum Foods Limited	41,24,002.50

PAN	Name	Market	Number of trade modified	Qty of shares modified	Value of trade modified	Profit/ loss because of client code modification
AADCS3704R	Spectrum Foods Limited	F&O	129	1,04,000	39,78,29,838	56,73,633

Date wise modified volume

Market Segment	Date	Number of trade modified	Qty of shares modified	Value of trade modified
F&O	5/4/2009	89	74,000	26,92,93,840
F&O	7/6/2009	40	30,000	12,85,35,998

The bench noted that the broker instead of “Spectrum Foods Private Limited” the name of “Sandeep Stock Private Limited” is punched. The transaction were executed on 05.04.2009 and 07.08.2009 and value of the transaction involved is 1,04,000 shares and volume total is 39,78,29,838/-. The number of trade modified is 129 as narrated in the assessment order. The assessee submitted that the income that has been received on the transaction is duly offered in the regular books of accounts and the same is accepted and in addition a separate addition is made merely based on the

investigation report and merely the income is accounted by the assessee which is arising out of the CCM done by the broker. The assessee has submitted the documentary evidence about the income, payment received by an account payee cheque. Thus, considering the overall facts which are already on record it is beyond doubt that the assessee no where alleged to have given any cash no documents relating to that transactions found and merely the income is arising on account of CCM the same cannot be considered as income within the meaning of section 68 of the Act, as the assessee has justified the income with the documentary proof. In support of the income the ld. AR of the assessee submitted all the required evidence and even the controlling authority allowed these type of punching error. This issue is discussed in detailed in the case of M/s. Noble Securities Alwar Vs. ITO wherein the Jaipur bench has considered the issue and the relevant finding is reiterated herein below :

> *"I have heard the rival contentions and perused the materials available on record. It is noted that the assessee is a partnership firm engaged in the business of trading of trading in shares. It is noted that the assessee itself is a client of M/s. Artistic Finance (P) Ltd. which carried out business on behalf of the assessee and the clients of the assessee. It is noted that every client is provided a unique code which is punched while making the transactions. It is noted that sometime the operating staff is not well versed with the system who at the time of making transactions in shares and in order to save time, prefixed the client code of the assessee in the system as default which sometime led to error in punching of client codes. In order to rectify the punching of client code, a facility i.e. Client Code Modification (in short CCM) is provided by the Stock Exchange till 4:15 PM of the trade day by itself which can be done only on written request by the client.*

It is also mentioned in Circular No. 974 dated 10.09.2009 of the National Securities Clearing Corporation Limited for its Futures & Options Segment (PB 25-26). The stock exchange has also drawn a list of the common violations committed and the applicable penalties (PB 21-24) where it is stated that "if the transfer of trades / errors at the time of order entries are in excess of 2% of the number of orders executed, fine of 0.1% of value of trades transferred is applicable". It is also noted from the records that the during the year the broker had carried out the broker had carried out 2380 modifications by using CCM facility which is only 0.18% of the total trades carried out by the broker during the year. It is noted that the assessee's client code was set as default in the system is for the convenience of the broker. The assessee has no control over the system. The client brings to the notice of the broker any mistake/ error in the client code. It may be noted that ITAT Ahemdabad Bench in the case of ACIT vs. Kunvarji Finance (P) Ltd. 119 ld. DR 1 had observed that the client code modification is permitted intra day i.e. on the same day. The relevant portion of the decision is as under:-

"As per Circular No. MCX/T&S/032/2007 dt. 22.01.2007 issued by the Commodity Exchange, client code modification is permitted intra- day i.e. on the same day. There is no penalty if the client code modification is upto 1 per cent of the total orders. In the present case, client code modifications made by the assessee being only 0.94 per cent i.e. less that 1 per cent of the total trading transactions, cannot be said to be unusually high or mala fide when the modification was made on the same day. Had the client modification been done after the transaction period when the price of the commodity had changed, then perhaps there could have been some basis to presume that client code modification was intentional. Even if the view of the Revenue is accepted that client code modification was done with mala fide intention, then the profit or loss accruing till the client code modification can be considered in the case of the assessee but the profit/loss arising after such modification can by no stretch of imagination be considered in the hands of the assessee. Moreover, CIT(A) having found that all transactions at the commodities exchange have been duly accounted in the books of account maintained by the concerned parties, there cannot be any justification for considering that profit/loss in the case of the assessee on the basis of mere presumption or suspicion."

Respectfully following the decision of ITAT Ahemdabad Bench (supra), the Ground No. 2 and 2.1 of the assessee is allowed.

The case law referred in the above decision of ITAT Ahmedabad the same has also been confirmed by the Gujarat High Court reported at 118

taxmann.com 374 (Gujarat), in the case of Principal Commissioner of Income-tax v. Kunvarji Commodities Brokers (P.) Ltd. Thus, considering the fact that against the decision cited by the ld. AR of the assessee the ld. DR did not show the decision of the same strength of High Court having the contrary view we respectfully follow the judicial wisdom of Hon'ble Gujarat High Court and considering the aspect of the mater the ground no. 2 raised by the assessee is allowed.

10. Since we have allowed the ground no 2 in the case of the assessee as discussed above the related commission addition raised vide ground no. 3 being consequential in nature the same is based on the finding recorded in para 10 the same is also directed to be deleted.

11. As the appeal of the assessee is allowed on merits the ground no. 1 challenging the re-opening of the case and ground no. 4 general in nature. Both these grounds becomes educative in nature and the same are not required to be decided.

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

Order pronounced in the open court on 08/04/2024.

Sd/-	Sd/-
(डा॰ एस. सीतालक्ष्मी)	(राठोड कमलेश जयन्तभाई)
(Dr. S. Seethalakshmi)	(Rathod Kamlesh Jayantbhai)
न्यायिक सदस्य / Judicial Member	लेखा सदस्य / Accountant Member

जयपुर / Jaipur
दिनांक / Dated:- 08/04/2024
*Ganesh Kumar, PS
आदेश की प्रतिलिपि अग्रेशित / Copy of the order forwarded to:

1. The Appellant- Spectrum Foods Limited, Jaipur
2. प्रत्यर्थी / The Respondent- ITO, Jaipur
3. आयकर आयुक्त / The ld CIT
4. आयकर आयुक्त(अपील) / The ld CIT(A)
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, जयपुर / DR, ITAT, Jaipur
6. गार्ड फाईल / Guard File (ITA No. 38/JP/2024)

आदेशानुसार / By order,

सहायक पंजीकार / Asst. Registrar