

IN THE INCOME TAX APPELLATE TRIBUNAL “SMC” BENCH KOLKATA

**BEFORE SHRI RAJPAL YADAV, VICE PRESIDENT
AND SHRI GIRISH AGRAWAL, ACCOUNTANT MEMBER**

**ITA No.172/KOL/2024
Assessment Year: 2012-13**

Seaside Projects Pvt. Ltd. 9, Lal Bazar Street, Kolkata- 700001. (PAN: AAPCS3454C)	Vs.	Income tax Officer, Ward-5(1), Kolkata
(Appellant)		(Respondent)

Present for:

Appellant by : Shri Manoj Kataruka, Advocate
Respondent by : Smt. Ranu Biswas, Addl. CIT, DR

Date of Hearing : 09.04.2024
Date of Pronouncement : 10.04.2024

ORDER

PER GIRISH AGRAWAL, ACCOUNTANT MEMBER:

This appeal filed by the assessee is against the order of Ld. CIT(A), National Faceless Appeal Centre (NFAC), Delhi vide Order No. ITBA/NFAC/S/250/2023-24/1059960493(1) dated 20.01.2024 passed against the assessment order by ITO, Ward-5(1), Kolkata u/s. 143(3)/147 of the Income-tax Act, 1961 (hereinafter referred to as the “Act”), dated 13.12.2019 for AY 2012-13.

2. Grounds of appeal raised by the assessee are reproduced as under:

“1) That on the facts and in the circumstances of the case the illegal notice u/s 148 issued by the AO and upheld by the CIT(A) is illegal and bad in law.

2) That on the facts and in the circumstances of the case the reopening of the case made by the AO u/s 148 of the Act, and the assessment framed u/s 147 by the AO and upheld by the CIT(A) is illegal, arbitrary and excessive.

3) That on the facts and in the circumstances of the case the action of the CIT(A) in upholding the action of the AO in making addition of Rs.27,93,150/- on account of bogus loss on client code modification is contrary to the material evidences on record and the addition is erroneous, arbitrary, excessive and illegal.

4) That the order passed by the A.O. was arbitrary, excessive and illegal.

5) That the above grounds of appeal will be argued in detail at the time of hearing and the appellant crave leave to submit additional grounds of appeal, if any, and/or alter, verify, modify or rectify any grounds of appeal at or before the time of hearing.”

2. Brief facts of the case are that assessee filed its original return of income on 27.11.2022 reporting total income of Rs.7,824/-. Prior to the impugned assessment, case of the assessee was reopened and assessment was completed u/s. 143(3) r.w.s. 147 vide order dated 07.05.2018 at an assessed income same as the returned income. Subsequent to this, the impugned proceedings were initiated by issuing notice u/s. 148 of the Act on 30.03.2019. In this respect, Ld. AO observed the following in the assessment order:

“Later, information was received from DDIT (Inv.), U-6[3], Kolkata wherein it has been stated that they have information in possession which states that SFIO has carried out investigation in NSEL which has discussed the issue of client code modification in the case of few brokers. The findings of investigation of member-broker and the traders have been perused. The details of client code modification were called from NSEL. As per this data there are total 219 brokers who have made 54565 client code modification and the volume of sale and purchase transactions is Rs.6311/- Crore. The brokers and the client in whose favour client code modifications are made are spread all over India. The assessee is also one of the clients whose name is included in the list of modified clients in the details provided by NSEL. As per this information, the assessee company is a beneficiary to the tune of Rs.27,93,150/- by way of client code modification during the F.Y.2011-12 relevant to AY 2012-13.

Accordingly, to verify the contents of the information the case was reopened u/s. 147 of the I. T. Act, 1961 after obtaining the approval of the Pr. CIT-2, Kolkata. Accordingly notice u/s. 148 of the I. T. Act, 1961 was issued on 30.03.2019 and duly served on the assessee asking it to file fresh return within the stipulated period.”

2.1. From the above observations of the Ld. AO, it is noted that these are general in nature. Ld. AO has mentioned about certain data relating to some 210 brokers who have made 54565 client code

modification for which the volume of sale and purchase transactions amounted to Rs.6311 Cr. In a very casual manner, he has observed that these brokers and clients are spread all-over India whereby assessee is also one of the clients who is a beneficiary of such client code modification. Based on such observation, Ld. AO arrived at a conclusion that assessee is a beneficiary of an amount of Rs.27,93,115/- by way of client code modification during the year. He further observed that in order to verify the contents of the information received by him from DDIT (Inv.) U-6(3), Kolkata the case of the assessee was reopened u/s. 147 of the Act by issuing notice u/s. 148. Assessee did not respond to the notice issued by the Ld. AO in this respect. Ld. AO after referring to certain judicial precedents and without pointing out as to anything factual on what was the client code by which it was modified, who was the broker and in which scrips the trading was done for the benefit of the assessee completed the assessment. There is no whisper of any factual and specific data relating to the assessee on the allegation of assessee being beneficiary of client code modification. AO without bringing anything on record to evidently demonstrate his observations for initiating the impugned proceeding, concluded that *“As per the information the assessee company is a beneficiary to the tune of Rs.27,93,150/- by way of client code modification during the FY 2011-12 relevant to AY 2012-13. The same is treated as bogus and arranged transaction and disallowed. Amount of Rs.27,93,150/- is added back to the total income of the assessee company for the FY 2011-12 corresponding to AY 2012-13.”*

2.2. Aggrieved, assessee went in appeal before the Ld. CIT(A), who also confirmed the addition made by the Ld. AO. Aggrieved, assessee is in appeal before the Tribunal.

3. Before us, ld. Counsel for the assessee emphasized on illegality of the reopening proceedings undertaken by the AO which is for the sole purpose of verifying the contents of the information received from the Investigation Wing. According to the Ld. Counsel, such an approach of conducting fishing and roving enquiries is not permissible under the provisions of section 147 read with sec. 148 of the Act and ought to be quashed ab initio. He further submitted that no investigation or enquiry was carried out by the AO to ascertain the information received by him by applying his mind and bringing cogent material on record. According to him, even if the revenue's theory of assessee having benefited by client code modification to earn the profits is accepted, then also the revenue had to bring on records some evidence to demonstrate that assessee had earned such a profit and the same has escaped from assessment. The material available and observations made by the AO in the impugned order is that there is a client code modification but there is no link from there to conclude that it was done to escape assessment of 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.

3.1. On the merits of the case also, ld. Counsel submitted that the addition has been made without providing any details of scrip in which the alleged transaction took place or the name of the broker or the person who had benefited in the proceed of such alleged client code modification. The AO has simply followed the Investigation Report without application of mind which is not permissible in law.

4. Per contra, Ld. Sr. DR placed reliance on the orders of the authorities below and submitted that assessee has failed to provide

any details and explanation in respect of the benefit arrived by it from the client code modification.

5. After hearing the rival contentions and perusing the material available on record, 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. As already noted above, AO initiated the proceeding for the purpose of verification of contents of the information received by him from the Investigation Wing. In this respect, he has made certain general observations. According to us, when the AO receives any such information, it is the bounden duty on his part to investigate the same and record substantive findings before impressing upon the assessee the tax liability. In the impugned assessment order, there is no mention and it is not discernible from it about the details of the scrip in which the alleged transaction took place resulting into the benefit of Rs.27,93,150/- on account of client code modification. Further, there are no details in respect of name of the broker or the person who eventually executed such transactions. We note that there is nothing on record or any fact or finding by the AO to suggest that the assessee and the other party as well as the brokers are in collusion to carry out the alleged transaction of transfer of profit by misusing the client code modification facility. Even if the broker would have been involved in such mischievous practice but to make an addition in the hands of the assessee by holding it as income escaping assessment, it is necessary to establish that the assessee and the other parties along with broker are in collusion.

5.1. Considering these observations and facts on record, we are in agreement with the submissions made by the Ld. Counsel and quash the impugned assessment order passed u/s. 147 read with section 143(3) of the Act. Accordingly, legal grounds taken by the assessee in

this respect are allowed. Since we have quashed the assessment order itself, grounds taken in respect of merits of the case are rendered academic in nature and are, therefore, not adjudicated upon.

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

Order pronounced in the open court on 10th April, 2024.

Sd/-
(Rajpal Yadav)
Vice President

Sd/-
(Girish Agrawal)
Accountant Member

Dated: 10th April, 2024

JD, Sr. P.S.

Copy to:

1. The Appellant:
 2. The Respondent.
 3. CIT(A), NFAC, Delhi
 4. The Pr. CIT,
 5. DR, ITAT, Kolkata Bench, Kolkata
- //True Copy//

By Order

Assistant Registrar
ITAT, Kolkata Benches, Kolkata