

**IN THE INCOME TAX APPELLATE TRIBUNAL  
DELHI BENCH 'H', NEW DELHI**

**Before Dr. B. R. R. Kumar, Accountant Member**

**Ms. Astha Chandra, Judicial Member**

**ITA No. 1912/Del/2021 : Asstt. Year : 2012-13**

Rakesh Kumar Aggarwal, D-631, Saraswati Vihar, Pitampura, New Delhi-110034	Vs	ACIT, Circle-26(2), New Delhi
<b>(APPELLANT)</b>		<b>(RESPONDENT)</b>
<b>PAN No. AAJPK4003C</b>		

**Assessee by : Sh. Amit Goel, CA &  
Sh. Pranav Yadav, Adv.  
Revenue by : Sh. Amit Katoch, Sr. DR**

**Date of Hearing: 13.02.2024**

**Date of Pronouncement: 23.04.2024**

**ORDER**

**Per Dr. B. R. R. Kumar, Accountant Member:**

The present appeal has been filed by the assessee against the order of National Faceless Appeal Centre (NFAC), Delhi dated 02.08.2021.

2. Following grounds have been raised by the assessee:

*"1. On the facts and circumstances of the case and in law, the notice issued u/s 148 in this case is bad in law, without jurisdiction and barred by limitation and therefore the notice issued and the assessment order passed on the foundation of such notice are liable to be quashed and CIT (A) erred in not holding so.*

*2. On the facts and circumstances of the case and in law, the notice u/s 148 issued in this case is contrary to law including the specific provision of section 147 to 151 of the Act and CIT(A) erred in not holding so.*

*3. On the facts and circumstances of the case and in law, the order passed by the assessing officer is bad-in-law and without jurisdiction and CIT (A) erred in not holding so.*

4. *On the facts and circumstances of the case and in law, the CIT (A) erred in confirming the addition of Rs. 14,34,750/- made by the assessing officer on the account of alleged benefit obtained through client code modification transaction/bogus transaction.*

5. *On the facts and circumstances of the case and in law, the CIT (A) erred in confirming the addition of Rs. 14,34,750/- (Rs.13,87,500 + Rs.47,250) made by the assessing officer without appreciating that there was no income escaping assessment of Rs. 13,34,750/-.*

6. *On the facts and circumstances of the case and in law, the CIT(A) erred in confirming addition of Rs. 14,34,750/- (Rs.13,87,500/- + Rs. 47,250/-) without appreciating that there was no loss in the transactions and the profit in the transaction was already declared in the income tax return."*

3. The reasons recorded by the Assessing Officer are as under:

*"Reasons for reopening of the assessment in the ease of Mr. Rakesh Kumar Aggarwal for the A. Y. 2012-13 u/s 147 of the Income Tax Act, 1961*

*Mr. Rakesh Kumar Aggarwal is assessed to tax with Circle-26(2), New Delhi. The assessee filed its return of income for the A.Y. 2012-13 or, 29-09-2012 declaring an income Rs.1,02,47,706/-. Thereafter, order u/s 143(3) passed on 03-03-2012 assessed at an income of Rs. 1,02,72,820/-.*

*An information was received from DDIT (Inv.), Unit-6(3), Mumbai wherein it is state that SFIO has also carried out investigation in NSEL and forwarded its report to Pr. CCIT, Mumbai Vide letter dard 01-11 2010. The report has also been shared with DGIT(Inv.), Mumbai, by the office of Pr. CCIT, Mumbai on 01-02-2019. The same has been received by this office on 06-02-2019. The SFIO report has also discussed the issue of client code modification in the case of few brokers. The findings of investigation of member-brokers and the traders are enclosed marked as annexure-2A and 2B respectively to this report. The SFIO report is also proposed to be shared with concerned Pr. CCITs. The details client code*

*modification were called from NSEL. As per data, there are total 219 brokers who have made 51565 client code modification and the volume of sale and purchase transactions is Rs.6311 crores. The brokers and the client in whose favour client code modifications are made are spread all over India.*

*In this information, Mr. Rakesh Kumar Aggarwal made the following transactions wherein it is mentioned that the assessee modified its client code during F.Y. 2011-12 or modified by broker for earn unaccounted money.*

Sl. No.	Name of the Broker	Date of Transaction	PAN of the Original Client	Total Value of transaction	Buy or Sell
1	KARVY COMTRADE LTD.	05/03/2012	ALNPA6866G	943500	Buy
2.	KARVY COMTRADE LTD.	05/03/2012	ALNPA6866G	444000	Buy

*I have gone through the report and gathered that Client Code is a unique code which is assigned by a broker to its clients. A broker can issue just one code to a Client Code Modification means modification/change of the client codes after execution of trades. Vide Circular no.SMD/POLICY/Cir-/03 dated Feb. 2003 SEBI mandated that the stock exchanges shall not normally permit changes in the client code except to correct for genuine mistakes. The client code modifications permit brokers to rectify human errors when a client inadvertently provides a wrong code or when a wrong code is punched in by the broke" while executing the trade. The broker is allowed to change it between 3:30 pm to 4:00 pm to rectify a genuine error that may have occurred while entering the trade. The facility ensures smooth functioning of the system and it to be used as on exception rather than routine. Client code modification means modification of client code after the execution of trade.*

*Over a period of time, some persons, in connivance with brokers started using Client Code Modifications for, purposes other than genuine errors. Contrary to its/motive, CCM facility was being misused and brokers transferred gains or losses from one person to*

*another by changing the code, in the garb of correcting an error. These gain or loss-book entries were then used to evade taxes.*

*Non genuine CCM were carried out to book contrived losses. In some cases, this facility was used by brokers to transfer gains or losses one party to another by modifying client codes in the guise of rectifying an error. It became a practice to book artificial profits or losses in March to impact tax liabilities. It is generally done by buying or selling stocks intra-day so as to consciously incur a loss and use that as a tax offset.*

*Client code modification (CCM) especially in the Futures and Options Segment (P&O) was being used as a device to evade taxes wherein the client codes were modified for booking artificial profits or losses at the year end (Jan to March) of the Financial year when the book profits/losses of various clients have crystallized. This is done with an intention to impact the tax liabilities of the pair of clients whose codes are modified.*

*Thus, a careful scrutiny of information received from the investigation wings and analysis of report, data of transactions and verification of ITR/Assessment Record lead to an irresistible conclusion that Client Code Modification had been earned out in the ease of assessee to shift in ascertained losses. By shifting in the above losses and shifting out the profit through, contrived transactions by means of CCM, the assessee has artificially depressed its profits. By withholding these facts surrounding the transaction during the regular assessment proceedings, the assessee has failed to disclose fully and truly all the material facts necessary for its assessment.*

*Thus, a careful scrutiny of information received from the investigation wing and analysis of report, data of transactions and verification of ITR/Assessment Record lead to an irresistible conclusion that. Client Code Modification had been earned out in the ease of assessee to shift in ascertained losses. By shifting in the*

*above losses and shifting out the profit through, contrived transactions by means of CCM, the assessee has artificially.*

*Considering the above referred credible information and analysis subsequent to the information, I have reason to believe that the case is squarely covered under provisions of section 147 of Income-tax Act, 1961 to the tune of Rs.13,87,600/-.*

*Since, more than four year have lapsed from the end of assessment year under consideration, approval may kindly be granted to issue notice u/s 148 r.w provisions of section 149(1)(b) of the Income Tax Act, 1961 for assessment year 2012-13."*

*Sd/-*

*(Varunesh Mishra)*

*Asstt. Commissioner of Income Tax  
Circle-26(e), New Delhi*

4. As against the reasons recorded, the facts are enumerated below:

As per reason for re-opening the assessment, reason recorded is with regard 'Buy' through broker Karvy Comtrade Ltd., detail below:

Sl. No.	Name of the Broker	Date of Transaction	PAN of the Original Client	Total Value of transaction	Buy or Sell
1	KARVY COMTRADE LTD.	05/03/2012	ALNPA6866G	943500	Buy
2.	KARVY COMTRADE LTD.	05/03/2012	ALNPA6866G	444000	Buy

The transaction with Karvy Comtrade Ltd. as under:

Purchase of castor seed from N.K. Industries vide Invoice NO. 112431 dated 10.03.2012 in the name of Karvy Consultants Ltd. on behalf of assessee (135000 kg at the rate of Rs.37/- per k.g.)	49,95,000
Add: VAT	2,49,750
	52,44,750
Add: Expenses on purchase/sale	12,988
Total amount paid to Karvy Comtrade Ltd. vide cheque no. 102375 debited to Axis Bank on 09.03.2012	52,57,738

Sale of castor seed from N.K. Coroporation vide Invoice No. NSEL/CASTOR/329 dated 12.03.2012 issued by Karvy Consultants Ltd. (135000 kg at the rate of Rs.38.04 per k.g.)	51,34,725
Add: VAT	2,56,736
	53,91,461
Less: Difference in VAT (256736 - 249750)	6,986
Amount received from Karvy Comtrade Ltd. into Axis Bank on 03.05.2012	53,84,475

From the above, it will be noticed that assessee has earned profit of Rs. 1,26,737/- (Rs.3,84,475 - Rs.52,57,738) for investment for the period of 55 days i.e. from 10.03.2012 to 03.05.2012. From the above, it can be noticed that the assessee has entered into contract for purchase and sale of particular commodities at prefix price. The purchase cost alongwith VAT, Brokerage. Service charges, transaction charges and stamp duty and other charges is paid by the assessee. The sale proceeds alongwith VAT, net of other charges is received by the assessee. That the difference of amount received, less amount paid is the margin of profit of the assessee on spot exchange transaction Assessee has made regular transaction

with Karvy Comtrade Ltd. during the previous year relevant to Assessment Year 2012-2013.

5. Documents examined:

1. Purchase bill no. 112431 for Rs.52,57,738/-
2. Invoice no. 329 of NSEL for Rs.53,84,475/-
3. Axis Bank statement dated 09.03.2012 for Rs. 52,57,738/-
4. Axis Bank statement dated 03.05.2012 for Rs.53,84,475/-
5. Contract note no. 12755 of Karvy Tradecom Ltd.
6. Statement of the account of the assessee in Karvy Tradecom Ltd.

6. We have gone through the contract note dated 10.03.2012 for Rs.49,95,000/- issued by Karvy Consultants Ltd. reflecting castor seed of 135,000 kg. We have examined invoice of Karvy Consultant Ltd. for 135,000 kg of castor seed @ Rs.38.04 amounting to Rs.51,34,725/-. The Axis Bank statement dated 09.03.2012 reflected debit of Rs.52,57,738/- on account of Karvy Cum Trade Ltd. and an amount of Rs.53,84,475/- was credited in the bank account of the assessee on 03.05.2012 on account of sale of the castor seed purchased on 10.03.2012. Further, we have examined the contract note of Karvy Trade totaling to Rs.49,95,000/- consisting of orders from 11:00:25 A.M. to 11:00:57 A.M. The total of 8 transactions/orders entered valued Rs.49,95,000/- includes the two amounts referred by the Assessing Officer of Rs.4,44,000/- and Rs.9,45,500/-. The said castor seed was sold at Rs.51,34,725/- excluding VAT. Hence, it can be concluded that the amount of Rs.13,87,500/- consist of two amounts Rs. 9,43,500/- and Rs. 4,44,000/-, which are amount of investment in purchase of castor seed and these amounts are part of a contract note of purchases of Rs. 49,95,000/-. The Contract note is at (Page no. 15 of paper book). After adding VAT & other expenses the total

amount payable for this investment in purchase of castor seed was Rs. 52,57,738/-. This payment is reflected in the bank statement at page no. 13 of paper book. This investment of Rs.52,57,738/- were correspondingly sold for Rs. 53,84,475/- and the amount was credited in the bank on 03/05/2012. i.e. F.Y 2012-13 (A.Y. 2013-14). The resultant profit of Rs. 1,26,737/- has been duly offered for tax in the return of income of AY 2013-14.

7. The amount of Rs. 13,87,500/- added by the AO is not any income taxable by any stretch of imagination. The amount of Rs. 13,87,500/- interpolates in the total investment of Rs.52,57,738/- made for purchase of Castor Seed and payment for such investment has been duly examined. There is no unexplained investment. There is no case of any unexplained credit. Hence, there is no case of any income escaping assessment.

8. Ergo, the appeal of the assessee is allowed on account of wrong reasons recorded for reopening of assessment as well as on merits of the case.

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

Order Pronounced in the Open Court on 23/04/2024.

Sd/-

**(Astha Chandra)**  
**Judicial Member**

**Dated: 23/04/2024**

\*Subodh Kumar, Sr. PS\*

Copy forwarded to:

1. Appellant
2. Respondent
3. CIT
4. CIT(Appeals)
5. DR: ITAT

Sd/-

**(Dr. B. R. R. Kumar)**  
**Accountant Member**