

**IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH: 'E' NEW DELHI**

**BEFORE SH. PRADIP KUMAR KEDIA, ACCOUNTANT MEMBER
AND
SHRI YOGESH KUMAR U.S., JUDICIAL MEMBER**

I.T.A. No. 6792/DEL/2014 (A.Y 2010-11)

Naveen Gaba D-12, Raheja Manas Apartments, Sector-31, Gurgaon, Haryana PAN No. AAEPG8929N (APPELLANT)	Vs.	ITO Ward-9(1) New Delhi (RESPONDENT)
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Assessee by :	None
Department by:	Sh. Anshul Sr. DR

Date of Hearing	25.06.2024
Date Pronouncement	03.07.2024

ORDER

PER YOGESH KUMAR U.S., JM

The present appeal is filed by the assessee for Assessment Year 2010-11 against the order of the Ld. Commissioner of Income Tax (Appeals)-34, New Delhi, dated 28.06.2019.

2. The grounds of Appeal are as under:-

“1. On the facts and circumstances of the case, the order passed by learned CIT (A) is bad both in the eye of law and on facts.

2. On the facts and circumstances of the case, the CIT (A) has erred in confirming the addition made by the AO on the basis of incomplete "reasons to believe recorded i.e. without any trade details and/or supporting especially when it was stated that the assessee was alleged to have misused the client code modification facility on the NSE.

3. On the facts and circumstances of the case, the learned CIT (A) has erred both on facts and in law in confirming the addition despite the fact that addition has been made by AO without conducting any independent enquiry during the course of assessment proceedings.

4. On the facts and circumstances of the case, the learned CIT (A) has erred both on facts and in law in confirming the addition by ignoring the fact that the AO rejected the objections raised by the assessee without passing a speaking order for disposal of the objections raised by the assessee.

5. On the facts and circumstances of the case, the learned CIT (A) has erred both on facts and in law in confirming the addition by ignoring the fact that the learned A.O. with improper jurisdiction has passed the assessment order.

6. On the facts and circumstances of the case, the learned CIT (A) has erred both on facts and in law in confirming the addition made by the AO by holding that the reply of the assessee to the show cause given was untenable without giving any factual reason therefore.

7. That the appellant craves leave to add, amend or alter any of the grounds c appeal.”

3. Brief facts of the case that the assessee is an individual. Return declaring an income of Rs.17,12,890/- was filed on 13.10.2010. Reassessment proceedings u/s 147 of the Income Tax Act, 1961, 'Act' for short) was initiated in the case of the assessee on the basis of the information received from DIT (1 & CI), Mumbai which contained details of the manner in which fictitious losses and profits were created by some brokers by misusing the client code modification facility in the future and options (F&O) segment on NSE during March, 2010. In the case of the assessee specific information was that the client code had been modified in 54 trades as a result of which the profit accruing to these trades was transformed into loss of Rs.37,02,486/-. The AO has initiated the reassessment proceedings and issued notice u/s 148. The assessment is completed u/s 147/143(3) of the Act vide order dated 30.03.2016 and AO added Rs.37,48,286/- in the taxable income of the assessee on account of client code modification and commission paid thereon by computing the total income of the Assessee at Rs.54,61,675/-.

4. As against the assessment order dated 30/03/2016, the Assessee preferred an Appeal before the CIT(A). The Ld. CIT(A) vide order dated 28/06/2019 dismissed the Appeal filed by the assessee. Aggrieved by the order of the Ld. CIT(A), the assessee preferred the present Appeal on the Grounds mentioned above.

5. None appeared for the assessee. The records shows that several notices have been issued by the Registry to the assessee and the Assessee's Representative has also filed application for adjournment along with the power of attorney, but thereafter failed to appear before the Tribunal. Considering the above facts and circumstances, we deem it fit to decide the present appeal after hearing the Ld. Departmental Representative.

6. The Ld. Departmental Representative vehemently submitted that the grounds of Appeal of the assessee are devoid of merit and by relying orders of the Lower Authorities, sought for dismissal of the Appeal filed by the Assessee.

7. We have heard the Ld. Departmental Representative and perused the material available on record. The Ld. CIT(A) while dismissing the Appeal filed by the assessee. Considered all the Grounds of Appeal raised by the assessee and dismissed the Appeal, in following manners:-

“ 7. Ground No. 8 The appellant has challenged the addition of Rs.37,48,786/- consisting of Rs.37,02,486/- and Rs.46,300/- made by the AO on account of alleged loss and commission respectively.

7.1 It is observed by the AO on the basis of the information received from DIT (I&CI) that 54 number of trades were modified in the case of the appellant and loss to the appellant on account of such modification was at Rs.37,02,486/-. The AO has provided the detail of date wise modified volume, modified trades and gist of modified trades to the appellant. The appellant is a Director of a company M/s Fairwealth Securities Pvt. Ltd. and hence could exercise complete and dominant control over the individual employees who carried out the work related to punching of data in respect of trades done online. The AO is issued the notice u/s 131 and information was sought from M/s Fairwealth Securities Pvt. Ltd., the company has replied that data is not available and trade file contains only details of final positions. The AO has asked the appellant why the sum of Rs.37,02,486/- should not be assessed as income. The AO has not accepted the submission of the appellant as all the modifications were done on three days only i.e. 22.03.2010, 23.03.2010 and 25.03.2010. No modification was done either on any previous dates or later dates during the period 01.04.2009 to 31.03.2010. The client code of other clients are entirely different from client code of the appellant Sh. Naveen Gaba. All the modifications

have resulted in losses. There is not even a single trade where the client code was changed in again making trade. Therefore AO hold that the transaction where the losses have been transferred to the assessee are only of a deliberately entered transaction to camouflage the non genuine client code modification and make it appear as a genuinely modified transactions. Since appellant has got loss in 100% of client code modification trades, therefore AO has not treated the transaction genuine and added Rs.37,02,486/- in the taxable income of the appellant. The AO has further added commission @ 1.25% i.e. Rs.46,300/- for obtaining fictitious loss on account of CCM.

7.2 During the course of appellate proceedings, appellant has filed written submission which is reproduced as under:-

In view of the arguments stated in other grounds, the A.O. wrongly made the addition of Rs. 37,48,786/- consisting of Rs. 37,02,486/- and Rs. 46,300/- on account of alleged loss and commission respectively. You will appreciate that no commission need to be paid to anyone on the legitimate income/loss by an assessee except the applicable demat charges and brokerage with STT etc.

The A.O. made the addition of Rs. 46,300/- as unaccounted commission on the assumption that the assessee arranged a fictitious loss and thus, must have paid a commission @1.25% to the operator etc.

In view of the aforementioned, the addition of Rs. 37,02,486/- and Rs. 46,300/- needs to be quashed.

7.3 I have considered the facts of the case, finding of the AO and submissions of the appellant. The appellant is a Director M/s Fairwealth Securities Pvt. Ltd through which transaction of shares client code has been modified in 54 trades as a result of which the profit accruing in these trades was transferred into a loss of Rs.37,02,486/-. The AO has confronted the Information received from the investigation wing and issue summon u/s 131 to Fairwealth Securities Pvt. Ltd. to furnish the desired

information. In response to that it is informed that data is not available and that trade file contains only detail of final position. The appellant has tried to justify the loss by client code modification stating that Fairwealth Securities Pvt. Ltd. used to execute all the trades online on the exchange platform and whenever any trade is executed in a wrong code. It is modified on receiving the request from the correct client i.e. the client who actually intended to trade. All the modifications / rectification of trades are done within the parameters of exchange. It is submitted by the appellant that FSL had submitted the confirmation from all the parties that they had made the trades and it is a bonafide mistake done by the broker i.e. M/s Fairwealth Securities Pvt. Ltd. during the course of trading and same had been rectified by the broker on the trading platform itself. The contention of the appellant is not acceptable as appellant himself is a Director in M/s Fairwealth Securities Pvt. Ltd. In the case of the appellant all the modifications were done on three days only i.e. 22.03.2010, 23.03.2010 and 25.03.2010 and there was no modification either on previous dates or later dates during the period of 01.04.2009 to 31.03.2010. The client codes of other clients are entirely different from client code of the appellant Sh. Naveen Gaba and all the modifications have resulted in losses. All these facts creates suspicion about the transaction carried out by the appellant and it does not appear the bonafide client code modification transaction. Further it is proved by way of investigation carried out by the DIT(I&CI) that CCM was misused for obtaining fictitious losses / profits and brokers received commission @ 0.5% to 2% on the amount of losses/profits for transferring such losses/ profits to their clients. Thus AO has added commission @ 1.25% on the loss claimed by the appellant by CCM at Rs.46,300/- in the income of the appellant. Considering the above facts, AO is justified in making addition of Rs.37,48,786/- which includes loss of Rs.37,02,486/-and commission at Rs.46,300/-.”

8. Though the assessee has raised the similar grounds of Appeal before us, the assessee failed to put forth any argument in support of the grounds of Appeal. On the other hand as observed above, the Ld. CIT(A) has decided the issues involved in the Appeal against the assessee after deliberating all the issues in detail, in the absence of any material on record to prove contrary to the observations of the Ld. CIT(A), we find no merit in the Grounds of Appeal of the assessee, accordingly, the Grounds of Appeal of the assessee are dismissed and the Appeal filed by the assessee is also dismissed.

Order pronounced in the open court on 03rd JULY, 2024.

Sd/-

**(PRADIP KUMAR KEDIA)
ACCOUNTANT MEMBER**

Dated : 03/07/2024

*R.N, Sr. PS**

Copy forwarded to :

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

Sd/-

**(YOGESH KUMAR U.S.)
JUDICIAL MEMBER**

ASSISTANT REGISTRAR
ITAT NEW DELHI

