

**IN THE INCOME TAX APPELLATE TRIBUNAL  
“C” BENCH, AHMEDABAD**

**BEFORE SHRI RAMIT KOCHAR, ACCOUNTANT MEMBER  
& SHRI SIDDHARTHA NAUTIYAL, JUDICIAL MEMBER**

I.T.A. No.111/Ahd/2024  
(Assessment Year: 2012-13)

Umeshbhai Rameshchandra Shah (Individual), B. No. 2/b, Panama Society Vibhag-2, Chandranagar Bus Stop, Narayan Nagar Road, Paldi, Ahmedabad-380007	Vs.	Assistant Commissioner of Income Tax (International Taxation)-2, Ahmedabad
[PAN No.AHMPS3868Q]		
<b>(Appellant)</b>	..	<b>(Respondent)</b>

<b>Appellant by :</b>	Shri D.K. Parikh & Shri Nirav Choksi, A.R.s
<b>Respondent by:</b>	Shri Ashok Kumar Suthar, Sr. DR

<b>Date of Hearing</b>	08.08.2024
<b>Date of Pronouncement</b>	14.08.2024

ORDER

**PER SIDDHARTHA NAUTIYAL - JUDICIAL MEMBER:**

The present appeal has been filed by the Assessee against the order passed by the Ld. Commissioner of Income Tax (Appeals), (in short “Ld. CIT(A)”), Ahmedabad-13 under Section 250 of the Act, vide order dated 23.11.2023, for Assessment Year 2012-13.

2. The assessee has taken the following grounds of appeal:

*“1. The learned Commissioner of Income Tax (Appeals)-Ahmedabad-13 [CIT (Appeals)] has erred both in law and on facts in confirming the legality of Reassessment proceedings without properly considering the submissions, legal position as submitted before him. On the facts and in the circumstances of the case, the ld CIT(Appeals) ought to have held that the reassessment was invalid, illegal and without jurisdiction. It be so held now the reassessment was invalid/ illegal and without jurisdiction. It be so held now.*

2. *The ld CIT(Appeals) also further erred both in law and on facts in not considering the jurisdictional High Court judgments holding that there was no proper inquiry on the so called information based on which the reopening was initiated and further, on the basis of documents and confirmations furnished*
3. *The ld CIT(Appeals) also further erred both in law and on facts in not appreciating that when the addition of amount for which reasons was recorded having not been added, no other items of alleged income could be added in reassessment based on binding judgments which he wrongly distinguished . It be so held now and orders passed by lower authorities be quashed.*
4. *Without prejudice to the above grounds, the ld CIT(Appeals) also grievously erred both in law and on facts in not deleting addition of Rs. 2,55,000/- made by ld A.O. merely on the basis of incorrect information which was later proved to be incorrect. It be so held now and order passed by Id AO be quashed now. The addition is confirmed by ld CIT(A) on untenable grounds as no such transactions were ever related to the appellant. It be so held now and addition be deleted and order passed by Id AO be quashed now.*
5. *The ld CIT(Appeals) also erred both in law and on facts in confirming the addition of Rs. 62,694/- out of Rs. 2,98,370/- when the amount of Rs. 2,98,370/- which came to be included in an amount of Rs. 4,62,640/- was already declared as income/ profit and hence entire addition including Rs. 62,694/- ought to be deleted in stead of partly confirming above addition. It be directed to be deleted now.*
6. *The ld CIT(Appeals) also further grievously erred both in law and on facts in confirming addition of Rs. 16,19,130/- made by ld AO merely on assumption without any iota of evidence ignoring the detailed explanations and confirmation of Anand Rathi Share & Stock Brokers that no such transactions were ever transacted by the appellant. The addition made and confirmed on irrelevant grounds without any cross examination and merely on suspicion, deserves to be deleted. It be deleted now.*
7. *The ld CIT(Appeals) ought to have considered all the submissions with a speaking order commenting on each submission and decisions cited before him. The order passed in violation of principles of natural justice is illegal and bad in law. It be so held now.*
8. *The ld CIT(Appeals) miserably failed to properly consider the detailed submissions and binding judgments on the issued raised while relying on judgments not applicable to the facts of the appellants case. It be so held now.*
9. *The ld CIT(Appeals) ought to have allowed the appeal in toto.*
10. *The appellant craves leave to add, alter, modify or delete any of the grounds at the time of hearing.”*

3. The brief facts of the case are that information was received by the assessing officer from the Director of Income Tax, Investigation, in respect of non-genuine share transaction of ₹10,28,80,561/- in the shares of Nyssa Corporation. Accordingly, the assessing officer issued notice under section 148 of the Act, and proceeded to make certain additions in the hands of the assessee. The assessing officer issued notice to the concerned the broking firm M/s Anand Rathi, on whose platform the transactions were carried out and in response to these notices, the brokerage firm submitted that no trades were carried out in the ledger account of the firm in the name of the assessee. The broker further clarified that one of its staff members, while booking trade on exchange platform, inadvertently entered client code of the impugned the assessee, instead of client code of another client namely Uttam Nakrani HUF. The trades in the script as mentioned in the notice i.e. Nyssa Corporation were eventually settled in the name of Uttam Nakrani HUF. Further, the assessee also submitted that he is CEO of Hindustan Lever Ltd and is a non-resident Indian based in Singapore. He submitted that due to some reporting error or mistake in the manual entry by the broker, his Code had been wrongly attached to these fraudulent transactions. He further submitted letters signed by the client service manager (Wealth Management) for M/s Anand Rathi Wealth Services Ltd wherein it is stated that no transactions were carried out in the Code of the assessee. The assessee further submitted that vide letter dated 22-11-2019, M/s Anand Rathi has admitted that while uploading a unique client code on exchange platform, at the time of opening the account of the assessee, inadvertently PAN of the assessee was mentioned, instead of the PAN of Uttam Nakrani HUF. The broker further submitted that as a result of the mistake by the team member of the broker firm, all the trades carried on by Uttam Nakrani HUF were shown under the PAN of the assessee, and all trades

relating to this script were eventually settled account of “Uttam Nakrani HUF”. In the reply submitted by the broker, details of transactions entered by Uttam Nakrani HUF, contracts notes for such transaction, demat account of Uttam Nakrani HUF and bank account details for also submitted to the assessing officer. However, the assessing officer did not agree with the contentions of the assessee that there was no involvement of the assessee either in the purchase/sale of shares of Nyssa/client code modification and was of the view that the role of the assessee was of providing its PAN for all such transactions, which includes certain manipulated scrips in exchange of certain payments. Accordingly, the assessing officer added a sum of 2% of the transaction value, amounting to ₹16,19,130/- as income of the assessee. While passing the assessment order, the assessing officer made the following observations:

*“8.7 From the details unearthed during the proceedings, it is seen that the assessee was in repetitive contact with the broker during the relevant financial year. The assessee cannot deny the fact. It needs to be clarified that this is not a case of Client Code Modification. PAN of the assessee is used for thousands of transactions valuing Crores of rupees spanning multiple years by the broker whom the assessee was actively involved in business transactions. This is additional feature besides that the broker was having general authority to enter into transaction on BSE platform on behalf of the assessee. In such circumstances, it cannot be said that the assessee was not aware of these transactions by his own regular broker. The fact that the assessee is CEO of a large multinational company also goes against the assessee. The assessee is not novice in the share trading business. He has also maintained another separate account with another broker ICICI Securities Ltd and regularly enter in shares transactions in the accounts. Furthermore, without assessee's consent, it is not possible that the broker has used the assessee's PAN for manipulated scrips. It is also strange that after becoming officially aware of all such manipulations, the assessee has no issues with the broker and he is insisting that these mistakes are genuine mistakes by the broker, This situation goes against the assessee. The broker has also submitted that Anand Rathi is a reputed broker but repetitively making such transactions for thousand times over multiple years do not match the words of the broker.*

*8.8 At the same time from the details and documents available, it is clear that the assessee has not made any payments or received any payments in his accounts through banking channel for the transactions. Similar is the position about delivery of the shares. The assessee has not given or taken delivery of the shares. Broker*

*notes were not issued in the name of the assessee. In the ledger account of the assessee, these transactions are not reflected. Therefore, the assessee's role is limited for providing its PAN for all such transactions which include certain manipulated scrips in lieu of certain payments. In similar cases, normally the name provider charge @2% of the transaction value. In this case, the assessee is not required to incur any expenses but to provide his high net worth PAN number without any objection. Therefore, assessee's income from such transactions are assessed as under:*

*2% of Rs.8(08,56,465/- ( transaction value for AY 2012-13) = Rs. 16,19,130/-*

*Thus, addition of Rs.16,19,130/- is made to total income of the assessee for providing its client code for manipulated transactions.”*

4. In appeal, Ld. CIT(Appeals) confirmed the additions made by the assessing officer. The assessee is in appeal before us against the aforesaid order passed by Ld. CIT(Appeals).

5. Before us, at the outset, the counsel for the assessee challenged the initiation of proceedings under section 147 of the Act, on the ground that while the 148 proceedings were initiated on the ground that assessee was engaged in purchase and sale of shares of Nyssa Corporation, however, at the time of passing of the final assessment order, the assessing officer made addition on a totally different basis. The counsel for the assessee submitted that while passing the assessment order, the assessing officer agreed to the contention that the assessee had in fact not purchased/sold shares of Nyssa Corporation, but had lent his PAN to the concerned broker, in exchange for a commission of 2% of the total value of transactions. The counsel for the assessee relied upon several judicial precedents in support of the contention that it is a well settled law that once additions in the order passed under section 147 of the Act is on an altogether different basis/ source of income, which did not form part of the “reasons for reopening” as mentioned in the notice initiating the re-assessment

proceedings, then the order passed by assessing officer under section 148 of the Act does not survive.

6. However, on going through the facts of the instant case, the reasons recorded by the assessing officer and the judicial precedents on the subject, we are unable to accept the aforesaid contention of the assessee for the reason that the case of the assessee was reopened on the basis that the assessee was engaged in purchase/sale of shares of Nyssa Corporation. During the course of assessment proceedings, the assessing officer formed the view, on the basis of certain facts which were brought on record, that the assessee had not actually carried out purchase/sale of shares Nyssa Corporation, but the assessee has lent his PAN to the concerned broker, in exchange of certain unaccounted payment of approximately 2% on the total value of such transactions (which is common in such line of business, as found in certain cases by the Ld. Assessing Officer). Therefore, on going through the instant facts, we observe that it is not a case where no additions were made in the hands of the assessee in respect of purchase/sale of shares of Nyssa Corporation, but the assessing officer, on consideration of the facts of the case, had come to the conclusion that though the assessee had not taken actual delivery of such shares of Nyssa Corporation, however the assessee's role was that of providing its PAN for transactions involving purchase and sale of shares of Nyssa, in exchange of certain payments, computed at 2% of the transaction value. Accordingly, in our considered view, this is not a case where no addition had been made in the hands of the assessee in respect of purchase/sale of shares of Nyssa Corporation, in which case, we could have considered the applicability of judicial precedents cited by the assessee. However, from the contents of the assessment order, which were also later confirmed by Ld. CIT(Appeals), it is

observed that with respect to the very same script i.e. Nyssa Corporation, the assessing officer had in fact made certain additions in the hands of the assessee. We would like to clarify that at this stage we are not considering the merits of the basis of addition made by the assessing officer, but only taking into consideration the fact that additions were made by the assessing officer with respect to shares of Nyssa Corporation. Therefore, we are unable to accept the contention of the counsel for the assessee on this issue. In the result, the assessee's challenge to reopening of assessment under section 147 of the Act, is dismissed.

7. This brings us to the merits of the case, wherein the counsel for the assessee submitted that the assessing officer and Ld. CIT(Appeals) has clearly misdirected themselves in confirming the additions on the basis that the assessee has fraudulently lent its PAN to the brokerage firm, Anand Rathi for earning commission at the rate of 2% on purchase and sale of shares of penny/bogus scrip by the name of Nyssa Corporation. The counsel for the assessee submitted that the assessee is the CEO of a reputed multinational firm, Hindustan Unilever Ltd and it cannot be contemplated that a person of such designation would be engaged in such activities. Secondly, the counsel for the assessee also drew our attention to the letter filed by the concerned brokerage firm, Anand Rathi, wherein has been confirmed that the assessee was not engaged in purchase/sale of shares of Nyssa Corporation, and the only reason why the assessee's name was figuring in such a transaction was on account of mistake committed by the staff of the brokerage firm M/s Anand Rathi, who had inadvertently filled the name of the assessee in place of Uttam Nakrani HUF (the entity which had actually been engaged in purchase and sale of shares of Nyssa Corporation). The brokerage firm also confirmed that all the

purchase/sale of shares of Nyssa Corporation was effected only by Uttam Nakrani HUF, and therefore, the assessee had no role whatsoever in purchase/sale of shares of Nyssa Corporation. Therefore, clearly, since all the above evidences/letters had been submitted before the assessing officer and Ld. CIT(Appeals), there was no basis whatsoever for coming to the conclusion that assessee had fraudulently lent his PAN to the concerned brokerage firm, Anand Rathi, for earning commission computed at the rate of 2% of the transaction value of such penny stock company. Further, the counsel for the assessee also submitted that the Department has not brought forth any corroborative evidence or basis for arriving at the conclusion that the assessee had fraudulently lent his PAN for carrying out such transactions and further, there is no basis as to how the assessing officer arrived at the rate of 2% of such transactions. The assessing officer as well as Ld. CIT(Appeals) has simply ignored the letters filed by the brokerage firm, who have also confirmed that the assessee was not engaged in purchase/sale of shares of Nyssa Corporation, which were summarily ignored by the Tax Authorities.

8. In response, Ld. DR placed reliance on the observations made by the assessing officer and Ld. CIT(Appeals) in their respective orders.

9. We have heard the rival contentions and perused the material on record. So far as the merits of the case are concerned, we agree with the counsel for the assessee that the Department has not brought anything on record to substantiate that the assessee was engaged in earning commission, stated to have been calculated at the rate of 2% on the value of transactions of penny stock companies shares viz. Nyssa Corporation. Evidently, during the course of assessment proceedings, the assessing officer had issued notice under section 133(6) of the Act to the brokerage firm M/s Anand Rathi, in response to which,

vide letter dated 15-12-2019, the brokerage firm specifically submitted that the assessee had not carried out any transactions in the stated script and all the trades were carried out by Uttam Nakrani HUF, were shown in the name of the assessee, on account of mistake of one of the staff members of the brokerage firm. However, despite the assessee having submitted all the relevant facts before the concerned assessing officer, the assessing officer then took the alternate view that though the assessee had not purchased or sold the shares of Nyssa Corporation, however, the assessee had lent his PAN to the concerned brokerage firm, to enable it to trade in such penny stock and thereby earned commission at the rate of 2% of the trade value of such transactions. However, we observe that the assessee is CEO of a reputed multinational company Hindustan Lever Ltd and is based out of Singapore and in light of the letter submitted by the brokerage firm, there is seemingly no reason to come to the conclusion that the assessee had earned brokerage income by lending his PAN number in respect of transactions of a penny/bogus stock. The brokerage firm had specifically confirmed the mistake on the part of the staff members and therefore, the assessee, in our considered view had discharged the onus, wherein the brokerage firm had specifically submitted that all the trades with respect to this specific script, were in fact been carried out by Uttam Nakrani HUF in whose name the entire trades were settled. **Further, the counsel for the assessee also pointed out that even for assessment years 2013-14, 2014-15 and 2015-16, the case of the assessee had been reopened on similar grounds, however, no addition was made by the assessing officer after taking into consideration the assessee submissions on this issue.** Therefore, we observe that this is a recurring issue, wherein the notices were issued in this respect to sale/purchase of shares of Nyssa Corporation on the basis of an inadvertent mistake committed by the brokerage firm, M/s Anand Rathi, who

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had also admitted to the inadvertent mistake in response to notice issued by the concerned assessing officer. Accordingly, looking into the instant facts, we are of the view that the assessee has neither engaged himself in sale/purchase of sales of Nyssa Corporation and nor is there any evidence/circumstance to come to the conclusion that the assessee had deliberately lent its PAN number to the concerned brokerage firm, with a view to earn unaccounted commission income at the rate of 2% on trade value of shares of Nyssa Corporation.

10. Further, the Counsel for the assessee did not make any arguments before us with respect to Grounds 4 & 5 in the grounds of appeal filed before us. Accordingly, Ground Nos. 4 & 5 of the assessee's appeal are dismissed as not pressed.

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

**This Order pronounced in Open Court on**

**14/08/2024**

**Sd/-**  
**(RAMIT KOCHAR)**  
**ACCOUNTANT MEMBER**

Ahmedabad; Dated 14/08/2024

TANMAY, Sr. PS

**TRUE COPY**

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2. प्रत्यर्थी / The Respondent.
3. संबंधित आयकर आयुक्त / Concerned CIT
4. आयकर आयुक्त(अपील) / The CIT(A)-
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, अहमदाबाद / DR, ITAT, Ahmedabad
6. गार्ड फाईल / Guard file.

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आयकर अपीलीय अधिकरण, अहमदाबाद / ITAT, Ahmedabad