

| आयकर अपीलीय अधिकरण न्यायपीठ, मुंबई |
IN THE INCOME TAX APPELLATE TRIBUNAL
"D" BENCH, MUMBAI

BEFORE SHRI NARENDRA KUMAR BILLAIYA, HON'BLE ACCOUNTANT MEMBER
&
SHRI SANDEEP SINGH KARHAIL, HON'BLE JUDICIAL MEMBER

I.T.A. No. 2816/Mum/2024
Assessment Year: 2012-13

Mrs. Darakhshan Mustahasan Shaikh 501, Sheetal Enclave Behind Vibgyor School Mindspace, Malad (West) Mumbai - 400064 [PAN: ANRPS7890L]	Vs	ACIT -30(1), Mumbai
अपीलार्थी/ (Appellant)		प्रत्यर्थी/ (Respondent)

Assessee by :	Shri Nishit Gandhi, A/R
Revenue by :	Smt. Mahita Nair, Sr. D/R

सुनवाई की तारीख/**Date of Hearing** : 21/08/2024
घोषणा की तारीख/**Date of Pronouncement** : 23/08/2024

आदेश/ORDER

PER NARENDRA KUMAR BILLAIYA, AM :

This appeal by the assessee is preferred against the order dated 12/04/2024 by NFAC, Delhi [in short 'ld. CIT(A)'], pertaining to AY 2012-13.

2. The challenge of the assessee is two-fold. Firstly, the assessee has challenged the very jurisdiction of the AO for re-assessment and on merits of the case, the assessee is aggrieved by the addition of Rs.18,92,250/- u/s 68 of the Act.

3. Representatives of both the sides were heard at length. Case records carefully perused.


4. Briefly stated the facts of the case are that the assessee filed her return of income on 19/09/2012 declaring total income of Rs.96,06,327/-. The AO was in possession of an information received

from DDIT(Inv.)-Unit 6(3), Mumbai, that the assessee was involved in Client Code Modification (CCM). Accordingly, notice u/s 148 of the Act was issued and served upon the assessee. In response to which the assessee filed her return of income and accordingly statutory notices were issued and served upon the assessee. The AO made inquiries from National Spot Exchange Limited (NSEL) and on receiving reply from the NSEL the AO came to know that the assessee had entered in CCM. Therefore, a showcause notice was issued to the assessee. In her reply the assessee stated that her gross total income comprises of income from speculation activity of Rs.11,48,457/- as income from NSEL via M/s. Anand Rathi Commodities Limited (hereinafter 'M/s. ARCL') where CCM had happened. It was further explained that the assessee had never received the contract notes and on making inquiry with M/s. ARCL, the assessee came to know about buy and sell of *Kastkadi* being 600 in quantity where total value of buy was Rs.18,46,845/- and sale value of Rs.18,92,250/-. Since the contract notes were not made available by the broker, the assessee could not add the profit in her computation of income. However, it was pointed out that the profit of Rs.47,250/- was included in the net gain of Rs.10,02,110/- and shown under the head income from other sources in the computation of total income. The reply of the assessee did not find any favour with the AO who completed the assessment by making addition of Rs.18,92,250/- u/s 68 of the Act.

4.1. The assessee carried the matter in appeal before the Id. CIT(A) but without any success.

5. Having heard the rival contentions, we have carefully perused the orders of the authorities below.

6. The reasons for re-opening of the assessment read as under:-



**GOVERNMENT OF INDIA
MINISTRY OF FINANCE
INCOME TAX DEPARTMENT
OFFICE OF THE ASSISTANT COMMISSIONER OF INCOME TAX
CIRCLE 30(1), MUMBAI**

To,
DARAKHSHAN MUSTAHASAN SHAIKH
D-302 LANDMARK, LINK ROAD, CHINCHOLI BUNDER
MALAD (WEST)
MUMBAI 400064, Maharashtra
India

PAN: ANRPS7890L	Assessment Year: 2012-13	Dated: 22/10/2019	Letter No : ITBA/AST/F/17/2019-20/1019220462(1)
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Sir/ Madam/ M/s,
Subject: Providing reasons for reopening for the A.Y. 2012-13 -reg.-

1. In this case the return of income was filed on 19.09.2012 declaring total income of Rs.96,06,327/-.

2. Information has been received from the Dy. Director of Income Tax (Investigation) Unit-6(3), Mumbai regarding client code modification on the NSEL. It is informed by the DDIT that SIFO has carried out investigation in NSEL and forwarded its report to Pr.CCIT/ DGIT(Inv) Mumbai vide letter dated 01.11.2018. The report discussed the issue of Client Code Modification in the case of few brokers. The DDIT has undertaken inquiries in the case of one broker Anand Rathi Commodities Ltd. (ARCL) and few beneficiaries / clients. The investigation revealed that the Client Code Modification were done according to the NSEL as per its circular dated 08.07.2011. The total value of modified trades amounted to Rs.3073.48 crores. Out of this, the two original client codes most used belong to Borosil Glass Works Ltd. (Rs.1061.52 Cr) and Navratan Mal Gupta (Rs.1084.40 Cr). As per the SIFO report Borosil has filed a complaint with the SFIO that the broker ARCL had misused their Unit Client Code (UCC) without their authority.

3 The Broker had stated that the Client Code Modification was indeed done and this was without any instruction of the clients. This was supposedly done to save time as the trade was punched on a single client code and then shifted to the client on whose name the trade was to be done. The broker had also stated that there was no record of any voice recordings or written instructions of the clients as the orders were received on telephone by dealers / relationship manager. The Broker had also stated that the verification of quality and quantity of goods was done by NSEL. The borrowers and borrowing brokers were supposed to

Note: If digitally signed, the date of digital signature may be taken as date of document.
ROOM NO:502,5th Floor, Kautliya Bhavan, C-41 to C-43, G Block, Bandra Kuria Complex, Bandra (East), Mumbai, Maharashtra, 400051
Email: MUMBAI.DCIT30.1@INCOMETAX.GOV.IN, Office Phone:02226571744

* The Notice/Letter/Order No. mentioned above may be treated as DIN for the purpose of procedure for issuance of Income Tax Notice prescribed by Circular No.19/2019 dt. 14 August 2019.

deliver and deposit the goods in NSEL owned / accredited godowns. The warehouse receipts were then issued by the NSEL to complete the trade. The Broker had also stated that there was no physical delivery of goods at any time in all the trades carried out on the NSEL platform.

4. During the course of investigation summons were also issued by the DDIT to few client in whose favour client code were modified by ARCL. The four client having a cumulative value of modified transactions of worth Rs.341.89 Cr. The breakup of client code modified by these entities is as under :

Name of the Company	Total Value of transactions that were modified (Rs.)
Ashrit Holdings Ltd.	135,10,11,921/-
Technocraft Industries (India) Ltd.	117,25,87,010/-
M D Saraf Securities Pvt. Ltd.	36,34,09,637/-
BMS Industries Limited	53,19,02,445/-

5. Statement of Shri Anil Garodia, President (Account and Finance) at M/s. Technocraft Industries (I) Ltd was recorded. The findings of the investigation revealed that ARCL or its employees used to contact the subject company whenever there was good opportunity to trade in NSEL. The trading done in NSEL was in the form of paired contract. The purchase and sales were executed on the same day. Contract Note was received in the evening for both purchase and sale. Payments were made accordingly on T+2 basis. In the case of sale payments were received in T+25/35 days. The profit arising from trade in NSEL had been offered to tax as business income in respective group companies and no set off of any kind of loss has been claimed against these profits. The source of funds for trading in NSEL is stated to be the company's own fund. The purchased commodities are stated to be stored in NSEL designated warehouses. Warehousing receipts were issued in favour of purchasers which were kept in custody of NSEL for discharge of commodity pay in towards sales contract. Client was delivery allocation report was issued two months.

6. Further statement of Shri Chean Pitamber Bharkhada, President, ARCL was also recorded by the investigating wing which clearly stated that no physical delivery of goods took place at any time whatsoever in all trade executed on NSEL. Inquiries done by the investigation department in the aftermath of the NSEL scam by means of survey has revealed that these godowns where the goods were supposedly placed were empty and goods not found. Therefore, as the goods themselves were not in place, there is no question of the goods being delivered. After trading on, NSEL was suspended, ARCL did not fulfil

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payment obligations against sale contracts the trade in respect of which the loss is claimed by the assessee. No goods were in the possession of assessee either in his hand or in the possession of NSEL on his behalf. Therefore, the assessee (Technofract group) could not recover his losses by selling the goods and losses of Rs.57 crore arose. Hence, it is concluded that the losses are speculative losses which are not allowable to be set off against normal business income of the assessee.

7. On perusal of the trade details of the assessee in the NSEL platform, it is seen that the assessee has purchased and sold through client code modification. The details are as under :

Sr.No.	Name of the assessee	F.Y.	Buy	Sell
1	Darakhshan Mustahas Shaikh	2011-12	18,45,000/-	18,92,250/-

8. As per investigation report of the DDIT, the sale of Rs.18,92,250/- is artificial sale created by the broker through client code modification and is in the nature of accommodation entry only.

9. The data in possession of the undersigned has led to formation of belief that the assessee is one of the beneficiaries in obtaining the accommodation entry of Rs.18,92,250/- through Client Code Modification done by the Broker on behalf of the assessee.

10. Therefore, I have reason to believe that the income chargeable to tax, as indicated above, to the tune of Rs.1892250/- has escaped assessment by reason of the failure on the part of the Assessee to disclose fully and truly all material facts necessary for A.Y. 2012-13 within the meaning of the provisions of Section 147 of the I.T. Act, 1961. Section 147 of the Income Tax Act, 1961 contemplates three primary conditions for the initiation of reassessment proceedings:

- There should be an income,
- Income should be chargeable to tax,
- And that income has escaped assessment.

11. In this case more than four years have lapsed from the end of the assessment year under consideration. Hence necessary sanction to issue notice u/s.148 has been obtained separately from Principal Commissioner of Income Tax as per the provisions of Section 151 of the Act.

12. Accordingly, administrative approval to issue notice u/s. 148 of the I. T. Act, 1961 is

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hereby sought in the case of the assessee for A.Y. 2012-13, as required u/s. 151(1) of the I. T. Act, 1961.

MITIKA DAHIYA
CIRCLE 30(1), MUMBAI

7. A perusal of the aforementioned reasons show that the re-opening is done after four years from the end of the assessment year under consideration, therefore, the 1st proviso to Section 147 of the Act is applicable. Therefore, it is incumbent upon the AO to show that there was failure on part of the assessee to disclose truly and fully, material facts. At the same time the re-opening cannot be done on erroneous facts.

8. At clause 3 of the reasons for re-opening the assessment, the AO himself as admitted that the broker had stated that CCM was indeed done and this was without any instructions from client. Secondly and most importantly, the transactions mentioned at clause 7 of the reasons are very much part of the computation of net gain which is as under:-

Party Code	Party Name	Cl. Type	Symbol	Opt. Type	Saada Date	Buy Qty	Buy Rate	Buy Amt	Sell Qty	Sell Rate	Sell Amt	Net Gain
PRID0006	DARAKHSHAN M SHAIKH	INC	CASTKADI3		May 6 2011	900	940	31,72,500.00	900	961.5	32,45,062.50	72,562.50
PRID0006	DARAKHSHAN M SHAIKH	INC	CASTKADI3		Jul 2 2011	1200	900	40,50,000.00	1200	920.3	41,41,350.00	91,350.00
PRID0006	DARAKHSHAN M SHAIKH	INC	CASTKADI3		Aug 19 2011	2400	1,000.00	90,00,000.00	2400	1,022.80	92,05,200.00	2,05,200.00
PRID0006	DARAKHSHAN M SHAIKH	INC	CASTKADI3		Oct 12 2011	2700	850	86,06,250.00	2700	870.1	88,09,762.50	2,03,512.50
PRID0006	DARAKHSHAN M SHAIKH	INC	CASTKADI3		Dec 7 2011	2700	830	84,03,750.00	2700	848.6	85,92,075.00	1,88,325.00
PRID0006	DARAKHSHAN M SHAIKH	INC	CASTKADI3		Jan 20 2012	600	820	18,45,000.00	600	841	18,92,250.00	47,250.00
PRID0006	DARAKHSHAN M SHAIKH	INC	CASTKADI3		Feb 21 2012	900	810	27,33,750.00	900	832.4	28,09,350.00	75,600.00
PRID0006	DARAKHSHAN M SHAIKH	INC	PDY1121HR2		Nov 30 2011	900	2,400.00	10,80,000.00	900	2,444.00	10,99,800.00	19,800.00
PRID0006	DARAKHSHAN M SHAIKH	INC	PDY1121HR2		Dec 30 2011	4200	2,400.00	50,40,000.00	4200	2,443.50	51,31,350.00	91,350.00
PRID0006	DARAKHSHAN M SHAIKH	INC	PDY1121HR2		Jan 4 2012	900	2,400.00	10,80,000.00	900	2,443.00	10,99,350.00	19,350.00
SUB TOTALS						17400		4,50,11,250.00	17400		4,60,25,550.00	10,14,300.00
											Less : Transaction Charges ,	
											Service Tax and Stampduty	12,190.00
											Net Gain	10,02,110

8.1. Which is part of the computation of total income which reads as under:-

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✓ Name of the Assessee : DARAKHSHAN M. SHAIKH 1.3
Address : 13 / 4, OTI Apartment,
Amrut Nagar, Jogeshwari (West),
Mumbai - 400 102
Status : Individual
PAN : ANRPS7890L
Previous Year : 31st March,2012
Assessment Year : 2012 - 2013
Date of Birth : 24.12.1971

COMPUTATION OF TOTAL INCOME

	<u>Amount</u>	<u>Amount</u>
I. <u>INCOME FROM HOUSE PROPERTIES</u>		
Rent Recd	1,734,464	
Less : Deduction U/s. 24		
Standard Deduction	<u>520,339</u>	1,214,125
II. <u>BUSINESS INCOME</u>		
Share of Profit from Prop Concern M/s. Adiba Fashions		4,322,116
III. <u>CAPITAL GAINS</u>		
Short Term Capital Gains	810	
Long Term Capital Gains	1,508,072	
Less : Exempt U/s. 10(38)	<u>(1,508,072)</u>	810
IV. <u>INCOME FROM OTHER SOURCES</u>		
Other Income	2,768,598	
Speculation Profit	1,148,457	
Saving Bank Interest	138,914	
Interest Income	34,137	
FDR Interest	<u>70,379</u>	4,160,485
		<u>9,697,536</u>
Less : STCG Considered Separately		810
		<u>9,696,726</u>
LESS : DEDUCTIONS U/Ch. VI - A		
U/s. 80 - C		
L.I.C. Premium		91,209
		<u>91,209</u>
		<u>9,605,517</u>
		<u>9,605,520</u>
<u>Tax As Per Return</u>		
Tax on Normal Income	2,732,655	
Tax on STCG	122	2,732,777
Add : Education Cess		<u>81,983</u>
		<u>2,814,760</u>
Less : TDS		<u>166,246</u>
		<u>2,648,514</u>
Less : Advance Tax		<u>2,700,000</u>
		<u>(51,486)</u>
		<u>Refund Due</u>

8.2. Under the head income from other sources, speculation profit of Rs.11,48,457/- includes the net gain mentioned hereinabove.

9. Considering the aforementioned facts and the details, we have no hesitation to hold that there was no failure on the part of the assessee to disclose fully and truly the material facts necessary for completion of assessment so as to attract the 1st proviso to Section 147 of the Act. Therefore, the re-opening of assessment is bad in law. We accordingly set aside the notice issued u/s 148 of the Act making the consequential assessment order null and void. Since we have quashed the assessment order, we do not find it necessary to delve into the merits of the case.

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

Order pronounced in the Court on 23rd August, 2024 at Mumbai.

Sd/-

(SANDEEP SINGH KARHAIL)
JUDICIAL MEMBER

Sd/-

(NARENDRA KUMAR BILLAIYA)
ACCOUNTANT MEMBER

Mumbai, Dated 23/08/2024

Sd/-

आदेश की प्रतिलिपि अग्रेषित/Copy of the Order forwarded to :

1. अपीलार्थी / The Appellant
2. प्रत्यर्थी / The Respondent
3. संबंधित आयकर आयुक्त / Concerned Pr. CIT
4. आयकर आयुक्त (अपील)/ The CIT(A)-
5. विभागीय प्रतिनिधि , आयकर अपीलीय अधिकरण, मुंबई /DR,ITAT, Mumbai,
6. गार्ड फाई/ Guard file.

आदेशानुसार/ BY ORDER,
TRUE COPY

Assistant Registrar
आयकर अपीलीय अधिकरण
ITAT, Mumbai