

**IN THE INCOME TAX APPELLATE TRIBUNAL
“T” BENCH, MUMBAI**

**BEFORE MS PADMAVATHY S, AM &
SHRI SUNIL KUMAR SINGH, JM**

**I.T.A. No. 434/Mum/2023
(Assessment Year: 2014-15)**

Divya Mahadevia E/12, Sea Face Park, Bhulabhai Desai Road, Mumbai-400026. PAN : AABPM3640B	Vs.	ITO (IT)-3(2)(1), Room No. 1627, 16 th Floor, Air India Building, Nariman Point, Mumbai-400021.
Appellant)	:	Respondent)

Appellant/Assessee by : Shri Pankaj Jain, AR

Revenue/Respondent by : Shri Anil Sant, Add. CIT-DR

Date of Hearing : 20.08.2024

Date of Pronouncement : 21.08.2024

ORDER

Per Padmavathy S, AM:

This appeal by the assessee is against the final order of assessment passed by the Income Tax Officer, International Tax, Ward-3(2)(1), Mumbai [in short 'the AO'] under section 147 r.w.s. 144C(13) of the Income Tax Act, 1961 (the Act) dated 06.01.2023 for Assessment Year (AY) 2013-14.

2. The assessee is a non-resident individual and filed the return of income for AY 2013-14 on 13.07.2023 declaring a total income of Rs. 6,26,670/-. The

Assessing Officer (AO) received information from DDIT (Inv.) stating that the assessee is one of the beneficiaries of Client Code Modification (CCM) done by various brokers to provide fictitious profits / losses to various parties. The office of the DDIT has conducted inquiry in the case of one such broker Anand Rathi Commodities Ltd. and found the following transactions pertaining to the assessee where CCM is carried out.

Sr. No.	Name of the Broker	Date of Transactions	Transaction ID (Trade No.)	Original UCC	Modified UCC	Name of the Original Client	PAN of the Original Client	Name of the modified client	PAN of the modified client	Qty Traded	Value of one unit	Total Value of transaction	Buy or Sell
1	ANAND RATHI COMMODITIES LTD	20.09.2012	451	HNN001	HOD593	NAVRATAN MAL GUPTA	ABRPG5272C	DIVYA ADITYA MAHADEVI A	AABPM364 0B	6	704	7112000	BUY
2	ANAND RATHI COMMODITIES LTD	22.02.2013	3518	HCB011	HOD593	BOROSIL GLASS WORKS LTD	AAACB5484G	DIVYA ADITYA MAHADEVI A	AABPM364 0B	6	675.1	1875300	BUY
3	ANAND RATHI COMMODITIES LTD	22.02.2013	3518	HCB011	HOD593	BOROSIL GLASS WORKS LTD	AAACB5484G	DIVYA ADITYA MAHADEVI A	AABPM364 0B	1	625.1	312550	BUY
4	ANAND RATHI COMMODITIES LTD	20.09.2012	709	HNN001	HOD593	NAVRATAN MAL GUPTA	ABRPG5272C	DIVYA ADITYA MAHADEVI A	AABPM364 0B	3	717	1075500	SELL
5	ANAND RATHI COMMODITIES LTD	20.09.2012	732	HNN001	HOD593	NAVRATAN MAL GUPTA	ABRPG5272C	DIVYA ADITYA MAHADEVI A	AABPM364 0B	3	717	1075500	SELL
6	ANAND RATHI COMMODITIES LTD	12.09.2012	772	HNM198	HOD593	MG D ELECTRONICS PVT LTD	AADCM9639D	DIVYA ADITYA MAHADEVI A	AABPM364 0B	1	2905	435750	BUY
7	ANAND RATHI COMMODITIES LTD	12.09.2012	743	HNM198	HOD593	MG D ELECTRONICS PVT LTD	AADCM9639D	DIVYA ADITYA MAHADEVI A	AABPM364 0B	3	2905	1307250	BUY
8	ANAND RATHI COMMODITIES LTD	12.09.2012	933	HNM198	HOD593	MG D ELECTRONICS PVT LTD	AADCM9639D	DIVYA ADITYA MAHADEVI A	AABPM364 0B	3	2955.1	1329795	SELL
9	ANAND RATHI COMMODITIES LTD	12.09.2012	941	HNM198	HOD593	MG D ELECTRONICS PVT LTD	AADCM9639D	DIVYA ADITYA MAHADEVI A	AABPM364 0B	1	2955.1	443265	SELL
												9966910	

3. The AO re-opened the assessment by issuing of notice under section 148 of the Act calling on the assessee to file the return of income and the necessary details pertaining to the impugned transactions. The assessee in response to the notice filed the return of income and also submitted that the impugned transactions have already been declared as part of the income returned by the assessee in the original

return of income filed. The AO after considering the submissions of the assessee made an addition of Rs. 21,18,790/- under section 68 of the Act. Aggrieved assessee filed its objections before the DRP. Before the DRP the assessee submitted that the AO while making the addition did not consider the sale value of one of the transactions. The assessee also submitted that the impugned transactions are already part of the return of income filed by the assessee. The DRP after considering the submissions of the assessee directed the assessee to file a petition under section 154 with regard to the sale transactions not factored by the AO and also directed the AO to consider the petition and re-compute the addition. The AO in the final assessment order reduced the addition Rs. 1,09,660/- after considering the sale amount as per the rectification petition filed by the assessee under section 154 of the Act. The assessee is in appeal against the final order of the AO before the Tribunal.

4. We heard the parties and perused the material on record. The main submission of the ld. AR during the course of hearing was that the impugned transactions are already part of the income declared by the assessee while filing the return of income. In this regard, the ld. AR took us through the impugned transactions as extracted in the earlier part of this order and the breakup of the gain arising from Spot Arbitrage as declared in the return of income. The breakup of the gain arising from Spot Arbitrage is extracted below:

Sr no	Trans No	Date	Expiry	Buy Amount (A)	Sell Amount (B)	Gross Profit C=(B-A)	Expenses D	Net profit E=(C-D)
1	12042012/137	17/04/2012		15,75,000	16,14,375	39,375	4,493	34,882
2	18042012/263	23/04/2012		15,97,500	16,38,000	40,500	4,558	35,942
3	01062012/5	05/06/2012		12,35,250	12,57,750	22,500	4,927	17,573
4	06062012/163	08/06/2012		16,32,000	16,61,400	29,400	6,509	22,891
5	05072012/82	09/07/2012		9,45,000	9,61,500	16,500	3,768	12,732
6	10072012/211	12/07/2012		15,75,000	16,04,000	29,000	6,283	22,717
7	10072012/243	12/07/2012		8,53,800	8,69,550	15,750	3,406	12,344
8	06082012/116	08/08/2012		8,40,000	8,56,050	16,050	3,352	12,698
9	07082012/191	09/08/2012		10,27,500	10,47,000	19,500	4,100	15,400
10	13082012/396	16/08/2012		25,20,000	25,68,240	48,240	10,056	38,184
11	12092012/262	14/09/2012		17,43,000	17,73,060	30,060	6,356	23,704
12	20092012/574	24/09/2012		21,12,000	21,51,000	39,000	7,706	31,294
13	17102012/1360	19/10/2012		16,69,000	17,01,750	32,750	6,094	26,656
14	25102012/1620	30/10/2012		22,13,250	22,55,250	42,000	8,078	33,922
15	23112012/0662	27/11/2012		16,89,500	17,20,500	31,000	6,164	24,836
16	30112012/0869	05/12/2012		23,27,738	23,80,050	52,313	6,130	46,182
17	28122012/1027	01/01/2013		15,54,000	15,82,500	28,500	5,670	22,830
18	18012013/0844	22/01/2013		24,76,600	25,21,050	44,450	9,035	35,415
19	31012013/1269	04/02/2013		15,16,750	15,43,250	26,500	5,532	20,968
20	22022013/0897	26/02/2013	03/04/2013	21,87,850	22,28,450	40,600	7,984	29,898
21	06032013/0225	08/03/2013	16/04/2013	15,48,000	15,80,715	32,715	5,656	15,958
22	11032013/0420	12/03/2013	07/05/2013	8,02,760	8,27,120	24,360	2,946	7,265
23	13022012/158	13/02/2012	12/04/2012	18,22,500	18,72,900	50,400	6,154	9,479
24	16022012/207	16/02/2012	17/04/2012	18,22,500	18,73,350	50,850	6,165	13,812
25	23022012/284	23/02/2012	21/04/2012	17,77,500	18,23,625	46,125	6,007	15,896
26	29022012/350	29/02/2012	27/04/2012	26,71,313	27,40,500	69,188	9,028	29,512
				4,37,35,310	4,46,52,935	9,17,625	1,56,157	6,12,991

Table 1.1 (Page No.7)

5. From the perusal of the details submitted by the assessee, we notice that the impugned transactions as tabulated above are part of the income of Rs. 6,12,991/- arising from Spot Arbitrage (refer pg. 1, sl. No. 11, 12, 20 & pg. 4 of PB). Therefore, we see merit in the submissions of the assessee that the addition made by the AO under section 68 to the tune of Rs. 1,09,660/- is already part of the

income declared by the assessee in the return of income i.e. the amount of Rs. 1,09,660/- is already included in the income of Rs. 6,12,991/-. Accordingly, in our considered view the AO is not right adding the said amount once again under section 68 of the Act. The addition made by the AO is hereby deleted.

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

Order pronounced in the open court on 21-08-2024.

Sd/-
(SUNIL KUMAR SINGH)
Judicial Member

**SK, Sr. PS*

Sd/-
(PADMAVATHY S)
Accountant Member

Copy of the Order forwarded to :

1. The Appellant
2. The Respondent
3. DR, ITAT, Mumbai
4. Guard File
5. CIT

BY ORDER,

(Dy./Asstt. Registrar)
ITAT, Mumbai