

IN THE INCOME TAX APPELLATE TRIBUNAL

"E" BENCH, MUMBAI

BEFORE SHRI PRASHANT MAHARISHI, AM

AND

SHRI RAHUL CHAUDHARY, JM

ITA No. 2066/MUM/2024

A.Y.2013-14

The Income Tax Officer

19 (2) (2) Mumbai

503, 5<sup>th</sup> Floor,

Piramal Chambers

Lal Baug, Parel

Mumbai

(Appellant)

PAN

Assessee by

Revenue by

Date of hearing

Date of pronouncement

Vs.

Kunverben Ratilal Raval

7, Taladhvaj Bhavan

3 Road

Pinjrapole lane

Mumbai 400004

(Respondent)

AADPR8076I

Mr Mitesh Mehta CA

Shri P D Chougule ADI CIT SR

DR

14-08-2024

29.08.2024

ORDER

PER PRASHANT MAHARISHI, AM:

1. This appeal is filed by The Income Tax Officer – ward 19 (2) (2), Mumbai (the learned assessing officer) for assessment year 2013 – 14 against the appellate order passed by the National faceless appeal Centre, Delhi (the learned CIT – A) dated 21/2/2024 wherein the appeal filed by the assessee against the reassessment order passed under section 147 read with section 144B of The Income

Tax Act, 1961 (The Act) dated 31/05/2023 which was allowed.

2. The learned assessing officer aggrieved with the above order preferred this appeal raising following grounds: -

- i. Whether on the facts and circumstances of the case and in law the learned CIT (A) was justified in allowing the appeal of the assessee due to change of opinion without appreciating the facts that the assessment was reopened based on the information about the client code modification by the assessee which was received subsequent to the completion of the assessment under section 143 (3) of the act
- ii. Whether on the facts and in the circumstances of the case the learned CIT – A has erred in allowing the appeal of the assessee ignoring the fact that the client code modification was obtained from NSEI and had proved by the CIT (investigation) Mumbai, beyond doubt that the assessee also involved and entered transaction on account of client code modification of Rs. 56,586,240/-
- iii. Whether on the facts and circumstances of the case and in law the learned CIT (A) has erred in allowing the objection of the assessee that reopening under section 148 of the act 1961 is not justified by ignoring the fact that the broker on and the Rathi commodities Ltd which was involved in maximum client code modification and the statement of Shri Chetan Pitambar Bharkhada recorded under section 131 of the act on which he relied on

question number 19 that no physical delivery of goods took place at any time whatsoever in all trade executed on NSEL.

iv. Whether on the facts and circumstances of the case and in law the learned CIT (A) has erred in relying on the case of Ravi Gopal Trivedy V NEAC ITA number 358/MUL/2023 dated 16/file/2023 which is distinguishable from the facts of the case that

1. The statement of Mr Chethan P Bhakhada recorded under section 131 of the IT act was provided to the assessee during the reassessment proceedings under section 147 of the act, which was not the case in the relied decision in the Ravi Gopal Trivedy

2. Reasons recorded for reopening new limb mentioned therein the details of the transaction of by/sale and the modus operandi adopted for modification of client code in the transaction is recorded in the reasons have been accepted in the details furnished by the assessee during the assessment proceedings.

3. The brief fact of the case shows that assessee is an individual engaged in the business of commodity trading, filed her of income on 28/9/2013 declaring total income of Rs 1,040,450/-. The assessee also filed tax audit Report r along with the return of income. Scrutiny assessment was carried out under section 143 (3) on 9/3/2016 wherein the assessed income was determined at Rs. 1,059,400/-.

4. Subsequently the reassessment proceedings were initiated by issuing a notice under section 148 on 24/4/2024. The reassessment was done wherein the reasons were recorded about client Modification code for stated transactions at NSEL platform which is not reflected in therefore it was found that aggregate to Rs. 56,586,240/- was the total transaction with a buy value of Rs. 32,833,500/- and sale value of Rs. 23,752,740/-.
5. The assessee was granted opportunities of the hearing wherein the assessee attended and furnish the reply. Based on the reply of the assessee it was found that the total amount of transaction entered by the assessee on account of client code modification is Rs. 56,586,240. This information was received from the investigation wing wherein it is found that as per the serious fraud investigation office report prepared on the NSEL Scam and shared the information with the income tax department. Subsequently the inquiries were made and to understand the modus operandi summons under section 131 of the act was also issued to Anand RathiCommodities Limited wherein as per the statement of one person it has been stated that no physical delivery of goods took place at any time whatever in all trade on NSEL. It was noted that the return filed by the assessee the income/loss generated by the assessee in the pursuance of his activities on that stock exchange platform is not reflecting in the return of income for assessment year 2013 - 14 of the total alleged transaction of Rs. 56,586,240/-.

6. The assessee gave the bifurcations of the 11-trading transaction of Buy of Rs. 3,28,33,507 items of sale amounting to Rs. 23,752,740. Assessee submitted that all these transactions are recorded in its books of accounts and resultant profit has been disclosed assessee has also submitted the commodity purchase Ledger account and commodity sales Ledger account as well as the Ledger account of the broker along with the contract notes and bills. Assessee also produced the bank statement highlighting the receipt and payment of the consideration. The opportunity of personal hearing was also granted to the assessee where the assessee also explained the whole transaction. Assessee denied of any booking of transaction in client code modification. Assessee also objected to reopening of assessment stating that reasons does not name the assessee, there is no escapement of income and transactions are already recorded in the books of the assessee. On NSEL commodity transaction there is no delivery of goods but same are settled. Therefore no addition to be made.
7. The learned assessing officer on examination of the same and has made the addition of Rs. 328,33,500 of the buy value of the total transaction treating the same as bogus under section 69C of the act. The total income of the assessee was determined at Rs. 33,892,900 a passing an assessment order under section 143 (3) read with section 147 of the act and 144B of the income tax act on 31/05/2023.

8. Aggrieved with the assessment order the assessee preferred an appeal before the learned CIT – A. Assessee submitted that assessee is an Indian resident and has filed the return of income engaged in the business of commodity trading wherein she has done in the NSEL transaction through its broker made a purchase transaction of agricultural commodities of Rs. 73,941,790/-, sold those goods on the same platform at Rs. 75,503,266/-, incurred the direct expenditure of Rs. 253,369/- and has shown the gross profit of Rs. 1,308,107/-. The assessee has also filed the tax audit report along with the return of income which was assessed under section 143 (3). The reassessment proceedings were initiated wherein on the same information which was available with the learned assessing officer during assessment proceedings, the reopening of the assessment was made and therefore the reopening of the assessment is not valid. Assessee submitted a written submission of almost 50 pages before the learned CIT – A relying upon several judicial precedents challenging the reopening of the assessment requesting to quash the same. It was the claim of the assessee that in the reasons recorded for reopening, neither there is any material linking to the assessee and there is no live link with the income of the assessee. Assessee has not entered any client code modification transaction. NSEL transactions of the agricultural commodities is without any delivery of goods. Therefore, reopening of the assessment is invalid.

9. The learned CIT – A quashed the reassessment proceedings relying upon the decision of Ravi Gopal Trivedy 358/M/2023 dated 16/file/2023. It was further held that the details were available with the learned assessing officer for assessment year 2014 – 15 however the assessment year 2013 – 14 was reopened. The learned assessing officer has relying on the information made an addition of Rs. 3 28,33,500 under section 69C as bogus purchases without proper verification when the transactions are already part of the books of accounts and due profit is disclosed. He further held that the details provided of the client code modification related to the transaction of the next assessment year 2014 – 15 and not for the assessment year 2013 – 14. Therefore, he quashed reopening of the assessment stating there is no escapement of income, there is no live link.
10. Aggrieved with the order of the learned CIT – A the learned assessing officer is in appeal before us.
11. The learned departmental representative pressing ground number 1 of the appeal submits that there is no change of opinion because the information was received subsequent to the completion of the assessment under section 143 (3) of the act. Further the assessee has entered a transaction of Rs. 56,586,240/- as per the information obtained from NSEL based on the report of the DGIT (investigation), Mumbai which beyond doubt proves that the assessee is also involved in entered a transaction on account of client for modification. Further the learned CIT – A has failed to consider the question number 19 wherein it is specifically

stated that there is no physical delivery of goods to place at any time whatsoever in all trade executed on NSEL. It was further claimed that the decision relied upon by the learned CIT – A is distinguishable on facts. In fact, he reiterated the grounds of appeal raised before us.

12. The learned authorised representative supported the orders of the learned CIT – A submitted that the original return of income filed by the assessee on 28/9/2013 declaring total income of Rs. 1,040,450 was assessed on 9/3/2016 under section 143 (3) of the act. Assessee submitted that assessee has entered the purchase transaction of Rs. 73,941,790/- and sale transaction of Rs. 75,503,266/-. Out of these the whole transaction the learned assessing officer has picked up the sale transaction of Rs. 2,37,52,744 which the purchases have been booked by the assessee at Rs. 23,331,000/-. Therefore, on this transaction itself assessee has offered a profit of Rs. 421,740/- he specifically referred to the transaction dated 31/12/2012 of Pady basmat entered four 660 metric ton which were sold on same date at Rs. 23,752,740. He also submitted that the second transaction was with respect to the purchase of cottonseed wash oil of 150 metric ton on 22/12/2012 for purchase of Rs. 9,502,500/- which was sold on 96,78,000/- on which the profit shown by the assessee is Rs. 175,500/-. He also placed on record the contract notes at page number 79 of the paper book. Therefore, the addition made by the learned assessing officer of the purchase of Rs. 32,833,500/- is devoid of any merit because assessee has

sold the same goods on the same platform for Rs. 334,30,740/-, which is higher than the addition made by the learned assessing officer. He further referred to the reasons recorded by the learned assessing officer and submitted that there is no live link available with the escaped income of the assessee. He referred to the reasons which are placed at page number 1 of the assessment order itself. Therefore, according to him there is no infirmity in the order of the learned CIT - A in quashing the reassessment also. He submitted that there is no question of any delivery because these are the future and option transaction where no delivery is required to be taken. He even otherwise submitted that the assessee has already offered the income more than what is added by the learned assessing officer. Even otherwise he submitted that on identical facts and circumstances when the case of the assessee was reopened for assessment year 2014 - 15, the assessment order is passed on 17/4/2023 wherein the information was that the assessee has earned a profit of Rs. 26,097,600/- on client code modification but at the time of passing of the order the learned assessing officer himself stated that no variation is required to be done and the total income of the assessee was assessed at the returned income of Rs. 621,190/-. He placed on record such assessment order at page number 83 - 85 of the paper books. Therefore, his claim was that when in the subsequent year on identical information, the addition has not been made and the claim of the assessee is accepted, there is no reason that for this year i.e., assessment year

2013 - 14 the addition is to be made on the same information. He therefore submitted that the order of the learned CIT - A is correct in quashing the reassessment and even otherwise on the merits of the case no addition is required to be made.

13. We have carefully considered the rival contention and perused the orders of the learned assessing officer as well as the learned CIT - A. The facts of the record shows that assessee is an individual who filed her return of income on 28/9/2013 declaring a total income of Rs. 1,040,450/-. The original assessment was passed under section 143 (3) on 9/3/2016 wherein the assessed income of the assessee was assessed at Rs. 1,059,400/- after making an addition under section 14 A of Rs. 18,950/-. Subsequently the case of the assessee was reopened by issue of notice under section 148 and 24/4/2021. Reasons recorded mentions that the assessee has entered modified trade transaction in pursuance of his activity in NSEL platform is not reflecting/under reflecting. Therefore, aggregating to Rs. 56,586,240/- i.e., buy value of Rs. 3,28,33,500/- and sales value of Rs. 23,752,740/- through these modified the trade transaction work out without any documentary evidence during the year under consideration. However, the facts clearly shows that assessee has shown total purchases of Rs. 73,941,790/- and sales of Rs. 75,503,266/-. In the purchase transaction the impugned alleged bogus transactions were recorded of Rs. 3,28,33,500. These transactions comprise of two transactions. The first transaction was on 22/12/2012 of

cottonseed wash oil purchases amounting to Rs. 9,502,500/-. The second transaction was on 31 December 2012 of Pady basmati Rice of Rs. 23,331,000/-. The assessee has also recorded the sales of cottonseed wash oil at Rs. 9,678,000 and paddy basmati at Rs. 23,752,740/-. Therefore, both the above transactions alleged by the learned assessing officer are already recorded as purchases in the books of account and for which sale has been accounted for. Thus, assessee has already recorded the sales of Rs. 334,30,740/- out of the purchases of Rs. 32,833,500/- resulting into the net profit of Rs. 597,240/-. In the subsequent assessment year i.e., 2014 - 15 on the identical information the learned assessing officer has accepted the explanation of the assessee and did not make any addition on the identical basis. Paragraph number 2.1 of the assessment order passed for assessment year 2014 - 15 clearly shows that that in the submission made by the assessee, the assessee has furnished the computation of total income, contract copies, bank statement showing receipts and payment and calculation of returns before trade confirmation and other documents. The amount is already considered in the books of account of the assessee on which the assessee has already earned profit which has already been offered for taxation in the income tax return filed by the assessee and therefore no addition was made. The facts of the current year are no different except the amount which we have already discussed.

14. In view of the above facts, we do not find any infirmity in the order of the learned CIT – A in holding that when the income is already offered by the assessee by showing the sales of the goods which is higher than what is booked as purchases, the reasons recorded by the learned assessing officer not linking the assessee, and absence of any lively link between the reasons recorded and escapement of the income of the assessee, the reassessment order is rightly quashed. Of course, we agree with the Id. DR that there cannot be any change of opinion because of survey. But on the other reason of absence of escapement of income and absence of live link, the reopening of assessment is correctly quashed by the Id. CIT (A).
15. Even on the merits of the case when in the subsequent year on identical facts, the addition has not been made by the learned assessing officer and the assessment order placed before us for assessment year 2014 – 15 also shows the identical transaction, we do not find any infirmity in deleting the addition.
16. In the result all the grounds of the appeal of the learned assessing officer are dismissed.

Order pronounced in the open court on 29.08.2024.

Sd/-

Sd/-

(RAHUL CHAUDHARY)  
(JUDICIAL MEMBER)

(PRASHANT MAHARISHI)  
(ACCOUNTANT MEMBER)

Mumbai, Dated: 29.08.2024

*Dragon*

Copy of the Order forwarded to:

The Appellant, The Respondent, TheCIT, The DR ITAT& Guard File

BY ORDER,

Sr. Private Secretary/ Asst. Registrar  
Income Tax Appellate Tribunal, Mumbai