

**IN THE INCOME TAX APPELLATE TRIBUNAL "C" BENCH KOLKATA**

**Shri Manish Borad, Accountant Member  
Shri Sonjoy Sarma, Judicial Member**

**I.T.A. No.797/Kol/2023  
Assessment Year: 2009-10**

**Sharda Kanoria,**

35- Tirumula, Ballygunge Park,  
Ballygunge, Kolkata - 700019

[PAN: AFTPK2961G] ..... **Appellant**

**vs.**

**Assistant Commissioner of Income Tax,  
Circle – 30 Kolkata,**

Office of the Asst. Commissioner of Income-tax,  
2, Gariahat Road (South)

Kolkata – 700068 ..... **Respondent**

**Appearances by:**

Assessee represented by : Puja Somani, AR

Department represented by : Amuldeep Kaur, Addl. CIT, Sr. DR

Date of concluding the hearing : July 16, 2024

Date of pronouncing the order : October 07, 2024

**ORDER**

**Per Sonjoy Sarma, Judicial Member:**

This appeal filed by the assessee pertaining to the Assessment Year (in short 'AY') 2009-10 is directed against the order passed u/s 250 of the Income Tax Act, 1961 (in short the 'Act') by the Learned Commissioner of Income Tax, National Faceless Appeal Centre (NFAC), Delhi, dated 22.06.2023 arising out of Assessment Order dated 21.12.2016, passed under Section 143(3) read with section 147 of the Act.

2. The Assessee has raised the following grounds of appeal:

*"1. That, on the facts and in the circumstances of the case and in law, the Ld. CIT(A) has erred in having rejected the ground of the appellant challenging the validity of the initiation of the ag proceedings u/s 147/148 of the Act vide the impugned notice u/s of 148 of the Act as the same was based on third party unsubstantiated and unverified evidences and material which were never supplied to the appellant.*

*2 That, on the facts and in the circumstances of the case and in law, the CIT(A) erred in confirming the action of the Ld. A.O. in having initiated proceeding u/s.148 of the Act in spite of the fact that the ROI for the A.Y.2009-10 under appeal was duly filed u/s 139(1) on 30/10/2009 at an income of Rs.7,34,610/- and the impugned transactions of share purchase/sale were all transacted through Authorised Brokers on the recognised Stock Exchanges, details of which all existed on the Stock Exchange and was thus available with the A.O and thus there was no escapement of income warranting any proceeding to reopen the assessment.*

*3. That, on the facts and in the circumstances of the case and in law, the CIT(A) erred in confirming u/s 68 of the Act the disallowance of the share loss of Rs.18,22,316/- on the alleged ground of Client Code Modification (CCM) ignoring all the documents/evidences produced by the appellant without bringing out any discrepancy in the same, wholly placing reliance on some alleged investigation report of the Investigation Wing which is totally unverified, behind the back information and without providing the appellant any opportunity for verification and/or rebuttal of the same as required u/s 142(3) of the Act. No further investigation/enquiry on the said finding of the Investigation Wing was conducted by the Ld. CIT(A) or the A.O. and nothing was brought on record to substantiate the said alleged Report.*

*4. That, on the facts and in the circumstances of the case and in law, the Order u/s 147, so passed by the Ld. A.O. and confirmed by the Ld. CIT(A) being bad in law and in facts be accordingly quashed and all relief as prayed for by the appellant be kindly granted."*

3. Brief facts of the case are that the assessee, Smt. Sharda Kanoria filed its return of income for the A.Y. 2009-10 on 31.10.2009 declaring total income of ₹ 7,34,606/-. The return was processed under Section 143(1) of the Act. However, information was later received by the Assessing Officer from the office of Principal Commissioner of Income Tax (Investigation), Ahmedabad vide letter dated 08.03.2016 stating that the assessee had allegedly reduced its taxable income by ₹ 18,22,316/-for the

A.Y. 2009-10 by misusing the Client Code Modification (CCM) facility. Based on this information, the Assessing Officer reopen the case under Section 147 of the Act, after recording the reasons and obtaining the necessary approval from the PCIT, Delhi. Notice under Section 148 was issued on 30.03.2016. In response, the assessee requested the reasons of reopening the case which were provided on 24.06.2016 along with notice under Section 143(2) of the Act. The reasons recorded for reopening included in the alleged misuse of CCM facility by the assessee, resulting in bogus loss of ₹ 18,22,316/-. During the assessment proceedings, the assessee submitted that the it had declared speculation income of ₹ 39 lacs for the year and that the transaction were genuine, executed through M/s Mangal Keshav Securities Ltd. registered broker. The assessee also submitted the ledger account of the broker for the period 01.04.2008 to 01.03.2009 along with contract notes and other supporting documents. The assessee argued that the transaction were done through recognised stock exchange and all payments were made through banking channels. Despite the assessee submissions, the Learned Assessing Officer added the sum of ₹ 18,22,316/- as profit from Future & Options (F&O) trading in the assessment order dated 21.12.2016 stating that the assessee failed to explain the genuineness of the loss.

4. The assessee filed an appeal before the Learned CIT(A) but the appeal was dismissed and the addition made by the Assessing Officer was sustained.

5. Aggrieved, the assessee filed an appeal before this Tribunal challenging the reopening the assessment under Section 147 and 148 of the Act as well as the addition of ₹ 18,22,316/- as made in the case of assessee. At the time of hearing, the Authorised Representative argued that the reopening of the assessment under section 147 of the Act was not

justified, as the reasons recorded for reopening did not provide any specific details regarding reopening did not provide any specific details regarding alleged bogus loss of ₹ 18,22,316/-. The assessee further contended that the Ld. AO relied on vague information received from the investigation wing without any independent application of mind. He further submitted that the assessee had already reported income of Rs. 39 lacs for the A.Y. 2009-10 and all transactions were carried out through registered brokers and recognised stock exchange. The assessee has also contended that any CCM if done by broker was beyond its knowledge and control. The Authorised Representative referred to the decision of the Hon'ble Supreme Court in the case of Coronation Agro Industries Ltd. Vs. DCIT 82 taxmann.com 75 to argue that mere claim of CCM could not be the grounds for reopening an assessment unless there was concrete evidence of wrong doing. The Learned Authorised Representative requested that the Tribunal may set aside the addition made by the Learned Assessing Officer and order of the Learned CIT(A) by allowing the appeal of the assessee.

6. On the other hand, the Learned Departmental Representative supporting the order of the Learned Assessing Officer and the CIT(A) stating that the information received from the Investigation Wing was credible and indicated that the assessee had engaged in misuse of CCM facility. The Ld. DR argued that the Ld. AO had rightly reopened the case and made the addition based on the information available.

7. We have heard the rival submission of both the parties and perusing the material available on record. It is observed that the reopening of the assessment under Section 147 of the Act based on solely on the information received from the Investigation Wing regarding the alleged misuse of CCM facility. However, it is also noted that the Assessing Officer failed to provide complete break up of the alleged bogus loss of ₹

18,22,316/- even till end of the assessment proceedings. The assessee had submitted that the ledger account with M/s Mangal Keshav Securities Ltd. as well as contract notes and other relevant documents to substantiate its claim that the transaction were genuine. Furthermore, the assessee had already reported speculative income of ₹ 39 lacs for the year which was duly offered to tax. In the light of the above, considering the decision of the Hon'ble Bombay High Court as in the case of Coronation Agro Industries Ltd. Vs. DCIT (supra) wherein it was held that CCM could not be grounds for reopening of assessment unless there was concrete evidence of evasion. We therefore, found that the Assessing Officer had no valid grounds of reopening the case under Section 147 of the Act. Furthermore, the addition of ₹ 18,22,316/- was made without providing the assessee with necessary break up or specific details of alleged loos, thereby violating the principle of natural justice.

8. In view of the above findings, the addition of ₹ 18,22,316/- made by the Learned Assessing Officer and sustained by CIT(A) is hereby set aside. The appeal of the assessee is allowed and assessment order is quashed. The learned AO is directed to delete the addition made under Section 68 of the Act.

9. In terms of the above, appeal of the assessee is allowed.

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

***Kolkata, the 7<sup>th</sup> October, 2024.***

Sd/-  
**[Manish Borad]**  
**Accountant Member**

Sd/-  
**[Sonjoy Sarma]**  
**Judicial Member**

Dated: 07.10.2024.

AK, PS

*Copy of the order forwarded to:*

- 1.Sharda Kanoria
- 2.Assistant Commissioner of Income Tax,Circle – 30 Kolkata
3. CIT(A)-
4. CIT- ,
5. CIT(DR),

//True copy//

By order

Assistant Registrar, Kolkata Benches