

आयकर अपीलिय अधिकरण
दिल्ली पीठ "ए", दिल्ली
श्री विकास अवस्थी, न्यायिक सदस्य एवं
श्री अवधेश कुमार मिश्रा, लेखाकार सदस्य के समक्ष

IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH "A", DELHI
BEFORE SHRI VIKAS AWASTHY, JUDICIAL MEMBER &
SHRI AVDHESH KUMAR MISHRA, ACCOUNTANT MEMBER
आअसं.4145/दिल्ली/2024(नि.व. 2012-13)
ITA No. 4145/DEL/2024 (A.Y.2012-13)

Deputy Commissioner of Income Tax,
Circle-19(1), 2nd Floor, C R Building, I.P Estate,
New Delhi 110002

..... अपीलार्थी/Appellant

बनाम Vs.

Atul Goel,
S-33, Panchsheel Park, Hauz Khas,
Delhi 110017
PAN: AADPG-2222-P

..... प्रतिवादी/Respondent

CO No. 111/DEL/2024 (A.Y.2012-13)
In ITA No. 4145/DEL/2024

Atul Goel,
S-33, Panchsheel Park, Hauz Khas,
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बनाम Vs.

Deputy Commissioner of Income Tax,
Circle-19(1), 2nd Floor, C R Building, I.P Estate,
New Delhi 110002

..... प्रतिवादी/Respondent

Assessee by : Shri Ved Jain, Advocate & Ms. Uma Upadhyay, Chartered
Accountant
Department by : Shri Ashish Tripathi, Sr. DR

सुनवाई की तिथि/ Date of hearing : 06/03/2025

घोषणा की तिथि/ Date of pronouncement: : 30/05/2025

आदेश/ORDER

PER VIKAS AWASTHY, JM:

The Revenue is in appeal against against the order of Commissioner of Income Tax (Appeals), National Faceless Appeal Centre, Delhi (hereinafter referred to as 'the CIT(A)') dated 08.07.2024, for assessment year 2012-13. The assessee has filed Cross Objections in appeal filed by the Revenue.

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2. The Revenue in appeal has raised following grounds assailing findings of the CIT(A):-

"(i) Whether in facts and circumstances of the case and in law, the Ld. CIT(A) has erred in not appreciating that information received from investigation wing is valid piece of evidence on the basis of which reopening can be done"

"(ii) Whether on facts of the case and in law, the Ld. CIT(A) has erred in ignoring the fact that it was evidently established by the Investigation wing that assessee was one of the beneficiaries in the Client Code Modifications"

"(iii) Whether in facts and circumstances of the case and in law, the Ld. CIT(A) has erred in holding that there was no independent enquiry by the AO in reopening the case without appreciating that AO has formed a clear opinion about the bogus/fraudulent nature of transaction upon the receipt of evidently established information from Investigation Wing in Client Code Modification cases and AO has recorded the reasons for reopening of the case."

"(iv) Whether in facts and circumstances of the case and in law, the Ld. CIT(A) has erred in holding that the assessing officer did not take cognizance of complete details of transactions of Client Code Modifications and addition was made in arbitrary manner without appreciating that the information was analyzed by the assessing officer and a speaking order was passed accordingly after giving opportunity of being heard to the assessee."

"(v) Whether in facts and circumstances of the case and in law, the Ld. CIT(A) has erred in deleting the disallowance of Rs. 2,96,33, 125/ being unexplained income in Client Code Modification and Rs. 8,91,363/- being commission paid to the entry operators"

3. Shri Ashish Tripathi, representing the department submitted that on the basis of report received from SFIO which was based on investigation made in the transactions of NSEL, the assessment in the case of assessee for AY 2012-13 was reopened and notice u/s. 148 of the Income Tax Act,1961(hereinafter referred to as 'the Act') was issued to the assessee. The assessee in convenience with his share broker has indulged in unauthorized Client Code Modification (in short CCM) in respect of the transactions carried out during the relevant period. The AO made addition of Rs.2,96,33,125/- in respect of the CCM carried out by the assessee to reduce the profits and tax liability. The assessee carried the issue in appeal before the CIT(A), assailing findings of the Assessing Officer in assessment order dated 22.11.2019 passed u/s. 147/143(3) of the Act, *inter alia* challenging reopening of assessment as well as addition made by the AO on account of CCM. The CIT(A) has erred not only in holding reopening invalid but also deleted the addition on merits. The Id. DR prayed for upholding the assessment order and reversing findings of the CIT(A).

4. Per contra, Shri Ved Jain, appearing on behalf of the assessee vehemently defended the impugned order and prayed for dismissing appeal of the Revenue. The Id. Counsel submits that it is not a case where the assessee after CCM has suffered a loss. Rather, the assessee has gained and has offered the same to tax in his return of income. In support of his submissions he referred to pages 66 and 76 of the paper book, wherein, the assessee has given details showing computation of profit in ITR on transaction/trade executed on NSEL and MCX. The Id. Counsel thus prayed for upholding the impugned order and dismissing appeal of the Revenue.

5. Both sides heard, orders of the authorities below examined. A perusal of the assessment order dated 22.11.2019 (supra) shows that the AO has reopened the assessment on the basis of information received from SFIO which intern was based on investigation made in the transactions of NSEL with regard to CCM carried out by few unscrupulous brokers. The reassessment proceedings were initiated against the assessee after four years, no independent inquiry was carried out by the Assessing Officer after receipt of the information from SFIO. The AO has merely extracted parts of investigation report wherein the modus operandi of CCM is used as a tool to reduce tax liability. The AO has recorded reasons to believe for reopening assessment. It is relevant to mention here that after expiry of four years from the end of relevant assessment year the first proviso to section 147 of the Act comes into play. According to first proviso to section 147 of the Act, assessment cannot be reopened unless the AO specifies that income chargeable to tax has escaped assessment for such assessment year by reason of the failure on the part of the assessee to "disclose fully and truly all material facts" necessary for his assessment. In the instant case the observation of the Assessing Officer with regard to absence of assessee not disclosing truly and fully all material facts is conspicuously missing. The assessment order is too shallow that even the Assessing Officer has not mentioned the name of the brokers through whom transactions were carried out by the assessee at NSEL. Further, the AO has not even carried out the exercise of identifying the scrips in which the assessee carried out CCM. In light of the above observations, we find no infirmity in findings of the CIT(A) in holding reopening of assessment as bad in law.

6. On merits of the addition, the Id. Counsel for the assessee has shown that the the gain on sale of such scrips (on which CCM is alleged) has already been

offered to tax in the return of income. The Counsel for the assessee has referred to the transactions carried out by the assessee and their disclosure in the return of income at pages 66 and 67 of the paper book. The Id. Counsel further pointed that even the disputed trades have been mentioned in the return of income. The CIT(A) deleted the addition on merits after observing as under:-

“9.3. Moreover, it is noticed that the allegation of the AO are mainly based upon report of SFIO wherein the detail of client code modification was shared with the Income Tax Department. However, he has not quoted any of the contents of the said report so as to substantiate that the appellant or his broker was involved in any wrongdoing or in genuine client code modification. The non-genuine client code modifications cannot be generalized for all the brokers in the market. Neither is there any finding of the AO that the broker of the appellant was engaged in any bogus client code modification nor any evidence was brought on record to substantiate the said allegation by the AO. The broker of the appellant i.e. M/s Pace Commodity Broker Pvt. Ltd. is also different from the broker mentioned in the reasons recorded M/s Anand Rathi Commodities Ltd. The arbitrary nature of the AO's order can further be gauged by the fact that the AO had accepted the profit figures which the appellant earns from transaction on NSEL, profit from trades in which CCM were carried out being already included in this figure, but has than added the value of the sale/ purchase of certain trades, alleging them as income from other sources.

9.4. During the reassessment proceedings, the appellant had furnished complete details of transactions wherein CCM was carried out, which has neither been doubted nor any error/discrepancy been pointed by the AO. In this regard, the addition in an arbitrary manner was not justified on the part of the AO. Further, while making the addition on account of commission of Rs. 8,91,363/- which has been presumed to be paid by the appellant to the entry operator, the AO has failed to identify who was the accommodation entry provider he is referring to in his order. In the whole assessment order, there is not even a single reference of any money/cash being exchanged by the appellant for any of the alleged transactions or any admission of any of such entry operator in this regard. Without there being any evidence of any money trail, there cannot be any allegation of obtaining accommodation entry by the appellant. The allegation of obtaining accommodation entry is a serious allegation and onus is on the AO to first substantiate his allegation by gathering some tangible material/evidence either in the form of statement recorded during investigation or any material seized/impounded in this regard. On perusal of the assessment order, reasons

recorded and notices issued during the reassessment proceedings, there is no such evidence been referred by the AO to support his allegation.

9.5. In view of the above discussed facts of the case, I am of the considered opinion that the AO has failed to establish that the appellant was a beneficiary of Rs. 2,96,33, 125/- on account of Client Code Modification. Therefore, the addition made by the AO of Rs. 2,96,33,125/- as income from undisclosed sources and of Rs. 8,91,363/- u/s 69C of the Act are hereby deleted. Accordingly, ground no. 5 and 6 of the appeal are allowed.”

7. No material has been placed on record by the Revenue to controvert findings of the CIT(A). We see no reason to interfere with the well reasoned findings of the CIT(A) on merits of the issue, as well.

8. In the result, appeal of the Revenue is dismissed being devoid of any merit.

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9. The Id. Counsel for the assessee made statement at Bar that he has not pressing cross objections filed by the assessee. In light of the statement made by the Id. Counsel for the assessee, the cross objections are dismissed as not pressed.

10. To sum up, appeal of the Revenue and CO of the assessee are dismissed.

Order pronounced in the open court on Friday the 30th day of May, 2025.

Sd/-

(AVDHESH KUMAR MISHRA)

लेखाकार सदस्य/ACCOUNTANT MEMBER

दिल्ली/Delhi, दिनांक/Dated 30/05/2025

Sd/-

(VIKAS AWASTHY)

न्यायिक सदस्य/JUDICIAL MEMBER

NV/-

प्रतिलिपि अग्रेषितCopy of the Order forwarded to :

1. अपीलार्थी/The Appellant ,
2. प्रतिवादी/ The Respondent.
3. The PCIT
4. विभागीय प्रतिनिधि, आय.अपी.अधि., दिल्ली /DR, ITAT, दिल्ली
5. गार्ड फाइल/Guard file.

BY ORDER,

//True Copy//

(Dy./Asstt. Registrar) ITAT, DELHI