



IN THE INCOME TAX APPELLATE TRIBUNAL, RAJKOT BENCH, RAJKOT
BEFORE DR. ARJUN LAL SAINI, AM.

&

Dr. DINESH MOHAN SINHA, JM

आयकरअपीलसं./ITA No. 164/RJT/2023

निर्धारणवर्ष / Assessment Year: (2009-10)

(Hybrid Hearing)

Sandip Harkishan Marwadi C/o. Sarda & Sarda, CAs, 1st Floor, "Sakar", Dr. Radhakrishnan Road, Opp. Rajkumar College, Rajkot-360001,(Gujarat)	Vs.	Assistant Commissioner of Income Tax, Circle - 2(1), Income Tax Office, Racecourse Road, Sadar, Rajkot - 360001. Gujarat
स्थायीलेखासं./जीआइआरसं./PAN/GIR No.: ADBPM1302R		
(Appellant)		(Respondent)

Appellant by : Shri Vimal Desai, Ld. AR
Respondent by : Shri Abhimanyu Singh Yadav Ld. SR. DR
Date of Hearing : 26 / 03 /2026
Date of Pronouncement : 17/ 04 /2026

आदेश / ORDER

Per, Dr. Dinesh Mohan Sinha:

Captioned appeal filed by the assessee, pertaining to Assessment Year 2009-10, is directed against the order passed under section 250 of the Income Tax Act, 1961 by National Faceless Appeal Centre (NFAC), Delhi/Commissioner of Income Tax (Appeals), dated 23/03/2023, which in turn arises out of an order passed by the Assessing Officer u/s 143(3) r.w.s. 147 of the I.T. Act, dated 26/12/2016.



2. The grounds of appeal raised by the assessee are as follows:

1. *The re-assessment order u/s 143(3) r.w.s. 147 of the Act is bad in law.*
2. *The reopening of the assessment is bad in law.*
3. *The Id. assessing officer has erred in law as well as on facts in making an addition of Rs. 60,88,450/-, on account of alleged fictitious loss created by way of client code modifications and the ld. CIT(A) has also erred in law as well as on facts in confirming the same.*
4. *The Id. assessing officer has erred in law as well as on facts in making an addition of Rs. 60,884/- on account of alleged unaccounted expenditure being estimated commission for client code modifications and the ld. CIT(A) has also erred in law as well as on facts in confirming the same.*

3. Succinctly, the factual panorama of the case is that assessee before us is an Individual and engaged in the business of trading and investing in shares & securities and providing management services during the year. The assessee was originally assessed with the DCIT Circle 1(1) Rajkot. The case of the assessee has been reopened by him, by issue of notice u/s 148 of the Act, dated 30.03.2016. The assessee, vide his letter dated 13.05.2016, requested to treat the return filed u/s 139(1) of the Act, on 30.09.2009, showing income of Rs. 5,98,837/-, as return filed in pursuance to notice issued u/s 148 of the I.T. Act. A notice u/s 143(2) of the Act was issued on 17.05.2016. In response to the notices of hearing, the assessee attended from time to time and he filed submissions as and when called for. The fact of the case is that, a survey u/s. 133A was carried out for a coordinated and limited purpose at the premises of 12 brokers and few of their clients across India on 23.03.2015. On the basis of the data received from the National Stock Exchange (NSE) and after analyzing the same, it was found that these brokers had resorted to client code modification (CCM) as a tool for tax evasion. The assessee is one such beneficiary, in whose case, the loss booked was to the tune of Rs.60,88,450/-, by virtue of in-genuine client code modification. Hence, the assessment was reopened. The assessee was asked to show cause as



to why the fictitious loss claimed by him should not be denied and added to his total income.

4. In response, the assessee submitted its reply on 21.12.2016, before the assessing officer which is reproduced hereunder:

“Your goodself proposes to make addition of Rs.60,88,450/- on the contention of alleged fictitious loss generated by misuse of client code modifications. In this regard, I humbly submit as under:

(1). In the year under consideration, I have carried out transactions in the Futures & Options (F&O) segment and incurred loss of Rs.65,33,049.47/-.

(2). The transactions carried out by me are duly supported by the bills and contract notes of the broker who is registered member of National Stock Exchange (NSE) and STT was also paid on such transaction. A copy of relevant ledger account and bills/contract notes is enclosed herewith for your ready reference.

(3). The books of accounts are duly audited and there are no qualifications or reservations by the auditor.

(4). The client code modification is an inherent, inevitable and regular feature in the business of stock broking and therefore, the fact of client code modifications by itself cannot lead to any adverse conclusions.

(5). On perusal of the show-cause notice, it appears that the allegation of misuse of client code modification has been developed on the basis of data analysis exercise carried out in pursuance of apprehension of misuse of client code modification. While it is not disputed that data analysis can be starting point for investigation, it is a settled principle under the Income Tax law that adverse conclusions should not be based merely on the doubts and suspicions arising from such data analysis.

(6). It is a matter of fact that neither Income Tax Department nor any other regulatory body has found any adverse evidence based on any inquiry/investigation which can even remotely suggest that I have taken undue advantage by misuse of client code modification. Besides absence of any direct evidence, following facts clearly support my case:

(a) The report of Ahmedabad Investigation Directorate appears to be based on surveys carried out on 12 brokers and few of their clients. In this regard, it may please be noted that my broker M/s. Marwadi Shares & Finance Ltd. was never subjected to survey or any other inquiry/investigation in this regard. Hence, the doubts raised on my transactions do not find any direct support from the report of Investigation Directorate.

(b) As stated earlier, client code modification is an inevitable feature in share broking business. Accepting this inevitable feature, the regulators have also allowed client code modifications up to 1% without any adverse actions. The client code modifications by M/s Marwadi Shares & Finance Ltd in the year under consideration below the prescribed limit of 1% and the said



broker was not subjected to any adverse actions by any regulatory body. A specific confirmation from M/s. Marwadi Shares & Finance Ltd in this regard is enclosed herewith.

M/s Marwadi Shares & Finance Ltd was subjected to inspections by regulators like SEBI, NSE and BSE in the year under assessment. No any adversities/irregularities were observed by any of the regulators in their inspections. A confirmation in this regard is enclosed. This corroborates to the stand that client code modifications was a bonafide and genuine error.

(7).On facts, I wish to clarify that the client code modifications have been carried out by the broker with respect to the transactions in the code of M/s Chandarana Intermediaries Pvt. Ltd. The same appears to be due to the reason that the said concern was having large number of transactions with M/s Marwadi shares & Finance Ltd at that point of time. In screen-based transactions, the operator gets very short time to execute a transaction and therefore, such code selection error occurs specifically in case of a client code having large number of transactions. For better understanding this aspect, I am enclosing herewith a comparative statement showing transactions of Chandarana Intermediaries on my transaction dates and the overall percentage of such transactions involving client code modifications. It may be observed from the said statement that the transactions of client code modifications were in respect of minuscule and negligible proportions. This again corroborates to the bonafides of my transactions.

(8).I am also enclosing herewith a specific confirmation from M/s. Chandarana Intermediaries Pvt. Ltd. to the effect that the transactions in question did not belong to them. This should remove all the doubts in the matter.

(9).Except the covering letter of Investigation Directorate, details of my transactions and certain analysis thereof, I have not been granted any other material on the basis of which the allegation of misuse of client code modification has been put forward against me. I hereby specifically request to grant copy of such material and working, if any, to verify its correctness and reliability. I also request that if the department is relying upon the third-party information/versions and using against me, a meaningful opportunity of their cross-examination may please be granted.

(10).I may also point out the important fact that under the SEBI circular MRP/DoP/SE/cir-21/2009 dated 09-12-2009, a broker is required to maintain the records of transactions for a period of five years. Thus, the records for the financial year 2008-09 were required to be maintained till 31-03-2014. In view of this, it is presently not possible to obtain and present the relevant records from the broker to establish the genuineness of my transactions. Under the law, there cannot be any impossible onus on the assessee and the assessee cannot be called upon to prove something which he cannot due to efflux of reasonable time. The proposed addition is unjustified and unfair even on this count.



5. However, assessing officer rejected the above contention of the assessee and observed that assessee has resorted to CCM with the intention to reduce his taxable income and the fictitious loss brought in works out to Rs. 60,88,450/- Further, the brokers had admitted to have earned commission @ 0.5 to 2% on such accommodation. The assessee has not come forward to explain as to how much commission he has paid. However, taking the commission of 1%, the unexplained expenditure due to the above adjustments works out to Rs. 60,884/- and the same was added to the total income of the assessee.

6. Aggrieved by the order of the assessing officer, the assessee carried the matter in appeal before the learned CIT(A), who has confirmed the action of the assessing officer, therefore, the assessee is in appeal before this Tribunal.

7. Learned Counsel for the assessee vehemently, argued on ground number one and two raised by the assessee, challenging the reopening of the assessment. The Id.Counsel pointed out that there is no whisper in the reasons recorded, of any tangible material which came to the possession of the assessing officer. It reflects an arbitrary exercise of the power conferred under section 147 of the Act. In the reasons supplied to the petitioner, there is no whisper, what to speak of any allegation, that the petitioner had failed to disclose fully and truly all material facts necessary for assessment and that because of this failure there has been an escapement of income chargeable to tax. The assessee has raised the contention that the assessing officer was not having any material information to form "a reason to believe" that there was an escapement of income. In the reasons recorded there is complete non-application of mind and reasons were not recorded with reference to the assessee under consideration and in the reasons recorded, the information mentioned does not pertain to the assessee. Therefore, such reopening of assessment based on such reasons, which is not directly applicable to the assessee, hence reopening of the assessment should be quashed.



8. On the other hand, the Ld. DR for the Revenue has primarily reiterated the stand taken by the Assessing Officer, which we have already noted in our earlier para and is not being repeated for the sake of brevity.

9. We have heard both the parties and carefully gone through the submission put forth on behalf of the assessee along with the documents furnished and the case laws relied upon, and perused the fact of the case including the findings of the Id CIT(A) and other materials brought on record. We note that assessing officer reopened the case of the assessee merely on the basis of information received from the Investigation Wing, which does not pertain to the assessee, but pertain to other brokers/persons. The information mentioned in the reasons recorded, does not pertain to the assessee under consideration, directly, however, based on the assumptions, the assessment was reopened, which is not acceptable.

10. Thus, the reasons recorded are factually incorrect and vague which are not sustainable in eyes of law. For that reliance is placed on the decision of ITAT Jaipur, in the case of Shri Ram Mohan Rawat (ITA No. 1014/JP/2018) wherein it had asserted the importance of recording of correct 'reasons' and proper application of mind, while recording the same. In the said judgement, the reference of finding of Hon'ble Gujarat High Court on this issue has been made whereby it has been held that the formation of belief on such incorrect and vague reasons would lead the reopening of the assessment as invalid. The Hon'ble Gujarat High Court in case of Mumtaz Haji Mohmad Memon vs. ITO held that making the wrong statement in the reasons recorded and ignoring the relevant and correct facts available on record established that the assessing officer has not applied his independent mind while forming the opinion. Therefore, we note that the assessing officer proceeded for reopening of the assessment for non-existent and factually incorrect reasons and has not applied his mind. We hold that the assessing officer had taken an irrelevant fact into consideration and reopened the



assessments on the basis of suspicion, furthermore, the Assessing Officer proceeded for re-opening of the assessment on factually incorrect basis/reasons and has not applied his mind and did not verify the assessment records/returns filed by the assessee. Therefore, re-opening of the assessments is liable to be set aside/quashed. Accordingly, the orders of the assessing officer is not sustainable and hence deserve to be quashed.

11. The Hon'ble Supreme Court in the case of CIT Vs. Kelvinator of India Ltd. (2010) 320 ITR 561 has held that the assessing officer can reopen an assessment provided there is tangible material to come to the conclusion that there was escapement of income. Reasons must have live link with the formation of the belief. The Hon'ble Supreme Court in the case of CIT Vs. Dolatram Ravatmull 87 ITR 349 has held that there should be some direct nexus between the conclusion of the fact arrived at the authority concern and the primary facts upon which that conclusion is based. The use of extraneous and irrelevant material in arriving at that conclusion would vitiate the conclusion of facts and therefore, reopening of assessment is bad in law.

12. Accordingly, in view of the above facts and circumstances of the case, when the assessing officer has initiated the proceedings on the basis of factually incorrect facts and reasons and without application of mind and without verification of the facts available on record, then the proceedings initiated under section 147/148 are not sustainable in law. The same are set aside and consequential reassessment order is quashed.

13. Since the reopening is quashed, therefore, the ground nos. 3 and 4, raised on the merits of the addition become infructuous.



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

Order pronounced in the open court on 17/ 04 /2026.

Sd/-

**(Dr. A.L. SAINI)
ACCOUNT MEMBER**

Sd/-

**(Dr. DINESH MOHAN SINHA)
JUDICAL MEMBER**

Rajkot

दिनांक/ Date: 17 / 04 /2026

Copy of the Order forwarded to

1. The Assessee
2. The Respondent
3. The CIT(A)
4. Pr. CIT
5. DR/AR, ITAT, Rajkot
6. Guard File

By Order

Assistant Registrar/Sr. PS/PS
ITAT, Rajkot