IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH 'D', NEW DELHI

BEFORE SH. R. K. PANDA, ACCOUNTANT MEMBER
AND.
SH. KULDIP SINGH, JUDICIAL MEMBER

ITA No.4266/Del/2016
Assessment Year: 2011-12

ACIT Central Circle- 29 New Delhi	Vs.	M/s. Jaypee Financial Services Limited FA-45, Shivaji Enclave, New Delhi-110027 PAN No.AAACJ2992B
(APPELLANT)		**(RESPONDENT)**

Appellant by	Sh. J. K. Mishra, CIT DR
Respondent by	Sh. Ved Jain, Advocate Sh. Rishabh Jain, CA

Date of hearing:	12/09/2019
Date of Pronouncement:	03 /12/2019

ORDER

PER R.K PANDA, AM:

This appeal filed by the assessee is directed against the order dated 16.05.2016 of CIT(A)-30, New Delhi relating to A.Y. 2011-12.

2. Facts of the case, in brief, are that the assessee is a company and filed its return of income on 29.09.2011 declaring total income of Rs.3,20,240/-. The assessee company is engaged in the business of trading of shares, securities and commodities through recognized member of exchange. A search and seizure action u/s.132 of the IT Act

was initiated in the case of the assessee as part of JP group on 30.03.2012. In response to notice u/s.153A the assessee filed its return of income on 2.09.2013 declaring taxable income of Rs.3,20,240/-. During the course of assessment proceedings the AO noted that the assessee company is a client of registered broker M/s.Jaypee Capital Services Ltd. and Fututz Next Services Ltd. These companies are registered with NSE, MCX and NCDEX. These are also registered with the United Stock Exchange. During the course of search and post search proceedings, the evidences of Client Code Modifications done by these companies in their own account as well as in the accounts of client were found. The special auditors appointed u/s.142 (2A) was therefore directed to report on the aspect of client code modification (CCM) done by the company. Substantial client code modifications in the accounts of assessee company M/s.Jaypee Financial Services Ltd. was also found. Therefore, the special Auditor was directed to look into the aspect of client code modifications in the account of assessee company also. The AO referred to the relevant circulars, notifications and other rules and regulations with regard to client code modifications given by the concerned exchanges from time to time and thereafter asked the assessee to explain the genuineness of the client code modification the AO also confronted the report of the special auditor.

3. Rejecting the various explanations given by the assessee and observing that in the case of member (broker) group companies of the assessee, it has been held that the client code modification is by and large not for the genuine reasons and for extraneous consideration and that the assessee suppressed its income in its books of accounts by

shifting its profit to other clients as alleged by special auditors in their report, the AO made addition of Rs.1,90,71,392/-.

4. In appeal the Ld. CIT(A) deleted the addition by observing as under :-

7.3 "Findings: The findings are as under:-

I have carefully considered assessment order, written submission, case laws relied upon and oral arguments of Ld. AR. The objection/argument of the appellant are discussed as under:-

(i) It has been stated by the A.O. in the assessment order, that the Client Code Modifications **(CCM),** are carried out by the group companies of assessee, to which assessee is also a client and CCM are done in client code of assessee.

It has been further analyzed by the A.O. that whole process of CCM done by the group concerns of assessee, does not seem to be genuine. The A.O. has also held that the copy of File Transfer Protocol (FTP), was not made available in the assessment proceedings and therefore, there may be entries not as per the guidelines of the SEBI. In this way, A.O. concluded that an amount of Rs. 1,90,71,392/-, is the net effect of profit/loss shifted from the code of assessee company to the other client codes and vice versa.

(ii) During appellate proceedings, appellant has submitted that, this addition cannot be made in the account of assessee, as assessee is not a member to the exchange and cannot execute client code modifications. Further, the appellant also submitted that in case of group concerns (Jaypee Capital services Ltd./ Future Next Services Ltd.), the CCM is modification change of client codes, after execution of trades. This facility is provided by the Stock Exchange/ Commodity Exchange, in order to rectify any error or wrong data entry done by the staff of broker company, at the time of punching orders. Further, it is submitted that these CCM, is subjected to certain guidelines provided by the SEBI, with regard to the execution of entries, punched wrong by mistake and not as a routine. The observations of the Special Auditor regarding huge number of CCM transactions, are grossly incorrect, being misused to shift the profit / loss from one client to another. However, in appellate proceedings, it has been submitted CCM transactions, have been recorded in case of group concerns less than 1%, and no penal action has been taken by the exchange in this regard, meaning thereby there is no violation of rules and regulations prescribed in this regard by the Exchange.

(iii) Further, appellant also submitted that these entries have been entered into normal course of business. These entries are duly recorded in the books of accounts and also forming part of the transactions reported to the exchange. No adverse inference has been drawn about these entries by the exchange or SEBI. In fact, even the information about these CCM, was obtained by the A.O. from the exchange. During assessment proceedings, the group concerns have given detailed explanation in this regard to the A.O. In the explanations, it has been clarified that these errors are part of the normal course business activities and permissible even as per the Circular issued by National securities Clearing Corporation Ltd. in circular no.

NSCCL/SEC/2004/0464, dated 31.5.2004, where error upto 1% of the total number of transactions, is even permissible, without any fine. The circular is, reproduced as under:

"NATIONAL SECURITIES CLEARING CORPORATION LIMITED Download
Ref No. NSE/CMPT/5128

Circular No. NSCCL/SEC/2004/0464 May 31, 2004

To,

All Members,

(ii) Sub:- Penalty for client code modification.

(iii) In pursuance of the Bye laws and Regulations of NSCCL and in partial modification to circulars no. NSE/CMPT/4041 dated March 27, 2003 and NSE/CMPT/4991 dtd. April 16, 2004, it is hereby notified that the penalty structure for client code modification in the capital market (Cash Segment) is being revised. The new penalty structure is as follows:-

Percentage (%) of client codes changed to total orders (matched) on a daily basis	**Fine**
Less than or equal to 1%	**Nil**
Greater than 1% but less than or equal to 5%	**Fine of Rs.500/- lump sum per day**
Greater than 5% but less than or equal to 10%	**Fine of Rs. 1,000/- lump sum per day**
Greater than 10%	**Fine of Rs. 10,000/- lump sum per day**

The above shall be effective from trade date June 01, 2004

Yours faithfully,

For National Securities Clearing Corporation Ltd.

Jaya Chatterjee

Manager"

Therefore, it is submitted by the appellant that in their case, these errors are less than 1% of the total number of transactions entered into and the entries relating to CCM and have been

accepted by both the parties. The A.O. has not brought any evidence to support the allegation apart from suspicion on the basis of SEBI guidelines. Hence, it is submitted by the appellant that there is no justification for drawing any adverse inference on this account, without bringing any specific anomaly with regard to genuineness of the transactions and no fine has been imposed by concerned authorities, in respect of CCM .

(v) It is further submitted by the appellant that the entries, which are being alleged, where profit/losses arising from the alleged transactions by the A.O., are all being assessed to tax and such profit/losses, are included in total income declared in each of such case, which has been charged at the maximum marginal rate. Therefore, it is submitted that, there cannot be any allegation of intention to avoid taxes by shifting profit to loss by manipulating entries. The same A.O. has assessed all these entities in assessment proceedings u/s 153A/143(3) and no corresponding adjustments, have been made in the income of such entities.

From the above, following facts emerged:-

> Appellant is not a member of any exchange and cannot execute CCM.
> The transactions on account of CCM done by group concerns, are genuine,
> The volume of CCM occurred, are within the permissible limit allowed by the SEBI, and
> The Exchange / SEBI, has not found any violation of rules and regulations relating to CCM, and the CCM transactions are falling within the prescribed limit.

In view of the above, I agree with the arguments of the appellant and the CCM transactions, are found to be genuine. Accordingly, I hold that the A.O. was not justified in making addition on the above basis. Therefore, the addition of Rs. 1,90,71,392/- made by the A.O., is deleted.
Accordingly, ground no. 12 and 14, are hereby allowed."

5. Aggrieved with such order of the CIT(A), the revenue is in appeal before the Tribunal by raising the following grounds :-

(a) *On the facts and in the circumstances of the case, the Ld. CIT(A) had erred in law and on facts in directing the AO to delete addition made on account of Client Code Modification(CCM)*

(b) *On the facts and in the circumstances of the case, the Ld. CIT(A) had erred in law and on facts in holding that the CCM done by the company is within permissible limit and ignoring the fact that the CCM done by the sister concern M/s Futurz Next Services Ltd. through which profit of the assessee company was reduced by Rs. 1.90 crore is done through back office.*

(c) *On the facts and in the circumstances of the case, the Ld. CIT(A) had*

erred in law and on facts in holding that the CCM done by assessee company is within permissible criteria, thus, ignoring the fact that the CCM was done in the code of certain entities only and the modified client code were not similar to the original client code, the values of client code was significant and other conditions laid down by stock exchanges.

(d) *That the order of the CIT(A) is perverse, erroneous and is not tenable on facts and in law.*

(e) *That the grounds of appeal are without prejudice to each other.*

(f) *That the appellant craves leave to add, amend, alter or forgo any ground(s) of appeal either before or at the time of hearing of the appeal.*

6. The Ld. DR strongly opposed the order of the CIT(A). Referring to page -3 of the AO's order, the Ld. DR. drew the attention of the bench the various circulars, instructions and other rules and regulations with regards to client code modification given by the concerned authorities. Explaining the meaning of client code modification the Ld. DR drew the attention of the bench to the following written synopsis :-

3. *What does Client Code Modification mean?*

Client Code is a unique code which is assigned by a broker to its clients. A broker can issue just one code to a client. SEBI vide its Circular SMD/Policy/Cir-39/2001 dated July 18, 2001 made it mandatory for all brokers to use unique client codes for all clients. Client Code Modification means modification / change of the client codes after execution of trades. Vide Circular no. SMD/POLICY/Cir- /03 dated February 6, 2003 SEBI mandated that the stock exchanges shall not normally permit changes in the client code except to correct for genuine mistakes. The client code modifications permit brokers to rectify human errors when a client inadvertently provides a wrong code or when a wrong code is punched in by the broker whilst executing the trade. The facility ensures smooth functioning of the system and is to be used as an exception rather than routine. However, over a period of time, some persons, in connivance with brokers started using Client Code Modifications for purposes other than genuine errors and brokers transferred gains or losses from one person to another by changing the code, in the garb of correcting an error. CCM especially in the Futures and Options Segment (F&O) was being used a device to evade taxes wherein the client codes were modified for booking

artificial profits or losses at the fag end (Jan to March) of the Financial year when the book profits/losses of various clients have crystallized.

4. *It is pertinent to note that SEBI conducted a probe into 'modification of client codes by brokers, pursuant to observations by the Finance Ministry about many such modifications taking place in derivatives transactions at the NSE during March 2010. With regard to the client code modifications, the trading activities under scanner of SEBI mostly took place between 2009 and 2011 after which SEBI tightened its norms to put a full-stop to such manipulations. Before tightening of the norms, the Indian markets were seeing client code modifications to the tune of Rs 50,000 - Rs 60,000 crore a month, which came down to just about Rs 100 crore soon after SEBI's action. The probe also showed that the quantum of such modifications was much higher during March, compared to the other months, which hinted towards the tax evasion angle due to it being the last month of the fiscal. This showed that a large-scale manipulation was taking place*

AO has listed summary of the findings in the assessment order. In case the Hon'ble Bench considers it necessary to peruse the specific details of CCM, the copy of the special audit report may be provided by the Revenue.

3. *The findings of the SA were confronted to the assessee company. However, the assessee submitted an evasive reply to the effect that CCM can be done by the stock broker and since the assessee is not a stock broker.*

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6. *In this connection, it is necessary to bring certain facts in respect of CCM to the notice of the Hon'ble Bench. In fact, the characters of the code modified were entirely different and there was no scope of inadvertent mistake committed by the brokers at the time of punching of records. When the* ***Levenshtein Distance Analysis or digit edit analysis*** *is carried out in search cases, it is found that there was no scope of modification of such code which is in the nature of 'inadvertent mistake' but actually code was modified* ***"deliberately".***

7. *The* ***Levenshtein Distance Analysis*** *is calculation of edit operations or character edits (i.e. insertions, deletions or substitutions) required to change one client code into the other client code. The Levenshtein Distance Analysis or digit edit analysis helps us know the minimum number of edits required for changing one code to another.* ***The importance of Levenshtein Distance or edit distance is that it gives a clear indication as to whether the code is wrongly typed or is completely replaced. If the number of digits changed from original code to modified code is 1, then it can be reasonably argued that the OCC (Original Client Code) may have been typed wrongly by mistake. But if the number of digits changed is more, say 2 or 3, (in case of assessee it is 3) surely it cannot be a genuine typing mistake but a deliberate change.*** *To this extent, Levenshtein Distance Analysis or*

digit edit analysis acts as a clear indicator for genuineness in client code modification. The longer the distance (i.e., number of digits changed), the lesser the chances of genuineness.

8. In this connection, reference is invited to Circular no.653 issued by NSE (Ref. No.: SE/INVG/2011/18484 dated July 29, 2011), wherein reference to SEBI circular is made and it is

stated that,

"The Exchange has provided the facility of client code modification only to rectify genuine errors. Further, as per point 2 (a) and 3-(B) of the SEBI circular dated July 5, 2011, the following client code modifications would be considered as genuine modifications, provided there is no consistent pattern in such modifications:

Where original client code/name and modified client code/name are similar to each Other but such modifications are not repetitive.

ii. Where original client code and modified client code belong to a family. (Family for this purpose means spouse, dependent parents, dependent children and HUF)"

9. Thereafter, vide ***Circular*** *no.* ***NSE/INVG/2011/670 dated 26.08.2011, NSE*** *has again clarified that*

"In the joint meeting held between SEBI and Exchanges, it was decided that the following clarifications be issued for client code modifications:

The following would constitute genuine errors with regard to client code modifications:

> Error due to communication and/or punching or typing such that the original client code/name and the modified client code/name are similar to each other.

> Modification within relatives ('Relative for this purpose would mean "Relative" as defined under the Companies Act, 1956).

7. Referring to the decisions of the Hon'ble Supreme Court in the case of Durga Prasad More reported in 82 ITR 540 and Sumati Dayal reported in 214 ITR 801, he submitted that the surrounding circumstances and human probabilities should not be ignored by the taxing authority. Referring to the decision of the Hon'ble Supreme Court in the case of Mc Dowell and Company reported in 154 TIR 148, he submitted that the Hon'ble Supreme Court in the said decision has held that no one can get way with a tax avoidance

project with the mere statement that there is nothing illegal about it. It has further been held that colourable devices cannot be part of tax planning and it is wrong to encourage or entertain the belief that it is honorable to avoid the payment of tax by resorting to dubious methods. He submitted that the Ld. CIT(A) has not appreciated the intricacies of client code modification resorted to by the assessee to divert their profit in collision with stock brokers. He also relied on the following decisions :-

1. CIT Vs. MAF Academy 361 ITR 258 (Del)
2. CIT Vs. N. R. Portfolio 263 ITR 456 (Del)
3. CIT Vs. Navodaya Castle P. Ltd. 367 ITR 306
4. PCIT Vs. NDR Promoters 140 ITR 379

8. The Ld. Counsel for the assesse on the other hand heavily relied on the order of the CIT(A). He submitted that the AO has heavily relied upon the report of the special auditor which itself is not based on any material against the assessee. Referring to page 90 of the paper book he submitted that the notice u/s. 142 (1) dated 24.11.2014 was issued to the assessee company by the AO wherein information regarding CCM as highlighted by the special auditor was specially putforth and details were sought by the AO solely relying on the special auditor's report. Referring to the summary of instances of CCM given by the special auditor's report he submitted that there was no reference to any document or statement. He submitted that the AO did not apply his own mind to the special auditor's report and not examined the basis and blindly relied upon the report of the special auditor wherein there is an absence of any evidence of the income earned by the assessee in the process of

CCM. Referring to the decision of Hon'ble Bombay High Court in the case of PCIT Vs. PAT Commodities Services Pvt. Ltd. vide ITA No.1257/16 order dated 15.01.2019, he submitted that the Hon'ble High Court in the said decision has held that mere client code modification by broker does not mean that any income has escaped assessment. Revenue had to bring on record some evidence of the income earned by the assessee in the process of CCM. He submitted that in the instant case the revenue has not challenged the transactions nor held them to be false. Although SEBI is the regulator, however, no action has been taken by SEBI and they have not held the transaction to be non-genuine. He submitted that there is no adverse material in this case although a search has taken place and nothing incriminating was found during the course of search. He submitted that assessee is not a party to any such transaction of non genuine of CCM. He submitted that the revenue has not gone to the broker to find out as to whom this amount got shifted. He further submitted that the stock exchange has accepted the reasonable error margin up to 5% and, therefore, since the percentage of trade which are rectified are not only within the range on the lower side of the range of error margin, therefore, no adverse view can be taken. He also relied on the following decisions :-

1. M/s. Coronation Agro Industries Ltd. Vs. DCIT [WP No.2627 of 2016] dated 23.11.2016
2. Prashant Agencies Pvt. Ltd. and PPN Properties PVt. Ltd. Vs. ITO ITA No.3059/Del/2018
3. ITO Vs. Abhishek Fincap Srvices Pvt. Ltd. ITA

No.2750/Del/2017

4. Radiance Stock Traders Pvt. Ltd. Vs. ITO ITA No.4542/Del/2018
5. Sanjay Kumar Jain Vs. ITO in ITA No.825/Del/2019
6. DCIT Vs. Gyandeep Kehmka ITA No. 695/JP./2018
7. Mumbai ITAT in the case DCIT Vs. M/s. Comet Investment Pvt. Ltd. (ITA No.5802/Mum/2017)
8. DCIT Vs. M/s. S. B. Securities Pvt. Ltd. (ITA No.7346/Mum/2017)
9. CIT Vs. Kunvarji Finance (P) Ltd. reported in 40 ITR (T) 64
10. M/s. Rekhi Holdings (P) Ltd Vs. ACIT vide TIA No.4675/Del/2018 order dated 16.05.2019.

9. So far as the various decisions relied on by the Ld. DR are concerned, he submitted that all those decisions are distinguishable and not applicable to the facts of the present case. He accordingly submitted that since the order of the CIT(A) is in consonance with law, therefore, the same should be upheld and the grounds raised by the revenue should be dismissed.

10. We have considered the rival arguments made by both the sides, perused the orders of the AO and the CIT(A) and the paper book filed on behalf of the assessee. We have also considered the various decisions cited before us. We find the AO in the instant case made addition of Rs.1,90,71,392/- on account of CCM on the ground that in the case of member(broker) group of companies of the assessee, it is held that the CCM is by and large not for the genuine reasons and for extraneous consideration and that the assessee has

suppressed its income to the extent of Rs.1,90,71,392/-. We find the Ld. CIT(A) deleted the addition made by the AO on the ground that the assessee is not a member of any exchange and cannot execute CCM. Further the transactions on account of CCM done by group concerns are genuine and the volume of CCM occurred are within permissible limit allowed by SEBI. It is also the observations of the CIT(A) that the exchange or SEBI has not found any violation of rules and regulations relating to CCM and the CCM transactions are falling within the prescribed limit. It is the submission of the Ld. DR that it is not a genuine mistake and the transactions are not genuine. Further the CCM was done by the assessee through its sister concern M/s. Futurz Next Services Limited through which the profit of the assessee company was reduced by Rs.1.90 crores. According to the Ld. DR the CCM is akin to penny stock. It is the submission of the Ld. Counsel for the assessee that the transactions entered into by the assessee are not found to be false or untrue and although SEBI is the regulator no action has been taken by SEBI holding that the transactions are not genuine. Further no adverse material has been found by the search party during the course of search and the revenue even have not gone to the broker who has done the CCM. It is also his argument that it is not known as to whom the account has shifted.

11. We find some force in the argument of the Ld. Counsel for the assessee. We find force in the argument of the Ld. Counsel for the assessee that client code modification is the internal matter of the broker and assessee has no control over it. The AO in the instant case has not spelt out as to on which scrips the assessee has shifted

the profit. We find the AO nowhere in the assessment order has mentioned of any statement of broker of the assessee regarding the admission of any client code modification. We find in the instant case the addition has been made by the AO despite assertions by the assessee that it was not a registered broker on the stock exchange. There is also nothing on record to suggest that the CCM was done at the behest of the assessee. Further, there is no addition or adverse view taken in the case of the other person with whose accounts presumption is being made that transaction has been shifted. Admittedly there is nothing on record that the revenue has gone to the broker to find out as to who is the beneficiary of the CCM. Further the transactions have not been held to be non genuine. So far as the argument of the Ld. DR that the Client Code Modification is akin to penny stock is concerned, we do not find any merit in the said arguments. In case of the penny stocks shares are purchases at a very low price and were sold immediately after one year at astronomically high price just to claim the benefit of deduction u/s. 10 (38) or as the case may be. However, in case of CCM there is no such purchase at low price and sale at high price and it is on account of some punching error which has been rectified subsequently. We, therefore, do not find any merit in the argument of the Ld. DR that CCM is akin to penny stock.

12. We find an identical issue had come up before the Mumbai Bench of the Tribunal in the case of M/s. DCIT Vs. Comet Investment (P) Ltd. vide ITA No.5802/Mumbai/2017 order dated 13.05.2019. We find the Tribunal dismissed the appeal filed by the

revenue by observing as under :-

"7. After having heard the counsels for both the parties at length and after having gone through the facts of the present case, we find from the records that the assessee is not a registered broker on the Stock Exchange. Only the registered brokers can modify Client code (CCM) of their own clients. Therefore in such circumstances, the allegations of assessee having done or restored to CCM is apparently not correct. The AO has not brought on record that even the instructions for CCM was ever given by the assessee. Hence, in these circumstances, the assessee can't be held responsible for CCM if any done at the end of the broker. The AO except for the fact of receiving information from the DIT (I & Cl), has not considered the other aspects of the transaction to be considered as the transactions of the assessee. The other relevant aspect i.e. receipt and /or payments of monies, the time gap between the actual transactions on the stock exchange and the modification of the client code numbers of such transactions by the office of the registered share and stock broker, non-prohibition of client code modification by either the stock exchange or SEBI. In the order of assessment, the AO has stated the complete details of the Modus Operandi of creation of fictitious profit and / or losses with a malafide intention of escaping taxes. However, the AO has neither proved nor lead any evidence in case of any single transaction, which he has added to the income of the assessee, being of the type whose Modus Operandi is similar to the nature where he alleges to be added to the income of the assessee.

8. It is common knowledge that any transaction either relating to shares or derivatives to be considered as completed and taxable/deductible in the hands of any assessee should compulsorily have the following ingredients i.e.

i) *A valid transaction must have been executed on the Stock Exchange.*

ii) *The customer of the registered share broker should confirm & agree that the transaction entered into by the broker belongs to him.*

iii) *The payment Ibr purchases and/or receipt of sale proceeds should have happened between the Bank Accounts of the broker & his customer.*

iv) *The above transaction must have been accounted for in the hooks of account of the registered broker as well as his customer.*

v) *The eventual profit/loss on the transactions executed on the Stock Exchange & exchange of monies having happened as well as getting accounted in the respective books of account would eventually result into taxable profit and/or loss in the hands of such customers of the registered broker.*

9. *Whereas, the AO in the present case has mechanically added amounts as income of assessee without verifying & furnishing evidences on record that all the above steps have actually happened in the case of all the transactions which he has added as assessee's income. In our view, by no stretch of imagination can any AO consider a transaction on the Stock Exchange as income of a person other than the one who has either actually received monies in his bank account (in case of profit) and/or paid any monies from his bank account (in case of losses).*

10. *For the above proposition, we rely upon the decision in the case of M/s.Sambhavanath Investment v. ACIT I.T.A. No.3109/Mum/2011 AY 2006-2007 dated 19/12/2013 (Mum.)(Trib.), ACIT v Kunvarji Finance (P) Ltd (2015) 61 Taxmann.com 52(Ahd.)(Trib.)* ***wherein it was held that CCM within 1 % is absolutely normal. Accordingly the addition*** *was* ***deleted.*** *In the facts of the present case also, CCM is within 1 %, ITO vs. Pat Commodity Services P. Ltd. ITA Nos. 3498 and 3499/Mum/2012 dt. 7th Aug,2015 (Mum.)(Trib.), DCIT v Sunil J Anandpara ITA No. 3132/MUM/2015 Assessment Year: 2010-11 Bench I dated 15/9/2017 (Mum.)(Trib.) and ITO* ***vs.*** *M/s. M.N. Shares & Stock Brokers Pvt. Ltd. IT No. 5399/M/2017, AN. 2009-10 Bench - SMC.*

11. *Even nothing has been placed on record by the AO to demonstrate that any proceedings were ever initiated against the assessee by the SEBI or any stock exchange. It was also clarified by the Ld. AR that the broker, through whom the assessee carried on share transactions, were also not imposed any penalty. No co-relation between the assessee on the one hand and the other parties on the other hand has been brought on record to co-relate that the parties to whom the alleged profits or loss is supposed to have been diverted to reduce the taxable income of the assessee, has been brought on record to show that there was any collusion with each other and were known to each, so that one party diverted its profit or loss to the other parties. Even nothing has been brought on record to suggest that the said losses were purchased and the party were given cheque or cash payment in view of such favours.*

According to us, such co-relation was necessary to fasten any liability upon the assessee.

12. *No new facts or contrary judgments have been brought on record before us in order to controvert or rebut the findings so recorded by Ld CIT. Therefore, there are no reasons for us to interfere into or deviate from the findings so recorded by the Ld. CIT. Hence, we are of the considered view that the findings so recorded by the Ld. CIT are judicious and are well reasoned. Resultantly, these grounds raised by the assessee stands* ***dismissed."***

13. We find the Ahmedabad Bench of the Tribunal in the case of ACIT Vs. Kunvarji Finance (P) Ltd. reported in 401 ITR (T) 64 has held as under :-

8. We have carefully considered the arguments of both the sides and perused the material placed before us. The Assessing Officer believed the client code modification to be malafide because in his opinion the client code modification was for unusually high number of cases. Therefore, first thing to be decided is whether there was the client code modification for unusually high number of cases. The Commodity Exchange i.e. MCX vide circular No.MCX/T&S/032/2007 dated 22.01.2007, issued guidelines with regard to the client code modification, which reads as under:-

Circular no. MCX/T&S/032/2007 January 22, 2007

Client Code Modifications

In terms of provisions of the Rules, Bye-Laws and Business Rules of the Exchange, the Members of the Exchange are notified as under:
Forward Markets Commission (FMC) vide its letter no. 6/3/2006/MKT-ll (VOL III) dated December 20, 2006 and January 5, 2007 has directed as under.

a. The facility of client code modifications intra-day are allowed.

b. The members are also allowed to change their client codes between 5:00 p.m. to 5:15 p.m., in case of the contracts traded till 5:00 p.m. and between 11:30 p.m. to 11:45 p.m. for the contracts traded till 11:30 p.m. on all the trading days from Mondays to Fridays and on Saturdays the same shall be allowed between 2:00 p.m. to 2:15 p.m.

c. However, on the days when trading in commodities takes place till 11:55 p.m. the client code modification will be allowed only upto 12:00 p.m.

d. At all times, Proprietary trades shall not be allowed to be modified as client trades and client trades shall not be allowed to be modified as proprietary trades.

e. In order to ensure that client codes are entered with alertness and care, a penalty on the client code changes made on a daily basis shall be imposed as under:

S. No	Percentage of Client Code changed to total orders (matched) on a daily basis	Penalty (Rs.)
1	Less than or equal to 1 %	Nil
2	Greater than 1 % but less than or equal to 5%	500
3	Greater than 5% but less than or equal to 10%	1000
4	Greater than 10%	10000

f. It is clarified that the facility of client code modification is allowed as an interim measure only upto March 31, 2007 and after this date the said facility will be completely stopped.

With reference to point C. as referred above, Members may please note that the client code modifications will be allowed only upto 11:55 p.m. in international referenceable commodities (i.e. commodities traded upto 11:55 p.m.)

Members are requested to take note of the FMC directives and ensure strict compliance."

From the above, it is evident that client code modification is permitted intra-day, i.e. on the same day. As per Commodity Exchange, if client code modification is upto 1% of the total orders, there is no penalty and if it is greater than 1% but less than 5%, the penalty is Rs 500/-. If it is greater than 5% but less than 10%, penalty is Rs 1000/- and if it is greater than 10%, then penalty is Rs 10,000/-. From the above, the only inference that can be drawn is that as per MCX, the client code modification upto 1% is absolutely normal and therefore, the broker is permitted to modify the client code upto 1% without paying any penalty. Even client code modification upto 5% is not considered unusually high because that is also permitted with the token penalty of Rs 500/-. In the context of the circular issued by Commodity Exchange, let us examine whether the client code modification done by the broker i.e. KCBPL is unusually high. At page No. 16 on paragraph No.4.3, the CIT(A) has given the number of transactions entered into by the assessee for the period 2004-05 to 2007-08 and the number of client code modification and percentage thereof. We have also reproduced the same at paragraph No.6 of our order. From the said details, it is evident that the client code modification was done in four years 36,161 times. As an absolute figure, the client code modification may look very high, but if we look it at in terms of total transactions, it is only 0.94%. The total number of trade transactions is 38.58 lacs and the client code modification is only 36,161. Therefore, the client code modification is less than 1% of the total trading transactions. As per circular of Commodity Exchange, client code modification upto 1% is quite normal and is permitted without any penalty. That the Assessing Officer has not given any reason on what basis he presumed the client code modifications to be unusually high. In the light of the MCX circular, we are of the opinion that the client code modification was quite nominal and not unusually high as alleged by the Assessing Officer.

9. The Assessing Officer held the client code modifications to be malafide

with the intention to transfer the profit to other person by modifying the client code so as to avoid the payment of tax. From the circular of the Commodity Exchange, it is evident that client code modification is permitted on the same day. Therefore, we are unable to find out any justification for the allegation of the Assessing Officer that the client code modification was with the malafide intention. When the client code was modified on the same day, there cannot be any malafide intention. Had client modification done after the transactions period when the price of the commodity has already changed, then perhaps there could have been some basis to presume that client code modification is intentional. However, when the client code modification is done on the same day, in our opinion, there was no basis or justification to hold the same to be malafide.

10. Moreover, the Id. Assessing Officer has computed the notional profit/loss till the transactions period and not till the period by which the client code modification took place. Even if the view of the Revenue is accepted that the client code modification was with malafide intention, then the profit or loss accrued till the client code modification can be considered in the case of the assessee but by no stretch of imagination the profit/loss arising after the client code modification can be considered in the hands Of the assessee.

11. The Id. CIT(A) in paragraph 4.13 of his order has also recorded the findings that "all transactions at the Commodities Exchanges have been duly accounted in the books of account maintained by the concerned parties. Such profits/loss has been duly accounted whenever the transactions have been closed. Thus, whatever profits have been generated or accounting of actual trade, have been offered and brought to the charge of tax in the cases of concerned assessees." These findings of fact recorded by the Id. CIT(A) has not been controverted by the Revenue at the time of hearing before us. When the transaction has been duly accounted for and the profit/loss has accrued to the concerned parties in whose names transactions have been closed, there cannot be any basis or justification

for considering those profit/loss in the case of the assessee on the basis of mere presumption or suspicion. It is not the case of the Revenue that such alleged profit has actually been received by the assessee. In view of the totality of the above facts, we do not find any justification to interfere with the order of the CIT(A) in this regard and the same is sustained; and Ground Nos. 1 and 3 of the Revenue's appeal are rejected.

14. The various other decisions relied on by the Ld. Counsel for the assessee also supports his case that no addition can be made by the AO where CCM is done by the broker.

15. Since in the instant case it is an admitted fact that the assessee is not a member of any exchange and cannot execute CCM and the transactions on account of CCM done by the group concerns are not found to be false or untrue and since SEBI or the stock exchange has not taken any action treating the transactions to be non genuine and volume of CCM occurred are within the permissible limit allowed by the SEBI, therefore, in view of the discussions above and relying on the decisions cited (supra) we are of the considered opinion that there is no perversity in the order of the CIT(A) deleting the addition. Accordingly the same is upheld and the grounds raised by the revenue are dismissed.

16. In the result, the appeal filed by the revenue is dismissed.

Order pronounced in the open court on 03.12.2019.

Sd/-	Sd/-
(KULDIP SINGH)	**(R.K PANDA)**
JUDICIAL MEMBER	**ACCOUNTANT MEMBER**

Neha
Date:- 03.12.2019

Copy forwarded to:
1. Appellant
2. Respondent
3. CIT
4. CIT(Appeals)
5. DR: ITAT

ASSISTANT REGISTRAR
ITAT NEW DELHI