

IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCHES “SMC-1” : DELHI
BEFORE SHRI BHAVNESH SAINI, JUDICIAL MEMBER
AND
SHRI B.R.R. KUMAR, ACCOUNTANT MEMBER
ITA.No.5418/Del./2019
Assessment Year 2010-2011

Shri Mukesh Chand Garg, B-1/305, Ground Floor, Janak Puri, New Delhi. PIN – 110 058. PAN AEYPG7826A	vs.	The Income Tax Officer, Ward – 49 (3), Room No.1408, 14 th Floor, E-2 Block, Pratyakash Kar Bhawan, Civic Centre, JLN Marg, New Delhi. PIN 110 002
(Appellant)		(Respondent)

For Assessee :	Shri Ved Jain, Advocate Shri Ashish Goel, C.A.
For Revenue :	Shri Rakesh Gupta, Sr.D.R.

Date of Hearing :	22.07.2020
Date of Pronouncement :	23.07.2020

ORDER

PER BHAVNESH SAINI, J.M.

This appeal by Assessee has been directed against the Order of the Ld. CIT(A)-17, New Delhi, Dated 29.04.2019, for the A.Y. 2010-2011.

2. We have heard the Learned Representatives of both the parties through video conferencing and perused the material on record.

3. Briefly the facts of the case are that original return of income for the A.Y 2010-11 under appeal was filed on 08.09.2010 declaring an income of Rs.7,76,730/-. The return was processed under section 143(1) of Income Tax Act, 1961. Subsequently, assessment proceedings under section 147 were initiated after getting necessary approval. In this case information was received that assessee has availed contrived losses of Rs.12,25,412/- through broker by changing the client codes in sale and purchase of securities after the trades were conducted the same which lead to the tax evasion. Notice under section 148 was issued to which assessee submitted that the original return filed may be treated as return filed in response to notice under section 148 of the Income Tax Act, 1961. The A.O. on going through the details provided by Investigation Wing found that on the directions of the assessee, on many instances, broker has changed the original client code eight times from

the different client code of the assessee, details of which, are noted in the order which lead to bogus transaction in the nature of accommodation entries. After considering the explanation of assessee, the A.O. made the addition of Rs.12,25,412/- under section 69A of the I.T. Act, 1961. The Ld. CIT(A) dismissed the appeal of assessee.

4. The assessee in the present appeal has challenged the initiation of assessment proceedings under section 147/148 of the I.T. Act, 1961 and addition of Rs.12,25,412/- made on account of client code modification through broker. Learned Counsel for the Assessee, at the outset, submitted that in preceding A.Y. 2009-2010 the A.O. passed the similarly worded assessment order, copy of which is filed at page-97 of the paper book and made similar addition by reopening the assessment. The matter travelled up to ITAT, Delhi Bench in ITA.No.794/Del./2019 which were decided vide Order Dated 07.10.2019. The reopening of the assessment was quashed and addition on merit have been deleted.

5. The Ld. D.R. submitted that reasons for earlier year are not provided and strongly relied upon the Orders of the authorities below with regard to reopening of the assessment and addition made on the merits.

6. We have considered the rival submissions. We find that A.O. has passed the assessment order under appeal which is similarly worded in preceding A.Y. 2009-2010 copy of which is filed in the paper book. The matter travelled up to ITAT, Delhi Bench in the case of the same assessee and the Tribunal vide Order Dated 07.10.2019 deleted the addition on merit as well as quashed the reopening of the assessment. The findings of the Tribunal on merit in paras 10 and 12 are reproduced as under :

“10. Even otherwise on merit also, so far as the addition on account of code modification is concerned I find the Hon’ble Bombay High in the case of PAT Commodity Services (supra) has observed as under :-

“3. The respondent assessee is a private limited company engaged in the Business of providing

Commodity services to its clients. In the return of income filed by the assessee for the Assessment Year 2006-07, the Assessing Officer noticed that there were instances of client code modifications. The Assessing Officer believed that the same was done to indulge in circular trading to pass on profits or losses to the clients of the assessee company as per requirements. After hearing the assessee, the Assessing Officer made additions in the income of the assessee on such basis. The issue eventually reached to the Tribunal. The Tribunal did accept the Revenue's theory of misuse of clients code modification facility. However, the Tribunal accepted — the assessee's explanation and discarded the Revenue's theory that profit of the assessee's company were passed on to the clients. It was also noticed that the Revenue has not contended that the client code modification facility is often misused by the assessee to pass on losses to the investors, who may have sizable

profit arising out of commodity trading against which such losses can be set off The Revenue normally points out number of such instances of client code modifications as well as nature of errors in filling of the client code. At any rate, what can be taxed in the hands of the present assessee is the income escaping assessment. Even if the Revenue's theory of the assessee having enabled the clients to claim contrived losses, the Revenue had to bring on record some evidence of the income earned by the assessee in the process, be it in the nature of commission or otherwise. In the preset case, the Assessing Officer has added the entire amount of doubtful transactions by way of assessee's additional income, which is wholly impermissible. We do not know the fate of the individual investors in whose cases, the Revenue could have questioned the artificial losses. Be that as it may, we do not think entertaining these appeals would serve any useful purpose.

4. *In the result, both the appeals are dismissed.*

11. *Respectfully following the decision of Hon'ble Bombay High Court cited (supra), I hold that the addition made by the Assessing Officer and sustained by the CIT(A) on account of client codes modification is not justified. The grounds raised by the assessee are accordingly allowed.*

12. *In the result, the appeal filed by the assessee is allowed."*

6.1. Following the same, we set aside the Orders of the authorities below and delete the entire addition. Since the copy of the reasons and approval for preceding assessment year have not been filed in the paper book, therefore, the same is not adjudicated at this stage and may not yield any result because the addition on merit have already been deleted. In view of the above, we allow the appeal of assessee.

7. In the result, appeal of the Assessee allowed.

Order pronounced in the open Court.

Sd/-
(B.R.R. KUMAR)
ACCOUNTANT MEMBER

Sd/-
(BHAVNESH SAINI)
JUDICIAL MEMBER

Delhi, Dated 23rd July, 2020

VBP/-

Copy to

1.	The appellant
2.	The respondent
3.	CIT(A) concerned
4.	CIT concerned
5.	D.R. ITAT 'SMC-1' Bench, Delhi
6.	Guard File.

// BY Order //

Assistant Registrar : ITAT Delhi Benches :
Delhi.