| आयकर अपीलीय अधिकरण न्यायपीठ, मुंबई |

IN THE INCOME TAX APPELLATE TRIBUNAL
"A" BENCH, MUMBAI

BEFORE SHRI NARENDRA KUMAR BILLAIYA, HON'BLE ACCOUNTANT MEMBER
&
SHRI SANDEEP SINGH KARHAIL, HON'BLE JUDICIAL MEMBER

I.T.A. No. 809/Mum/2025
Assessment Year: 2012-13

Asha Viren Raj Plot No. 7, XCZAR Building Flat No. 402, N.S. Road 1, Azad Nagar Society Juhu Scheme Villeparle (West) Mumbai - 400056 **[PAN: AADPR9260J]**	Vs	**Income Tax Officer, Ward – 34(1)(1), Mumbai**
अपीलार्थी/ (Appellant)		**प्रत्यर्थी/** (Respondent)

Assessee by :	Shri Rajesh Shah, A/R
Revenue by :	Shri Ram Krishn Kedia, Sr. D/R

सुनवाई की तारीख/**Date of Hearing** : **18/03/2025**
घोषणा की तारीख /**Date of Pronouncement:** **20/03/2025**

आदेश/O R D E R

PER NARENDRA KUMAR BILLAIYA, AM:

This appeal by the assessee is preferred against the order dated 30/10/2024 by NFAC, Delhi [hereinafter "the ld. CIT(A)"], pertaining to AY 2012-13.

1.1. Appeal is time barred by limitation for 37 days. We have considered the reasons and are satisfied. Delay is condoned.

2. The grievance of the assessee reads as under:-

"1. On facts and circumstances of the case and in law the learned CIT(A) erred in confirming the reopening of the assessment under Section 148 of the Act though the original assessment was completed under Section 143(3) and full particulars were available before the AO. The learned AO has not pointed out any non-disclosure of full and true material facts which lead to reopening of the assessment. The reopening of the assessment is bad in law after the period of four years.

2. On facts and circumstances of the case and in law the learned CIT(A) erred in not accepting the fact that there were no sufficient tangible materials were available before

AO to believe that income has actually escaped the assessment for the purpose of initiating reassessment proceedings under Section 148 of the Act.

3. On facts and circumstances of the case and in law the learned CIT(A) has failed to appreciate the submissions of the Appellant that Client Code Modification (CCM) was done by commodity broker suo moto and without the knowledge or instructions of the Appellant and there is no involvement of the appellant.

4. a) On facts and circumstances of the case and in law the learned CIT(A) erred in making addition of entire gross sale value of commodity transactions Rs. 1,09,73,250/- as unexplained cash credit under Section 68 of the Act without considering the investment made of Rs. 1,07,43,750/- and having declared profit of Rs.2,29,500/-.

b) On facts and circumstances of the case and in law, the declared profit of Rs.2,29,500/- having accepted, no further addition could have been made by the AO and wrongly accepted by the CIT(A).

c) The learned CIT(A) has wrongly observed that the appellant has not incorporated purchases and sales transactions as well as the differential value in the books of accounts though the full details were available before the AO as well as before CIT(A).

5. On facts and circumstances of the case and in law the learned CIT(A) erred in not giving the statements of the parties on which reliance is made and the cross examination of the said parties. The whole addition was based on information from the SFI Office without verification and proving the involvement of the appellant in Client Code Modification.

6. On facts and circumstances of the case and in law, the AO wrongly applied the provisions of Section 68 of the Act without verification of the ledger account of the appellant in respect of the transactions alleged to have been modified by CCM by the broker.

7. On facts and circumstances of the case and in law and without prejudice to the above, the addition could not have been made of the gross sale value of the commodities. The learned CIT(A) ought to have restricted the profit element involved in the transactions which in any case the appellant had declared to the extent of Rs.2,29,500/-.

8. The appellant craves leave to add, amend, modify, substitute and / or cancel any of the ground of the appeal."

3. Representatives were heard at length, case records carefully perused and the relevant documentary evidence brought on record duly considered in the light of Rule 18(6) of the ITAT Rules, 1963.

4. The first challenge relates to the validity of the assumption of jurisdiction u/s 147 of the Act for reopening the completed assessment. The

impugned assessment year is AY 2012-13 and the notice u/s 148 of the Act served upon the assessee for reopening the assessment is dated 28/03/2019 which makes the notice issued after four years from the end of the impugned assessment year. The reasons for reopening the assessment reads as under:-

Name of the Assessee	***Smt. ASHA V RAJ***
Address	*18, Kaushalya, 11th Road, JVPD Scheme, Vile Parle-W, Mumbai-400056*
PAN of the Assessee.	*AADPR9260J*
Assessment year	*2012-13*
Date of return filing	*30.03.2013*
Return income	*Rs.7,07,823/-*

REASONS FOR RE-OPENING U/S, 147 OF THE INCOME TAX ACT, 1961

In this case, the assessee has filed his return of income for the A.Y.2012-13 declaring total income of Rs.7,07,823/- on' 30.03.2013. subsequently, the case was selected for scrutiny under CASS for the year under consideration and assessment was completed u/s 143(3.) of the IT Act on 04.03.2015 assessing total income at Rs.08,05,020/-.

2. *The Serious Fraud Investigation Office (SFIO) has prepared a detailed report on National Spot Exchange Ltd. (NSEL) scam which has been shared with the Income Tax Department. This information was received from DDIT(Inv), Unit-6(3), Mumbai vide No. DDIT(Inv)-6(3)/Information/2018-19 datedl5.03.2019 on 16.03.2019 through email. In this report, the findings of SFIO is that the brokers have performed rampant client code modification where, the dummy/ghost client code were used to book trades and later the client codes were modified.*

Following the detection of misuse and exploitation of NSEL Exchange platform by unscrupulous brokers/traders, the trading on the NSEL Exchange platform had been suspended from 01.04.2012 till 31.07.2013. At the time of suspension of trading activity, there were various brokers who had made several client code modification through sell and purchase of commodities. During the enquiry, summons u/s131 of the IT Act was issued to the broker Anand Rathi Commodities Pvt. Ltd. (as the maximum client code modifications were done by ARCL) and statement of Shri Chetan Pitamber Bharkhada, President, Anand Rathi Commodities Pvt. Ltd. was recorded on 12.03.2019 wherein he has stated that "no physical delivery of goods took, place at any time whatsoever in all trades executed on NSEL". The same finding has been given by the SFIO in its report that "No physical delivery of the goods were ever taken by their clients."

3. As per information, the assessee is one of the beneficiaries who have made the contract in CASTKADI3 and CASTKADI36 with the help of misusing the client code modification during the F.Y.2011-12 relevant to A.Y.2012-13. As per information, the total trade value of transaction was of Rs.2,17,17,000/- (Buy Of Rs. 1,07,43,750/- and sell of Rs. 1,09,73,250/-) for. A.Y.2012-13.

4. On going through the assessment order, it is observed that the A.O. has not taken up this issue in assessment order as the information was not available at the time of completion of assessment order u/s 143(3). The assessee did not declare the true and correct facts of the transaction in its . return of income. Hence, there was a failure on the part of the assessee to disclose true and correct facts of income.

5. In view of this new piece of information on misusing of client code modification .for F.Y.2011-12 relevant to A.Y.2012-13, it could be easily, deduced that income in excess of Rs. 1,00,000/- assessable to tax has escaped assessment.

6. Therefore, I have reason to believe that in the case of assessee, income above Rs. 1 lac has escaped assessment within the meaning of section u/sl47 of the IT Act,1961. The case is therefore required to be reopened u/s. 147 and notice u/sl48 of the IT Act may be issued accordingly."

5. A careful perusal of the reasons mentioned hereinabove would show that there is not even a whisper about the failure on the part of the assessee for not disclosing truly and fully all material facts relating to the assessment. The original assessment order was framed u/s 143(3) of the Act vide order dated 04/03/2015 wherein the returned income of the assessee was thoroughly examined after considering the financial statements. The profit and loss account for the year under consideration at the time of the original assessment proceedings is as under:-

******This space has been left blank intentionally. P.T.O.******

ASHA V. RAJ

12

Profit and Loss Account for the year ended 31st March, 2012

Particulars	Amount	Particulars	Amount
To Opening Stock	5908500	By Sales	78528329
To Purchase	83033407	By Closing Stock	12118282
To Brokerage	183626		
To Transaction Expenses	76963		
To Warehouse Charges	54834		
To Gross Profit	1389281		
	90646611	Total Rs.	90646611
To Audit Fees	33708	By Gross Profit	1389281
To Bank Charges	2341		
To Club Expenses	5582		
To Depreciation	154186		
To Electricity Exp.	101780		
To Professional Fees	79011		
To Profession Tax	2500		
To Repairs & Maintenance	72713		
To Salary & Bonus	193200		
To Telephone Expenses	137207		
To Net Profit	607053		
Total Rs.	1389281	Total Rs.	1389281

As per our Report of even date attached

For P.P.Mashru & Co.
Chartered Accountants

P. P. MASHRU & CO. Chartered Accountants MUMBAI

Pravin P. Mashru
(Proprietor)

PLACE : Mumbai
DATE : 29 SEP 2012

Asha V. Raj

PLACE : Mumbai
DATE : 29 SEP 2012

5.1. The contract notes under consideration are as under:-

CONTRACT NOTE
ANAND RATHI COMMODITIES LIMITED.
(Contract Notes issued by Members, acting for client as Agent)
(Subject to exclusive jurisdiction of the courts in Mumbai only)
MEMBER OF NATIONAL SPOT EXCHANGE LTD
NSEL CODE NO:10570 DP ID: CM-BP ID:
Regd. Off.: 4th Floor, Silver Metropolis,Jai Coach Compound,Opp. Bimbisar Nagar, Goregaon (E),Mumbai 400 063.
Tel.: +91 22 6698 3700 - Fax: +91 22 6698 3770 - E-mail: grievance@rathi.com
Compliance Officer : Mr. Deepak Kedia. / Email: deepakkedia@rathi.com Tel No.: 40013700
Visit us at : www.rathi.com

DEALING OFFICE ADDRESS
VICTORA- COMMODITY
LOWER PAREL
Fax: OWN

To: ASHA V RAJ (HOA995)
H NO 18 KAUSHALYA 11TH ROAD
VITTHAL NAGAR SOCIETY
JVPD SCHEME JUHU ,MUMBAI,400049
Pan No: AADPR9260J

Contract Form A No. : 0003970
Trade Date : 06/09/2011

Sir/Madam,
We have this day done by your order and on your account the following transactions :

ORDER NO	TRADE NO	TRD TIME	SCRIP NAME	PUR QTY	BUY RATE	BUY TOTAL	BUY TOT BROK	BUY VALUE	SCRIPNAME	SALE QTY	SELL RATE	SELL TOTAL	SELL TOT BROK	SELL VALUE	QTY UNIT	PRICE UNIT
141124900000091	104	3:11PM	CASTKADI3	200	950.00	712500.00	855.00	713355.00							1 BAG	20 KGS
141124900000091	103	3:11PM	CASTKADI3	300	950.00	1068750.00	1282.50	1070032.50							1 BAG	20 KGS
141124900000093	112	3:11PM	CASTKADI3	200	950.00	712500.00	855.00	713355.00							1 BAG	20 KGS
141124900000093	111	3:11PM	CASTKADI3	300	950.00	1068750.00	1282.50	1070032.50							1 BAG	20 KGS
141124900000104	142	3:11PM	CASTKADI3	300	950.00	1068750.00	1282.50	1070032.50							1 BAG	20 KGS
141124900000104	143	3:11PM	CASTKADI3	200	950.00	712500.00	855.00	713355.00							1 BAG	20 KGS
Net Total				1500		5343750.00		5350162.50								
141124900000096	124	3:12PM							CASTKADI36	200	972.40	729300.00	875.16	728424.84	1 BAG	20 KGS
141124900000096	123	3:12PM							CASTKADI36	300	972.40	1093950.00	1312.74	1092637.26	1 BAG	20 KGS
141124900000108	149	3:12PM							CASTKADI36	400	972.40	1458600.00	1750.32	1456849.68	1 BAG	20 KGS
141124900000108	148	3:12PM							CASTKADI36	100	972.40	364650.00	437.58	364212.42	1 BAG	20 KGS
141124900000110	151	3:13PM							CASTKADI36	400	972.40	1458600.00	1750.32	1456849.68	1 BAG	20 KGS
141124900000110	150	3:13PM							CASTKADI36	100	972.40	364650.00	437.58	364212.42	1 BAG	20 KGS
Net Total										1500		5469750.00		5463186.30		

Net Obligation	113,023.80
Transaction Charges	5,406.75
Service Tax	1,893.44
Stamp Duty & Other Charge	108.14
Net Amount .	105,615.47

Brokerage has been charged as stated and has been at rates not exceeding the official scale of brokerage and indicated separately.This contract is made subject to the Terms and Conditions given overleaf, Rules, Bye-laws, Business Rules notices and directions of National Spot Exchange Ltd. Mumbai.

Place:Mumbai
Date: 06/09/2011

AUTHORISED SIGNATORIES :
PRADEEP GUPTA/RAJESH BHOOTRA/ M.L. AGARWAL/ NAKENDRA JAIN

Yours faithfully,
For ANAND RATHI COMMODITIES LIMITED

CONTRACT NOTE
ANAND RATHI COMMODITIES LIMITED.
(Contract Notes issued by Members, acting for client as Agent)
(Subject to exclusive jurisdiction of the courts in Mumbai only)
MEMBER OF NATIONAL SPOT EXCHANGE LTD
NSEL CODE NO:10570 DP ID: CM-BP ID:
Regd. Off.: 4th Floor, Silver Metropolis,Jai Coach Compound,Opp. Bimbisar Nagar, Goregaon (E),Mumbai 400 063.
Tel.: +91 22 6698 3700 - Fax: +91 22 6698 3770 - E-mail: grievance@rathi.com
Compliance Officer : Mr. Deepak Kedia. / Email: deepakkedia@rathi.com Tel No.: 40013700
Visit us at : www.rathi.com

DEALING OFFICE ADDRESS
VICTORA- COMMODITY
LOWER PAREL
Fax: OWN

To: ASHA V RAJ (HOA995)
H NO 18 KAUSHALYA 11TH ROAD
VITTHAL NAGAR SOCIETY
JVPD SCHEME JUHU ,MUMBAI,400049
Pan No: AADPR9260J

Contract Form A No. : 0006387
Trade Date : 02/11/2011

Sir/Madam,
We have this day done by your order and on your account the following transactions :

ORDER NO	TRADE NO	TRD TIME	SCRIP NAME	PUR QTY	BUY RATE	BUY TOTAL	BUY TOT BROK	BUY VALUE	SCRIPNAME	SALE QTY	SELL RATE	SELL TOTAL	SELL TOT BROK	SELL VALUE	QTY UNIT	PRICE UNIT
111130600000025	2722	5:33PM	PDY1121HR2	3	2400.00	1080000.00	1296.00	1081296.00							300 BAG	1 QTL
111130600000026	2723	5:33PM	PDY1121HR2	3	2400.00	1080000.00	1296.00	1081296.00							300 BAG	1 QTL
111130600000027	2724	5:33PM	PDY1121HR2	3	2400.00	1080000.00	1296.00	1081296.00							300 BAG	1 QTL
111130600000028	2727	5:33PM	PDY1121HR2	3	2400.00	1080000.00	1296.00	1081296.00							300 BAG	1 QTL
111130600000029	2728	5:34PM	PDY1121HR2	3	2400.00	1080000.00	1296.00	1081296.00							300 BAG	1 QTL
Net Total				15		5400000.00		5406480.00								
111130600000032	2733	5:34PM							PY1121HR25	3	2446.00	1100700.00	1320.84	1099379.16	300 BAG	1 QTL
111130600000033	2734	5:34PM							PY1121HR25	3	2446.00	1100700.00	1320.84	1099379.16	300 BAG	1 QTL
111130600000034	2735	5:34PM							PY1121HR25	3	2446.00	1100700.00	1320.84	1099379.16	300 BAG	1 QTL
111130600000035	2736	5:34PM							PY1121HR25	3	2446.00	1100700.00	1320.84	1099379.16	300 BAG	1 QTL
111130600000036	2737	5:34PM							PY1121HR25	3	2446.00	1100700.00	1320.84	1099379.16	300 BAG	1 QTL
Net Total										15		5503500.00		5496895.80		

Net Obligation	99,415.80
Transaction Charges	1,090.35
Service Tax	1,459.98
Stamp Duty & Other Charge	109.04
Net Amount .	87,756.44

Brokerage has been charged as stated and has been at rates not exceeding the official scale of brokerage and indicated separately.This contract is made subject to the Terms and Conditions given overleaf, Rules, Bye-laws, Business Rules notices and directions of National Spot Exchange Ltd. Mumbai.

Place:Mumbai
Date: 02/11/2011

AUTHORISED SIGNATORIES :
PRADEEP GUPTA/RAJESH BHOOTRA/ M.L. AGARWAL/ NAKENDRA JAIN
MAHESH BANG

Yours faithfully,
For ANAND RATHI COMMODITIES LIMITED

5.2. The purchase and sale transaction mentioned in the aforementioned contract notes are part of the purchase and sales reflected in the profit and loss account of the assessee. Since all the details were furnished at the time of the original assessment proceedings, it cannot be said that there was any failure on the part of the assessee to disclose truly and fully all material facts relating to the assessment.

6. Since the reopening is of more than four years from the end of the relevant assessment year, first proviso to Section 147 of the Act, squarely applies, which read as under:-

> ***"Income escaping assessment.***
>
> > ***147.*** *If the Assessing Officer has reason to believe that any income chargeable to tax has escaped assessment for any assessment year, he may, subject to the provisions of sections 148 to 153, assess or reassess such income and also any other income chargeable to tax which has escaped assessment and which comes to his notice subsequently in the course of the proceedings under this section, or recompute the loss or the depreciation allowance or any other allowance, as the case may be, for the assessment year concerned (hereafter in this section and in sections 148 to 153 referred to as the relevant assessment year) :*
> > ……
> > ***Provided that where an assessment under sub-section (3) of section 143 or this section has been made for the relevant assessment year, no action shall be taken under this section after the expiry of four years from the end of the relevant assessment year, unless any income chargeable to tax has escaped assessment for such assessment year by reason of the failure on the part of the assessee to make a return under section 139 or in response to a notice issued under sub-section (1) of section 142 or section 148 or to disclose fully and truly all material facts necessary for his assessment, for that assessment year:***
> > ***… … …***
> > ***Explanation 1.—Production before the Assessing Officer of account books or other evidence from which material evidence could with due diligence have been discovered by the Assessing Officer will not necessarily amount to disclosure within the meaning of the foregoing proviso."***
>
> ***[emphasis supplied]"***

7. On similar situation, the Hon'ble High Court of Bombay in the case of *TAO Publishing (P.) Ltd. vs. DCIT [2015] 370 ITR 135 (Bombay)* has *interalia* held as under:-

> *"**10.** As stated above, the reasons supplied to the Petitioner do not disclose that there was any failure on the part of the Petitioner to provide all the material facts. That being the*

position, this ground could not have been taken up against the Petitioner at the time of disposing of the objections. Once this was not the basis for issuance of notice for Reassessment, it cannot be held against the Petitioner that the Petitioner had failed to make a true and full disclosure. It will have to be held that the Petitioner did not fail to make full and true disclosure of all material facts. The jurisdictional requirement for carrying out the reassessment, after the expiry of period of four years, is not fulfilled in the present case.

11. *The learned counsel for the Petitioner also submitted that, in fact, there was no failure to disclose all material facts as the Respondent No.1 had specifically sought details as regard the relevant expenditure and which were furnished. He relied upon the decision of the Apex Court in the case of Gemini Leather Stores v. ITO [1975] 100 ITR 1, to contend that the duty of the assessee was to place on record all the primary facts and drawing of inference from the primary facts is upto the Assessing Officer. However, this issue need not be gone into in depth any further, as the Petitioner is entitled to succeed on the first ground mentioned above.*

12. *In the circumstances, the Petitioner is entitled to the reliefs prayed for in the Petition. It will have to be held that the Respondent No.1 had no jurisdiction to proceed with the impugned reassessment proceedings."*

8. Similarly, in the case of *Sound Casting (P) Ltd. vs. DCIT [2012] 250 CTR 119 (Bombay)*, the Hon'ble High Court of Bombay held as under:-

> *"Held that the reopening of the assessment had admittedly taken place beyond a period of four years from the end of the relevant assessment year. There was no allegation in the reasons which had been disclosed to the assessee that there was any failure on his part to fully and truly disclosed material facts necessary for assessment for relevant assessment year. Hence, the jurisdictional condition for reopening the assessment beyond a period of four years had not been fulfilled. Even during the course of hearing, it had not been the submission of the revenue that there was any suppression of material facts on the part of the assessee. Therefore, the impugned notice was to be set aside."*

9. In another case of *First Source Solutions Ltd. vs. ACIT in [2021] 438 ITR 139 (Bombay)*, the Hon'ble Jurisdictional High Court, held as under:-

> *"**11.** Therefore, when the assessment is sought to be reopened after the expiry of period of four years from the end of the relevant year, the proviso to section 147 stipulates a requirement that there must be a failure on the part of the assessee to disclose fully and truly all material facts necessary for his assessment for that year. This stipulation does not govern a notice for reopening within a period of four years. In the case at hand, as noted earlier, there is not even a whisper about what fact was not disclosed. In our view, therefore, the notice to reopen under section 148 of the said Act itself was issued without jurisdiction. Consequently, the order passed also cannot be sustained."*

10. Considering the facts of the case in totality in light of the judicial decisions discussed hereinabove *(supra)*, we have no hesitation in setting

aside the impugned notice u/s 148 of the Act thereby quashing the resultant assessment order.

11. For the sake of completeness, we will now address the issues on merits of the case. The AO at para 7 of his order has observed as under:-

> *"….it is seen that the assessee has carried out certain transaction on NSEL platform through broker Anand Rathi Commodities Ltd wherein' total purchase is Rs. 1,07,43,750/- and sale is Rs. 1,09,73,250/-. Accordingly, Show cause notice dated 15.12.2019 was issued to the assessee, asking the assessee as to why Rs. 1,09,73,250/- being Sales amount, should not be added to the total income of the assessee for A.Y. 2012-13. In response to the same assessee made compliance on E filing portal and vide letter dated 17.312.2019 submitted that she has not done any CCM and requested the proof of CCM and details of amount of Rs. 1,09,73,250/- ."*

12. From the above, it can be seen that the AO himself is saying that there was contract for purchase of Rs.1,07,43,750/- and there was contract of sale for Rs.1,09,73,250/-. Thus, only the profit element should have been added which has already been disclosed by the assessee in its profit and loss account. Therefore, there is no income remaining for making the impugned addition. The AO has wrongly added the entire sales amount of Rs.1,09,73,250/- without deducting the purchase amount of Rs.1,07,43,750/-. Therefore, on merits of the case, the addition cannot be sustained. Accordingly, appeal of the assessee has to be allowed on both counts.

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

Order pronounced in the Court on 20th March, 2025 at Mumbai.

Sd/-	***Sd/-***
(SANDEEP SINGH KARHAIL)	**(NARENDRA KUMAR BILLAIYA)**
JUDICIAL MEMBER	**ACCOUNTANT MEMBER**

Mumbai, Dated 20/03/2025
SC SPS

आदेश की प्रतिलिपि अग्रेषित/Copy of the Order forwarded to :

1. अपीलार्थी / The Appellant
2. प्रत्यर्थी / The Respondent
3. संबंधित आयकर आयुक्त / Concerned Pr. CIT
4. आयकर आयुक्त (अपील)/ The CIT(A)-
5. विभागीय प्रतिनिधि ,**आयकर अपीलीय अधिकरण, मुंबई** /DR,ITAT, Mumbai,
6. गार्ड फाई/ Guard file.

आदेशानुसार/ **BY ORDER**
TRUE COPY

Assistant Registrar
आयकर अपीलीय अधिकरण
ITAT, Mumbai