IN THE INCOME TAX APPELLATE TRIBUNAL
AHMEDABAD "A" BENCH

Before: Shri RAMIT KOCHAR, Accountant Member
And Shri T.R. SENTHIL KUMAR, Judicial Member

ITA No. 84/Ahd/2018
Assessment Year 2009-10

Chandresh Luniya Chhajer Art, 93, Shakti Estate, Narol, Ahmedabad **PAN: ABMPL5397E** **(Appellant)**	Vs	The ITO, Ward-3(2)(6), Ahmedabad **(Respondent)**

Assessee Represented: Shri S.N. Divatia, A.R. &
Shri Samir Vora, A.R.
Revenue Represented: Ms.Bhavnasingh Gupta Sr DR

Date of hearing : 11-11-2024
Date of pronouncement : 10-02-2025

आदेश/ORDER

PER : T.R. SENTHIL KUMAR, JUDICIAL MEMBER:-

This appeal is filed by the Assessee as against the appellate order dated 06.10.2017 passed by the Commissioner of Income Tax (Appeals)-7, Ahmedabad arising out of the reassessment order passed under section 143(3) r.w.s. 147 of the Income Tax Act, 1961 (hereinafter referred to as 'the Act') relating to the Assessment Year 2009-10.

2. Brief facts of the case, the assessee is an individual and engaged in the business of shares and securities. For the assessment year

2019-20, the assessee filed his original return of income on 29-09-2009 declaring nil income after setting of losses. The return was selected for scrutiny assessment and assessment order u/s.143(3) was passed on 27-12-2011 assessing nil income. Later as per data relating to Client Code Modification (CCM) with the Department, it is found the assessee had entered into transaction through Mehta Finstock Pvt. Ltd. during assessment year 2009-10 amounting to Rs.5,89,787/- which has escaped assessment, hence a notice u/s. 148 of the Act was issued on 30-03-2016. In response the assessee requested to treat the original return in compliance to 148 notice and to provide reasons recorded. The assessee was provided reasons recorded and then proceeded with the re-assessment.

2.1. The Assessing Officer issued a show cause notice that the CCM carried out by the Mehta Finstock Pvt. Ltd. on behalf of the assessee was not inadvertent error but has been used as a systematic tool so as to evade taxes. Further the CCM has been done amounting to Rs. 12,56,760/- and not Rs. 5,89,787/- [which was shown to the assessee vide order sheet entry dated 02-12-2016] and the CCM made in the case of assessee in 63 transactions amounting to Rs. 12,56,760/- why not to be added in the hands of the assessee. In reply, the assessee stated he has never instructed the Broker to execute the above transaction and the assessee has not received any profit or loss on these transactions therefore CCM transactions are required to be clarified only by the Broker. The Assessing Officer also issued notice u/s. 133(6) to the Broker, M/s. Mehta Finstock Pvt. Ltd. wherein it stated they do not have old details with them relating to CCM transactions. Therefore the

Ld AO held that repeated wrong client code mistake is not possible as CCM has been done 63 times which is not a genuine mistake and the Broker Mehta Finstock Pvt. Ltd. is unable to provide the details of CCM, this is not possible without instructions of the client, therefore, the same is not treated as genuine punching error and added in the income of the assessee. Thereby the Ld AO determined the total loss as Rs. 3,10,72,093/-.

3. Aggrieved against the re-assessment order, the assessee filed an appeal before CIT(A) who has confirmed the addition by observing as under:-

> "4.2 I have carefully considered the assessment order, facts of the case and the submissions made by the appellant. The AO made the impugned addition holding at the appellant got benefit of CCM done by the broker, which was done with a malafide intention to avoid taxes on true income. The appellant on the other hand claimed that the client code modifications were carried out by the broker to rectify genuine punching errors on the same day that the errors were made, and that since were committed at the broker's end, the assessee could not be penalized.
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> 4.3 From a perusal of all the details on record and submissions, the following observations are made
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> - Client Code Modifications have been made in as many as 63 transactions. It is difficult to understand how genuine punching errors can occur in such large numbers. One can understand if an error is made on one or two occasions. However, the error to punching on 63 separate occasions in respect of the same broker and client is highly unlikely and suspicious.
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> - The broker, Mehta Finstock Pvt Ltd, Mumbal, has in response to a query from the AO, stated that it cannot provide any details of CCM made in the case of the appellant.
>
> - Provision of penalty by SEBI in case of CCM has led to a sharp decline in CCM instances. This goes to prove that CCM was being done in a calculated manner by the brokers with active participation of clients.

- If the contention of the appellant that modifications had to be carried out due to human errors is to be considered, the fact cannot be ignored that chances of human error on all the occasions are negligible, in this case, 63 instances.

- All the derivative transactions took place with same broker but on different dates. It is very unlikely that the same mistake will be committed by same person on various dates. Especially since the error in entry of client code has to be corrected on the same date. It is unlikely that the same broker will keep on making error and correcting it again and again within a short span of time.

- All cases of client code modification are with the same broker and this also indicates collusion, since the appellant must be dealing with a number of brokers and all the losses due to CCM have been with one broker only.

4.4 The appellant relied on various case laws in support of its submissions. However, the facts in these cases are at variance with the facts in this case. Moreover, the addition made by the AO cannot be taken to be based merely on suspicions, conjectures and surmises, as he has collected information from the National Stock Exchange as well as the appellant's broker before arriving at his decision.

4.5 In view of the discussion above, the addition of Rs.12,56,760/- made by the A.O. is confirmed and the grounds of the appellant are dismissed."

4. Aggrieved against the appellate order, the assessee is in appeal before us raising the following Grounds:-

"1.1 The order passed u/s.250 on 06.10.2017 for A.Y.2009-10 by CIT(A)-7, Abad upholding the addition of Rs.12,56.760/- on account of client code modification (CCM) made by AO is wholly illegal, unlawful and against the principles of natural justice.

1.2 The Ld. CIT(A) has grievously erred in law and or on facts in not considering fully and properly the submissions made and evidence produced by the appellant with regard to the impugned addition.

2.1 The Ld.CIT(A) has grievously erred in law and on facts in confirming the addition of Rs.12,56,760/- on account of client code modification (CCM).

2.2 That in the facts and circumstances of the case as well as in law, the Ld.CIT(A) ought not to have upheld the addition of Rs.12,56,760/- on account of client code modification (CCM).

3.1 The Ld.CIT(A) has grievously erred in law and on facts in confirming the impugned addition without appreciating that the appellant was not furnished complete details/material/statements etc. relating to CCM and without providing the opportunity to cross-examine the concern parties.

4.1 The Ld.CIT(A) has failed to appreciate that the reopening of regular assessment by notice u/s.147 itself was illegal, unlawful and without jurisdiction since the condition precedent for reopening were not fulfilled.

5.1 Without prejudice to above and in the alternative, the addition confirmed by CIT(A) is highly excessive and calls for reduction.

It is, therefore, prayed that the addition of Rs.12,56,760/- upheld by the CIT(A) may kindly be deleted."

5. The ld. counsel, Shri S.N. Divatia, for the assessee first dealt with the jurisdictional issue of reopening of assessment is done after four years wherein assessment u/s. 143(3) was already made on 27-12-2011 accepting the loss of Rs. 3,27,55,126/- claimed by the assessee which includes the sale of shares by the assessee. Thus, there is no failure on the part of the assessee in not disclosing any materials before the Assessing Officer or in the books of accounts. Further in the original assessment proceedings vide replies dated 10-11-2011 and 18-11-2011 the assessee filed various details relating to the loss from the derivative business in shares and also produced copy of bank statements and other details. Even reasons recorded for reopening of assessment does

not state that there was failure or omission on the part of the assessee to furnish the details, since the reopening is beyond four years period and there is no failure on the part of the assessee, the entire reopening itself is illegal and without jurisdiction.

5.1. Further, the CCM was neither thoughtful nor deliberate to set off profits against F & O losses, because the audited books of accounts as furnished in the paper book clearly indicates that there was already huge losses from sale of shares of Rs.85,46,016/- which was not converted into profit by the alleged bogus loss of Rs.12,56,750/- by doing CCM. Since the net result of the business was huge losses of Rs.1,80,46,336/- as per the audited profit and loss account. In support of the same, the assessee relied upon the Bombay High Court Judgement in the case of Ashish Niranjan Shah vs. Union of India (2024) 167 taxmann.com 561 (Bombay); Well Trans Logistics India (P) Ltd. vs. Addl. CIT (2024) 166 taxmann.com 72 (Delhi) and Co-ordinate Bench of this Tribunal in the case of DCIT vs. Kaizen Stock Trade (P) Ltd. (2021) 130 taxmann.com 236. Thus ld. A.R. pleaded that the entire re-assessment itself is bad in law and required to quash the re-assessment proceedings.

6. Per contra, ld. D.R. vide her submission dated 02-08-2024 supported the order passed by lower authorities and also submitted client code was modified 63 times which is huge number. The error in punching wrongly of 63 times is highly unusual and unbelievable. Further the reopening of assessment is valid in law. There was failure on the part of the assessee to disclose fully and

truly all materials facts necessary for assessment as per explanation 1 to section 147 of the Act and production before the Assessing Officer account books or other evidence but with due diligence have been discovered by the Assessing Officer will not necessarily amount to disclosure within the meaning of the proviso, therefore the additions made by the Assessing Officer does not require any interference and reliance is placed on Punjab and Haryana High Court in the case of Rakesh Gupta vs. CIT reported in 405 ITR 213.

7. We have given our thoughtful consideration and perused the materials available on record including the Paper book and case laws filed by both Parties. It is undisputed fact the assessee filed his original return of income and assessed to tax after calling for various details relating to the derivative business in shares and securities, after perusing books of accounts along with details and vouchers. As per audited profit and loss account still there is business loss of Rs. 1,80,46,366/- which is placed at page no. 8 of the paper book.

7.1. The reasons recorded by the Ld AO for reopening of assessment is as follows:-

> *"An information has been received from the Investigation wing. Ahmedabad regarding the Survey Report prepared by the ADIT (Inv.) Unit-1(3), conducted by the DDIT, (Inv.) Unit-1(3), Ahmedabad on Survey is 23.3.2015. The outcome of the survey report is that the choice advantage has been taken by the client i.e. income or loss i.e. if Client needs income for his books of accounts, he can generate the income through stock exchange by Client Code Modification with the help of the broker. The same is applicable in loss cases also. The Report has been provided alongwith annexure in which above named assessee is also involved in the transaction that he has taken the*

> *benefit of reduction of income due to C.C.M. amounting to Rs. 5,89,787/- for FY 2008-09 i.e. A.Y. 2009-10.*
>
> *From the above facts, I have reason to believe that the income of Rs.5,89,787/- has escaped the assessment which has been earned by the client. Therefore, there is suspicious thing which should be verified and has escaped upto the extent of Rs. 5,89,787/- for the year under consideration i.e. A.Y. 2010-11."*

Though the escaped income is recorded to be Rs. 5,89,789/- during the course of assessment, it is said to be 12,56,760/-, the same was informed to the assessee vide order sheet entry dated 02-12-2016. However, this amount of Rs.12,56,760/- is not likely to change net loss of Rs. 1.8 crores claimed by the assessee in its profit and loss account. Further, there is no failure on the part of the assessee in disclosing the relevant materials before the Assessing Officer.

7.2. On an identical issue of wrong claim of CCM, Hon'ble Bombay High Court in the case of Ashish Niranjan Shah [cited supra] held as follows:-

> *"24. It is a matter of public knowledge that client codes entered by a stock broker at the time of execution of the trades are permitted to be modified within a stipulated time after execution, if the stock broker finds that there had been any error in entering the correct client code. In the instant case, there is nothing to show whether such modification had been effected by the stock broker to deal with his errors in execution or whether the modification was effected under instructions of the Petitioner Besides, every transaction executed under the Petitioner's client code and thereby captured in his books of accounts have been subjected to scrutiny assessment. If someone else's client code had been entered by the stock broker and that had been changed to the Petitioner's client code, the transaction would get captured in the Petitioner's books and would be part of the material scrutinized.* ***If it is the Petitioner's client code that had been originally entered by the stock broker, leading to it being modified after execution, it would have no bearing on the income of the Petitioner, since it would be the person whose client code was entered upon modification, whose taxation would be impacted. Therefore, without any basis to show that there had been a failure on the Petitioner's part in making a full and***

truthful disclosure of material facts, the very jurisdiction to initiate reassessment as provided for in Section 147 would not be attracted.

25. It is because the Revenue cannot demonstrate a failure on the part of the Petitioner to make full and truthful disclosure of facts in his possession, that its stance has been moulded to state that such demonstration is not necessary, and it would suffice if the Revenue formulates a "reason to believe" that income has escaped assessment. We are afraid that we cannot agree to such a proposition, which would require ignoring the explicit provisions of Section 147 and supplanting it with a new formulation as is being canvassed by the Revenue.

26. Section 147 explicitly stipulates the grounds on which, and the framework within which, such reassessment may be initiated. The Revenue has invoked the first proviso to Section 147(1) in order to initiate the reassessment. ***An essential ingredient of the first proviso is that no action for reassessment can be taken after the expiry four years from the end of the relevant assessment year, unless the income escaping assessment has been caused by the failure on the part of the assessee to disclose fully and truly all material facts necessary for the assessment. That vital element is sorely missing in the instant case.***

27. The imperative requirement of compliance with the ingredients of Section 147 and Section 148 is underlined in innumerable judgments. However, we note with approval, a judgment of a Division Bench of this Court cited on behalf of the Petitioner, in case of Hindustan Lever Ltd. v. R.B. Wadkar [2004] 137 Taxman 479/268 ITR 332 (Bombay) (per V.C. Daga and J.P. Devadhar JJ.), and profitably extract the following:

> *18. Reading of proviso to section 147 makes it clear that 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 proceeding under section 147, or recompute the loss or the depreciation allowance or any other allowance, as the case may be for the concerned assessment year. However, where an assessment under sub-section (3) of section 143 has been made for relevant assessment year, no action can be taken under section 147 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 reasons of the failure on the part of the assessee to disclose all material facts necessary for his assessment for that assessment year.*
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> *19. In the case in hand it is not in dispute that the assessment year involved is 1996-97. The last date of the said assessment year was 31st March, 1997 and from that date if four years are counted, the period of four years expired on 1st March, 2001. The notice issued is dated 5th November, 2002 and received by the assessee on 7th*

November, 2002. Under these circumstances, the notice is clearly beyond the period of four years.

20. The reasons recorded by the Assessing Officer nowhere state that there was failure on the part of the assessee to disclose fully and truly all material facts necessary for the assessment of that assessment year. It is needless to mention that the reasons are required to be read as they were recorded by the Assessing Officer. No substitution or deletion is permissible No additions can be made to those reasons No inference can be allowed to be drawn based on reasons not recorded. It is for the Assessing Officer to disclose and open his mind through reasons recorded by him. He has to speak through his reasons It is for the Assessing Officer to reach to the conclusion as to whether there was failure on the part of the assessee to disclose fully and truly all material facts necessary for his assessment for the concerned assessment year It is for the Assessing Officer to form his opinion. It is for him to put his opinion on record in black and white. The reasons recorded should be clear and unambiguous and should not suffer from any vagueness. The reasons recorded must disclose his mind. Reasons are the manifestation of mind of the Assessing Officer. The reasons recorded should be self-explanatory and should not keep the assessee guessing for the reasons. Reasons provide link between conclusion and evidence. The reasons recorded must be based on evidence. The Assessing Officer, in the event of challenge to the reasons must be able to justify the same based on material available on record. He must disclose in the reasons as to which fact or material was not disclosed by the assessee fully and truly necessary for assessment of that assessment year, so as to establish vital link between the reasons and evidence That vital link is the safeguard against arbitrary reopening of the concluded assessment. The reasons recorded by the Assessing Officer cannot be supplemented by filing affidavit or making oral submission, otherwise, the reasons which were lacking in the material particulars would get supplemented, by the time the matter reaches to the Court, on the strength of affidavit or oral submissions advanced.

21 Having recorded our finding that the impugned notice itself is beyond the period of four years from the end of the assessment year 1996-97 and does not comply with the requirements of proviso to section 147 of the Act, the Assessing Officer had no jurisdiction to reopen the assessment proceedings which were concluded on the basis of assessment under section 143(3) of the Act. On this short count alone the impugned notice is liable to be quashed and set aside.

28. The discussion in the case above would squarely fit the facts of the instant case too. Without anything to show that it was the Petitioner who had failed to disclose any material fact fully and truly, there is no scope for initiating reassessment Consequently, this Writ Petition deserves to be allowed, quashing the Impugned Notice (dated 31 March, 2021)..”

7.3. Similarly Hon'ble Delhi High Court in the case of Well Trans Logistics Pvt. Ltd. [cited supra] held as under:-

> *"22. As rightly pointed out by the Income-tax Appellate Tribunal, the "reasons to believe" are not in fact reasons but only conclusions, one after the other. The expression "accommodation entry" is used to describe the information set out without explaining the basis for arriving at such a conclusion. The statement that the said entry was given to the assessee on his paying "unaccounted cašh" is another conclusion the basis for which is not disclosed Who is the accommodation entry giver is not mentioned. How he can be said to be "a known entry operator" is even more mysterious. Clearly the source for all these conclusions, one after the other, is the investigation report of the DIT. Nothing from that report is set out to enable the reader to appreciate how the conclusions flow therefrom.*
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> *23. Thus, the crucial link between the information made available to the Assessing Officer and the formation of belief is absent. The reasons must be self-evident, they must speak for themselves. The tangible material which forms the basis for the belief that income has escaped assessment must be evident from a reading of the reasons. The entire material need not be set out. However, something therein which is critical to the formation of the belief must be referred to. Otherwise the link goes missing.*
> *xxxxxxxxxx*
>
> *26. The first part of section 147(1) of the Act requires the Assessing Officer to have "reasons to believe" that any income chargeable to tax has escaped assessment. It is thus formation of reason to believe that is subject matter of examination. The Assessing Officer being a quasi- judicial authority is expected to arrive at a subjective satisfaction independently on an objective criteria. While the report of the Investigation Wing might constitute the material on the basis of which he forms the reasons to believe the process of arriving at such satisfaction cannot be a mere repetition of the report of investigation. The recording of reasons to believe and not reasons to suspect is the pre-condition to the assumption of jurisdiction under section 147 of the Act. The reasons to believe must demonstrate link between the tangible material and the formation of the belief or the reason to believe that income has escaped assessment.*
> *xxxxxxxx*
>
> *36. In the present case, as already noticed, the reasons to believe contain not the reasons but the conclusions of the Assessing Officer one after the other. There is no independent application of mind by the Assessing Officer to the tangible material which forms the basis of the reasons to believe that income has escaped assessment.* ***The conclusions of the Assessing Officer are at best a reproduction of the conclusion in the investigation report. Indeed it is a "borrowed satisfaction". The reasons fail to demonstrate the link between the tangible material and the formation of the reason to believe that income has escaped assessment."***

23. Coming back to the present case, the reasons recorded by the Assessing Officer for issuance of notice under Section 148 for reopening of assessment under Section 147 of the Act for AY 2011-12 are extracted below:-

… … … …

24. We may, note that the Assessing Officer after reproducing the information received from DDIT (Investigation) Unit, drew the conclusion of escapement of income. ***In the case of Assistant Commissioner Income-tax v. Rajesh Jhaveri Stock Brokers (P) Ltd (2007) 161 Taxman 316/291 1 500 (SC), the Supreme Court had explained that expression "reason to believe" would mean justification to know or suppose that income had escaped assessment. While, it is correct that it is not necessary for the Assessing Officer ascertain whether income had escaped assessment, nonetheless, the Assessing Officer must have sufficient cause to believe that it has to finally ascertain whether income had escaped assessment, nonetheless, the Assessing Officer must have sufficient cause to believe that it has.***

25. In the present case, as may be seen, there is no "close nexus" or "live link" between tangible material and the reason to believe that income has escaped assessment. The information received from the Investigating Unit of the Revenue cannot be the sole basis for forming a belief that income of the assessee has escaped assessment. Having received information from the Investigating Wing, it was incumbent upon the Assessing Officer to take further steps, make further enquiries and garner further material and if such material indicate that the income of the assessee has escaped assessment and then form a belief that the income of the assessee has escaped assessment.

26. Clearly, in this case, the Assessing Officer has not acquired any material to form such belief. There is not even a line of reason which may justify the formation of the belief Consequently, we are satisfied that reopening of assessment for the assessment year in question by the Assessing Officer does not satisfy the requirement of law in terms of Section 147 & 148 of the Act.

27. Consequently, the writ petition is allowed the impugned reassessment notice dated 22.03.2018 Issued under Section 148 of the IT Act and further proceedings, if any, initiated pursuant to the said notice dated 22.03.2018 are set aside."

7.3. The Co-ordinate Bench of this Tribunal in the case of Kaizen Stock Trade Pvt. Ltd. [cited supra] held as follows:-

"Business loss/deductions -Allowable as (Bogus loss) - Assessment year 2010-11 - Assessee company filed its return of income which was accepted and an order was passed An information was received from National Stock Exchange (NSE) that there was change in code of

assessee maintained with broker with respect to certain share transactions carried out in F and O segment - Assessing Officer held that assessee was able to shift out its profit of Rs. 1.02 crores and shift in loss of Rs. 83.63 lakhs by resorting to technique of client code modification (CCM) - It was noted that CCM might give rise to doubt/suspicion, however, it required detailed investigations from parties concerned to reveal truth Merely there were CCMs carried out by assessee could not be a basis to draw an inference against assessee Other corroborative evidences had to be brought suggesting that there was exchange of cash among parties involved in CCM - But it was noted that no such exercise was carried out by revenue - Further, number of transactions in respect of which client codes were modified were less than 1 per cent of total transactions carried out by assessee; therefore, such changes in client code could not be called a colourable device adopted for shifting out and shifting in profit/loss - Whether, on facts, impugned addition made by Assessing Officer was unjustified and same was to be deleted - Held, yes [Paras 11.3, 11.4 and 11.7] [In favour of assessee]"

7.4. Whereas the case law relied by the ld. DR in the case of Rakesh Gupta vs. CIT [cited supra] by the Punjab and Haryana High Court is a case where no regular assessment u/s.143(3) has been done, where Return of Income was only processed u/s.143(1) of the Act relating to the assessment year 2009-10 and then was reopened after a period of four years by using a notice u/s. 148 dated 31-03-2016. In that case, Hon'ble Punjab and Haryana High Court held that reopening of assessment is valid in law. In the present case, the assessee's case original assessment u/s. 143(3) was already completed on 27-12-2011 and again reopened by issuing 148 notice dated 30-03-2016. Thus, the above judgment relied by the ld. D.R. is not applicable to the facts of the present case.

8. Therefore respectfully following the above judicial precedents, we have no hesitation in holding that the reopening of assessment

itself is bad in law consequently the re-assessment proceedings is liable to be invalid in law. In the result, the ground no. 4.1 raised by the assessee is hereby allowed and other grounds raised by the assessee becomes academic and does not require adjudications.

9. In the result, **the appeal filed by the assessee is hereby allowed.**

Order pronounced as per Rule 34(4) of I.T.A.T. Rules 1963 on 10-02-2025

Sd/-	**Sd/-**
(RAMIT KOCHAR)	**(T.R. SENTHIL KUMAR)**
ACCOUNTANT MEMBER	**JUDICIAL MEMBER**

Ahmedabad :
Dated 10/02/2025

आदेश की प्रतिलिपि अग्रेषित / Copy of Order Forwarded to:-

1. Assessee
2. Revenue
3. Concerned CIT
4. CIT (A)
5. DR, ITAT, Ahmedabad
6. Guard file.

By order/आदेश से,

उप/सहायक पंजीकार
आयकर अपीलीय अधिकरण,
अहमदाबाद