

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION**

**INCOME TAX APPEAL NO.1257 OF 2016
WITH
INCOME TAX APPEAL NO. 1383 OF 2016**

Pr. Commissioner of Income Tax-13 .. Appellant
v/s.
Pat Commodity Services Pvt. Ltd. .. Respondent

Mr. Arvind Pinto for the appellant
Mr. Sanjiv M. Shah for the respondent

**CORAM : AKIL KURESHI &
M.S. SANKLECHA, J.J.**

DATED : 15th JANUARY, 2019

P.C.

1. These appeals involve the same assessee and arise out of common background. We may note the facts from Income Tax Appeal No.1257 of 2016. This appeal is filed to challenge the judgment of the Income Tax Appellate Tribunal (“the Tribunal” for short).

2. Following questions are raised for our consideration :-

(i) Whether in law and on the facts and circumstances of the case, was the Tribunal justified in upholding the deletion of the addition being the profits of the Company on account of the large scale client code modifications; the said be undertaken to transfer the profits of the company to other clients for the purposes of

adjustment of their incomes to evade payment of tax?

(ii) Whether in law and on the facts of the instant case, was the Tribunal in error in upholding the deletion when the AO had established that the motive of the client code modification was to indulge in circular trading to enable the generation of either profits or losses as required by clients at the end of the financial year?

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 present 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.

(M.S. SANKLECHA, J.)

(AKIL KURESHI, J.)