

OD - 9

IN THE HIGH COURT AT CALCUTTA
Special Jurisdiction [Income Tax]

ORIGINAL SIDE

ITAT/66/2025
IA NO.GA/2/2025
PRINCIPAL COMMISSIONER OF INCOME TAX - 2, KOLKATA
VS
SEASIDE PROJECTS PVT. LTD.

BEFORE :
THE HON'BLE CHIEF JUSTICE T.S SIVAGNANAM
And
THE HON'BLE JUSTICE CHAITALI CHATTERJEE (DAS)
Date : 16th June, 2025

Appearance :
Mr. Amit Sharma, Adv.
..for the appellant.

Ms. Swapna Das, Adv.
Mr. Siddharth Das, Adv.
..for respondent.

The Court : This appeal filed by the revenue under Section 260A of the Income Tax Act, 1961 (the Act) is directed against the order dated April 10, 2024 passed by the Income Tax Appellate Tribunal, 'SMC' Bench, Kolkata (the Tribunal) in ITA/172/Kol/20 for the assessment year 2012-13.

The revenue has raised the following substantial questions of law for consideration :

"i) Whether on the facts and in the circumstances of the case, the Learned Tribunal was justified in law to delete the addition of Rs.27,93,150/- made by the Assessing Officer on account of bogus

loss on client code modification, ignoring the fact that the respondent assessee failed to prove the genuineness of the transactions relating to bogus loss on client code modification?

ii) Whether on the facts and in the circumstances of the case, the Learned Tribunal was justified in law to arrive at the conclusive finding that the reasons recorded by the Assessing Officer are mechanical which lacks objective satisfaction?

iii) Whether on the facts and in the circumstances of the case, the Learned Tribunal was justified in law in not appreciating the facts of the case in proper perspective in the light of bogus loss transactions on client code modification while deciding the appeal in favour of the assessee ignoring the preponderance of probability and Finding arrived at against the assessee?

iv) Whether on the facts and in the circumstances of the case the Learned Tribunal was justified in law in not passing a speaking order by considering the materials available on record which thereby gives rise to perversity?

v) Whether in absence of verification, the Learned Tribunal ought to have remanded the matter back to the Assessing Officer for fresh verification and by not doing so the Learned Tribunal has violated the provisions of Rule 46 of the Income Tax Rules?"

We have heard Mr. Amit Sharma, learned senior standing counsel appearing for the appellant/revenue and Ms. Swapna Das, learned counsel appearing for the respondent/assessee.

The learned Tribunal by the impugned order has allowed the assessee's appeal and set aside the order passed by the appellate authority dated 20.1.2024 by which the appellate authority affirmed the addition made by the assessing officer by an order dated 13.12.2019 under Sections 143, 147 read with Section 144 of the Act. The first contention which was raised by the assessee by way of a preliminary objection in this appeal, when it was heard earlier was that the reasons for reopening were not furnished to the assessee. This Court directed the learned senior standing counsel for the revenue to get instructions in this aspect and, accordingly, the instructions received from the

revenue are being placed before this Court from which it is seen that the assessee has received the reasons for reopening and also submitted their reply dated 13.12.2019 and also stated that they are offering an additional income for purchasing peace. Therefore, the contention raised by the assessee that reasons for reopening were not furnished to the assessee is shown to be factually incorrect and, therefore, the said objection raised by the assessee before us stands rejected. The second contention which was raised by the assessee before the learned Tribunal and found favour of the learned Tribunal is the ground that the information received from the investigation wing are certain general information and that the assessing officer did not investigate on his own and record satisfaction as regards the escapement of income in the hands of the assessee for the relevant assessment year. To examine this aspect we have perused the 'reasons to believe' which was recorded by the assessing officer by proceedings dated 28.3.2019. It has been stated that the assessee filed its return of income on 27.11.2012 for the assessment year 2012-13 declaring total income of Rs.7,820/- , the return was processed under Section 143(1) on 23.3.2013 accepting the returned income. Scrutiny assessment under Section 143(3) /147 was completed on 2.5.2018. Further, it stated that in the case of the assessee, on the basis of enquiry and information in the possession of the assessing officer, it has come to light that SFIO has carried out investigation in NSEL which has discussed the issue of client code modification in the case of few brokers. Further, it stated that the findings of investigation of member-brokers and the traders have been perused by the assessing officer and the details of the client code modifications were called from NSEL. As per the data there are total 219 brokers who

have made 54565 client code modification and the volume of sale and purchase transaction is Rs.6311 crore. Further, the assessing officer specifically recorded that the brokers and the client in whose favour client modification are made are spread all over India and the assessee is also one of the clients whose name is included in the list of modified clients in the details provided by NSEL. The other relevant details with regard to the privity of contract existed between the clients and their respective brokers were also brought on record. Thus, the Assessing Officer would state that a comprehensive investigation/enquiry and verification of data processed by the Department and after due application of mind the Assessing Officer has reasons to believe that the assessee is a beneficiary to the tune of Rs.27,93,150/- by way of client code modification during the financial year 2011-12 relevant to the assessment year 2012-13. Hence, on the basis of the information collated and the analysis done by the Assessing Officer, he was of the view that the assessee company has not disclosed the true and full income. Thus, the Assessing Officer proceeded to issue notice under Section 148 of the Act for which approval was obtained from the Principal CIT-2, Kolkata. Therefore, the Tribunal committed an error in holding that the Assessing Officer did not record any satisfaction nor conduct any enquiry or investigation before issuing notice under Section 148 of the Act. Therefore, this contention raised by the Tribunal and accepted by the Tribunal is incorrect and, therefore, the revenue should succeed on the said point. Furthermore, the onus was on the assessee to establish that they were not the beneficiary on account of the modification of the client code, despite opportunity being granted to the assessee did not produce any evidence either during the course of assessment proceedings nor at

the first appellate stage to show that he is not the beneficiary of the client code modification.

Thus, we are of the view that the Tribunal committed an error in allowing the assessee's appeal.

For the above reasons, the appeal being ITAT/66/2025 filed by the revenue is allowed and the order passed by the learned Tribunal is set aside and the assessment order dated 13.12.2019 passed under Section 143(3)/147 read with Section 142 of the Act as affirmed by the appellate authority by order dated 20.01.2024 under Section 250 of the Act stands restored.

Consequently, the substantial questions of law were answered in favour of the appellant/revenue.

The application being GA/2/2025 stands closed.

(T.S SIVAGNANAM)
CHIEF JUSTICE

(CHAITALI CHATTERJEE (DAS), J.)

