आयकर अपीलीय अधिकरण "E" न्यायपीठ मुंबई में।

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

BEFORE SHRI SANDEEP GOSAIN, JUDICIAL MEMBER
AND SHRI RAMIT KOCHAR, ACCOUNTANT MEMBER

आयकर अपील सं./I.T.A. No.6534/Mum/2017

(**निर्धारण वर्ष /** Assessment Year: 2010-11)

Time Media & Entertainment LLP (Earlier Time Media & Entertainment Private Ltd.) 104, Rachna, V.P Road, Vile Parle (W), Mumbai-400056	**बनाम**/ v.	Income Tax Officer-16(1)(5) R.No. 439, 4th Floor, Aayakar Bhavan, M.K Marg, Mumbai-400020
स्थायी लेखा सं./PAN: AAACT1581C		
(अपीलार्थी **/Appellant**)	..	(प्रत्यर्थी / **Respondent**)

Assessee by:	Shri. Reepal G. Tralshawala
Revenue by:	Shri. D.G. Pansari (DR)

सुनवाई की तारीख **/Date of Hearing : 28.03.2019**

घोषणा की तारीख **/Date of Pronouncement : 18.06.2019**

आदेश / ORDER

PER RAMIT KOCHAR, Accountant Member:

This appeal, filed by assessee, being ITA No. 6534/Mum/2017, is directed against appellate order dated 31.07.2017, passed by learned Commissioner of Income Tax (Appeals)-4, Mumbai (hereinafter called "the CIT(A)") in Appeal No. CIT(A)-4/IT-89/ITO-16(1)(5)/2016-17, for assessment year 2010-11, the appellate proceedings had arisen before learned CIT(A) from the assessment order dated 30.03.2016 passed by learned Assessing Officer (hereinafter called "the AO") u/s 143(3) r.w.s. 147 of the Income-tax Act, 1961 (hereinafter called "the Act") for AY 2010-11.

2. The grounds of appeal raised by assessee in the memo of appeal filed with the Income-Tax Appellate Tribunal, Mumbai (hereinafter called "the tribunal") read as under:-

> *"**A) Re-opening is bad in law and reassessment order passed is liable to be quashed***
> *1. The Ld. CIT(A) erred in confirming the reopening of the assessment without appreciating that the reopening of the assessment is bad in law, invalid and liable to be quashed in as much as-*
> *a) reasons recorded for reopening of the assessment are reason to suspect and not reason to believe.*
> *b) reopening is upon direction of third party and therefore borrowed reasons;*
> *c) without any tangible material available; and*
> *d) without any proper application of mind and even the amount referred in the reasons recorded is incorrect.*
>
> ***Without prejudice to the above, on merits:***
> ***B) Disallowance of part of F & O Loss - Rs.31,98,597/-***
> *2. The learned CIT(A) erred in confirming the disallowance of F & O loss of Rs,31,98,597/- only on the reason that there was Client Code Modification (CCM) done by the broker in respect of the transactions where loss of Rs.31,98,597/ is incurred and hence, only on assumption and presumption the disallowance of loss of Rs.31,98,597/- is without any justification and liable to be deleted.*
> *3. The learned CIT(A) failed to appreciate that the broker through whom the transactions were carried out gave response to the summons issued by the AO and confirmed the transaction as genuine and that CCM was genuine mistake and hence, the disallowance of loss of Rs.31,98.597/- is unjustified and liable to be deleted.*
>
> *4. The Ld. CIT(A) further failed to appreciate that if the AO was not satisfied with the reply of the broker, the AO could have issued notice once again, however, the appellant could not be made to suffer due to fault / mistake on the part of the broker for punching error committed and hence, the disallowance of loss merely on the basis of allegations and without any material to prove otherwise is unjustified and liable to be deleted.*
>
> ***C) Addition of Rs. 31,986/- as unexplained expenditure***

5. The Ld. CIT(A) erred in confirming addition to the extent of Rs. 31,986/- as commission paid to the broker for carrying out CCM / obtaining loss without appreciating the fact that the appellant transaction giving rise to loss of Rs.31,98,597/- is genuine transaction and genuine loss and not fictitious and thus, the question of making payment of commission to the broker does not arise.

6. The Ld. CIT(A) further failed to appreciate that there was no evidence whatsoever that the appellant has made any such payment to the broker and neither there is any such claim made in the profit and loss account and hence, the addition confirmed to the extent of Rs. 31,986/- is without any justification and liable to be deleted.

7. The appellant craves leave to add, amend, alter or delete all or any of the aforesaid grounds of appeal."

3. The brief facts of the case are that the assessee is engaged in the business of TV serials telecast, advertising, film distribution etc. and had income from sale of pre-recorded CD/DVD , royalty, commission and income from investment in shares. The assessee filed its return of income with Revenue for the impugned assessment year on 07.09.2010, which was processed by Revenue u/s. 143(1) of the Act. Thus, no scrutiny assessment as is contemplated u/s. 143(3) read with Section 143(2) of the 1961 Act was originally framed by Revenue against the assessee.

3.2 The AO received information from the office of DIT(I&CI) Mumbai, vide letter no. DIT(I&CI)/CCM/2014-15 dated 27.02.2015 through learned PCIT that some brokers were misusing the Client Code Modification facility in the F&O segments on NSE and had created non-genuine profit and loss. It was observed by the AO that these Loses and Profits were given by these brokers to their different clients/beneficiaries according to their requirements. The AO observed that clients had taken fictitious loses to set off against their profits with a view to reduce their tax liability. As per information received by the AO, the assessee was one of the beneficiary of the Client Code Modification as the name of the assessee also appeared in the

beneficiaries list who had taken fictitious F&O Loses through the broker Inventure Growth & Securities Ltd. (hereinafter called "Inventure") , during the financial year 2009-10 relevant to AY 2010-11, to the tune of Rs. 31,98,597.50, which income as per AO had escaped taxation , the details of which are as hereunder:-

Original Client Name	PAN	Profit to original client because of client code modification	Modified client name	PAN	loss to modified client because of client code modification
G F L FINANCIALS INDIA	AABCG0597Q	31,98,597.50	TIME MEDIA AND ENTERTAINMENT PVT. LTD	AAACT1581C	31,98,597.50

3.3 The assessee case was reopened by the AO by invoking provisions of Section 147 of the 1961 Act for framing reassessment after obtaining due approvals for which notice dated 23.03.2015 u/s. 148 was issued by the AO to the assessee which was duly served on the assessee.

3.4 The assessee in response to aforesaid notice dated 23.03.2015 issued by the AO u/s. 148 filed its return of income on 15.04.2015, requesting AO to treat the return of income originally filed on 07.09.2010 as return of income filed in response to the notice issued u/s 148 of the 1961 Act.

3.5 Thus, undisputedly no original assessment was framed by Revenue u/s. 143(3) read with Section 143(2) of the 1961 Act and further reopening of the concluded assessment was done by Revenue u/s. 147 of the Act for framing reassessment within four years from the end of the assessment year and hence first proviso to Section 147 of the 1961 Act shall have no applicability.

3.6 Based on information received from learned Director of Income Tax (I and CI) , Mumbai , the notices u/s. 133(6) of the 1961 Act were

issued by the AO to the Brokers through which the assessee has done business in F&O segment on the NSE including the Broker Inventure, wherein there was an allegation on the assessee that it has obtained fictitious F&O Loss by way of change in client code modification by paying the brokerage to the brokers for off-setting huge profits against these fictitious losses. In response to the said notice, Inventure vide its reply dated 15.03.2015 submitted in nut-shell as under:-

> "*We are SEBI registered Stock Broker having more than 40000 clients and more than 1000 trading location. We have given the right to operate the trading terminal functions such as entering the order modifying the order, cancelling the order etc. to our Sub Broker/Authorized Person /Dealers, who are executing the trades on behalf of our clients. Some clients have family account with us and execute large order in one code in order to get the trading opportunity during the market volatility. During the market trading or post-market closing, the NSE provides the facility to modify the trade within the same family/group of clients to rectify the errors made in entering the client code. Because of this reasons, some client code were modified as per the guidelines issued by the Exchange. We further submit to your honor that during the financial year 2009-10, we have more than Rs. 97,000 crore trading volume in NSE F&O segment Where as the total client code modification is less than 1% of the total trading volume."*

3.7. The AO considered the aforesaid reply of the Broker Inventure and observed that they have not answered the specific question despite specifically asked to explain reasons and nature for such client code modifications in respect of the F&O transactions entered into by the assessee with them. The AO was of the view that the reply of the broker Inventure is evasive and general wherein specific replies were not given by Inventure.It is pertinent to mention that the enquiries with Brokers including Inventure was made by the AO after receipt of aforesaid information from learned DIT(I & CI) received through learned PCIT but before issuance of notice u/s 148 of the 1961 Act.

3.8 The AO also observed that spot verifications u/s 131(1A) of the 1961 Act was carried out by Revenue on brokers who were indulging in client code modifications and they have confirmed that they misused the facility of client code modification in order to create fictitious loses/profits.

3.9 The assessee was asked by the AO during the course of reassessment proceedings u/s 147/148 of the 1961 Act to prove the genuineness of these F&O Loses . The assessee in response filed ledger account of the brokers through which the assessee has taken F&O Loses. In view of the AO , the assessee had failed to prove genuineness of the losses on derivative transaction to the tune of Rs. 31,98,579.50.

3.10 During course of reassessment proceedings, the notices were issued by the AO to National Stock Exchange(in Short "NSE") u/s. 133(6) of the 1961 Act which sent reply dated 18.03.2016 , which clearly indicated that the assessee has undertaken client code modification through the brokers.

3.11 The AO show caused the assessee vide order sheet noting dated 22.03.2016 as to why the bogus losses claimed by the assessee with respect to F&O transaction through brokers which has resulted in wrong claim of losses on F&O should not be added to the income of the assessee. The assessee filed reply dated 28.03.2016 to justify its claim that the F&O loses are genuine but the AO was not satisfied with the reply filed by the assessee and additions were made to the income of the assessee by the AO to the tune of Rs. 31,98,597.50 u/s. 68 of the Act, vide reassessment order dated 30.03.2016 passed by the AO u/s 143(3) read with Section 147 of the 1961 Act .

3.12 Further additions as undisclosed income of the assessee to the tune of Rs. 1,59,930/- being @5% of alleged bogus F&O losses to the tune of Rs. 31,98,597.50 were made by the AO towards commissions allegedly paid to the broker Inventure by assessee from undisclosed

sources for obtaining these bogus F&O losses were made by the AO as the assessee had failed to prove the genuineness of these F&O losses and further the brokers had confirmed in an enquiry made by Revenue u/s 131(1A) having received brokerages on these bogus F&O Losses, , vide reassessment order dated 30.03.2016 passed by the AO u/s. 143(3) r.w.s. 147 of the Act.

4. The matter reached Ld. CIT(A) at the behest of the assessee wherein assessee filed first appeal with learned CIT(A) as the assessee was aggrieved by reassessment order dated 30.03.2016 passed by the AO u/s 143(3) read with Section 147 of the 1961 Act. The assessee reiterated before learned CIT(A) that these F&O losses are genuine but it did not found favour with Ld. CIT(A) , who was pleased to dismiss the appeal of the assessee on merits as well challenge raised by the assessee to the reopening of the concluded assessment by AO u/s 147 of the 1961 Act, but while so far as alleged commissions paid to broker Inventure on alleged bogus F&O Losses which were added as undisclosed income of the assessee by the AO to the tune of 5% of alleged bogus F&O Less, the learned CIT(A) was pleased to reduce the additions to the tune of 1% of the alleged bogus F&O Losses as against additions to the tune of 5% of alleged bogus F&O Losses made earlier by the AO in reassessment order, vide appellate order dated 31.07.2017 passed by learned CIT(A) , wherein learned CIT(A) held on merits as under:-

> *"3.2 I have considered the finding of the Assessing Officer, rival submission of appellant and perused the evidence on record. I find that assessee has shown loss under Futures and Options of Rs. 97,44,423/- out of which loss of Rs. 31,98,597/- has been shown by way of Client Code Modification without any valid reason. The information received from the office of the DIT(I&CI) , Mumbai by letter dated 27.02.2015 demonstrated the modus operandi of such brokers, misusing Client Code Modification facility of NSE and thereby giving entry of profit or losses in F&O trading. In this case Assessing Officer has made the enquiry from the broker who has not given proper answer as to why there was Client Code Modification. He has*

given general information avoiding the revelation of true facts. When question was client specific, broker was to give proper reply. Further, when spot verification was made, broker have confirmed such bogus Client Code Modification, hence the conclusion drawn by the Assessing Officer that fictitious loss was procured by parting commission is found to be worth approval.

3.3 In the course of appellate proceedings the Ld. Authorised Representative has given only general explanation without pointing out as to why there was a Client Code Modification and what was the propriety of obtaining business loss from a broker. Thus in such circumstances , the result of investigation done by DIT(I&CI) cannot be brush aside.Thus, the finding of Assessing Officer based on various facts are approved and disallowance of claim of loss of Rs. 31,98,597/- is sustained."

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4.2 I have considered the finding of Assessing Officer, rival submission of assessee carefully. I find that for doing such Client Code Modification assessee might have definitely incurred some commission expenses. It can be seen from Balance Sheet that assessee is in entertainment business having income from sale of CD, DVD & income from TV serials. Assessee has not shown any commission expenditure in P&L account except brokerage of Rs. 14,226/-. Since such entry has been obtain for claiming loss, hence element of commission expenditure cannot be ruled out. For obtaining such entry one has to incurred some expenditure, therefore the finding of Assessing Officer deserve approval. However estimation of expenditure @5% of loss is not found reasonable, rather found to be excess, hence in the fitness of thing a reasonable estimate of expenditure is to be made. Normally in such transaction, 1% commission is charged and not 3% to 6%. There are so many cases reflecting commission in brokerage sector @1% , thus from this point of view , and also considering the circumstances, 1% of such procurement of entry of Rs. 31,98,597/- is found to be most reasonable for making addition of unrecorded expenditure. Thus addition of expenditure of Rs. 31,986/- is sustained and balance amount of Rs. 1,27,944/- is deleted."

4.2 The assessee during the course of appellate proceedings before learned CIT(A) had also challenged reopening of the concluded assessment by the AO u/s 147 of the 1961 Act by raising additional grounds, which legal challenge to reopening of concluded assessment by the AO u/s 147 of the 1961 Act raised by the assessee also stood dismissed by learned CIT(A) , vide appellate order dated 31.07.2017 passed by learned CIT(A), wherein learned CIT(A) was pleased to hold as under:

> *"5.5. I have considered reason for reopening for assessment, counter representation of Ld. Assessing Officer and Ld. Authorised Representative, carefully. I find that in this case there was no regular assessment u/s 143(3), but Return of Income was simply processed u/s 143(1) of the IT. Act. , hence no scrutiny was made nor was any disclosure of income of Client Code Modification. Subsequently information obtained by the then DIT(I&CI), Mumbai through investigation was communicated to Assessing Officer through Pr.CIT-16. On the basis of specific information that brokers were misusing Client Code Modification facility to provide entry of profit or losses to such assesses willing to obtain such entries and assessee had procured such benefit from the broker, so as to suppress its taxable income, hence it is very obvious that while recording the reason the Assessing Officer was having tangible material to believe that there was escapement of assessment. It can be seen from tax audit report in form no 3CD that assessee's business is entertainment related. It derives income from sale of CD'S, DVD & TV serials, hence no such active F&O business is there. Thus, it is very evident from P&L account that in this year only such loss of Rs. 97,43,632/- has been shown and out of this, an amount of Rs. 31,98,597/- is on account of Client Code Modification for which no proper explanation is there, hence while recording the reason, Assessing Officer was having basic material, reliable information and reason to believe that there was escapement assessment , hence he has rightly proceeded to exercise power under section 148 and has made the escapement assessment. Because of these facts, none of the case laws relied upon by Ld. Authorised Representative is applicable or favor to the appellant."*

5. Aggrieved by an appellate order dated 31.07.2017 passed by learned CIT(A), the assessee has filed an appeal with tribunal. It is

pertinent to mention that the Revenue has not come in an appeal before tribunal against part relief granted by learned CIT(A) to the assessee as neither learned DR nor learned counsel for the assessee has brought to our notice factum of filing appeal by Revenue with tribunal against part relief granted by learned CIT(A) to the assessee. So, we shall be proceeding to adjudicate this appeal based on the belief that part relief granted by learned CIT(A) to the assessee has attained finality.

5.2 The Ld. Counsel for the assessee submitted before the Bench that the AO has recorded reasons for reopening of the concluded assessment u/s. 147 for framing reassessment which are placed in paper book filed with tribunal at page no. 19-20. It was submitted by learned counsel for the assessee that reasons recorded by the AO for reopening of the concluded assessment u/s 147 for framing fresh assessment were not sufficient as there was no material before AO to come to the conclusion that income of the assessee had escaped assessment. It was fairly submitted by learned counsel for the assessee that originally assessment was not framed by Revenue u/s. 143(3) read with Section 143(2) of the 1961 Act but the return of income was originally processed by Revenue u/s. 143(1) of the Act . It was submitted by learned counsel for the assessee that impugned assessment year under consideration before the tribunal is AY 2010-11 and notice dated 23.03.2015 was issued by the AO to the assessee u/s. 148 of the Act, for reopening of the concluded assessment which is within four years from the end of the assessment year. The learned counsel for the assessee relied upon the decision of Hon'ble Bombay High Court in the case of Coronation Agro Industries Limited v. DCIT reported in (2017) 390 ITR 464(Bom. HC). It was submitted by learned counsel for the assessee that all trades in F&O were done in the month of March 2010. The learned counsel for the assessee also relied upon the decision of Ahmadabad-tribunal in the case of Smt. Sunita Jain & Ors. v. ITO in ITA no. 501 & 502/Ahd./2016 vide orders dated

09.03.2017. It was submitted by learned counsel for the assessee that complete details were given to the AO as to the total F&O losses incurred by the assessee. It was submitted by ld. Counsel for the assessee that the AO made enquiries with brokers and there is no incriminating material before the AO to come to conclusion that these F&O losses were bogus. It was submitted by learned counsel for the assessee that reopening of the concluded assessment u/s 147 of the 1961 Act was done by the AO based on suspicion which is not permitted within mandate of Section 147/148 of the 1961 Act as there was no material before the AO to come to prima facie belief that income of the assessee had escaped assessment. The learned counsel for the assessee brought our attention to paper book /page no. 143 filed with tribunal which is an ledger account of Inventure in the books of accounts of the assessee . The learned counsel for the assessee relied upon the decision of Jaipur-tribunal in the case of DCIT v. Gyandeep Khemka in ITA no. 695/JP/2018 vide orders dated 23.10.2018. It was submitted by learned counsel for the assessee that the Revenue has not recorded statement of the Broker namely Inventure. It was submitted by learned counsel for the assessee that additions were made on account of client code modification based on allegation that these F&O loses are bogus while there is no evidence in possession of Revenue that these F&O losses are bogus . It was submitted by learned counsel for the assessee that total F&O loss of the assessee was Rs. 97,44,423/- out of which F&O loss with the broker Inventure was Rs. 34,67,657.96 . It was submitted by learned counsel for the assessee that out of the aforesaid loss with respect to F&O transactions entered into through Inventure to the tune of Rs. 34,67,657.96 , F & O loss to the tune of Rs. 31,98,579.50 was only disallowed by the AO and rest of the F&O loss was allowed by the AO itself. It was fairly submitted by learned counsel for the assessee that the F&O loss of Rs. 31,98,579.50 was subject to client code modifications undertaken by the brokers with stock exchanges. It was submitted by learned counsel for the assessee that the broker

Inventure is a big broker having turnover of Rs. 97,000/- crores and client code modification undertaken by this broker was less than 1% of the total trading volume , thus it could not be said that this F&O loss was bogus. It was explained by learned counsel for the assessee that there were punching errors done by the broker staff while executing trade orders which were later rectified through client code modifications with stock exchanges which can be done only within 30 minutes of the trade and there is no possibility of perpetrating any fraud on Revenue as the window for client code modification is available only for 30 minutes from the time of trade.

5.3. The Ld. DR submitted that assessee had indulged in F&O transactions wherein there were client code modification undertaken by the assessee in collusion with Brokers namely Inventure , with a view to defraud revenue wherein bogus fictitious loss in F&O to the tune of 31,98,579.50 was claimed as set off against other income's of the assessee. It was submitted by learned DR that the information was received from Director of Income-tax (Intelligence & Criminal Investigations), Mumbai that the assessee is beneficiary of bogus F&O loss through client code modifications undertaken in F&O trades. It was submitted that reasons for reopening of the concluded assessment were recorded by the AO based on incriminating information received from Director of Income-tax (Intelligence & Criminal Investigations), Mumbai and after making enquiries . It was submitted by learned DR that originally no scrutiny assessment was framed by Revenue u/s 143(3) read with Section 143(2) of the 1961 Act and the return of income was originally processed u/s. 143(1) of the 1961 Act . Thus , it was claimed that there could not be thus any change of opinion as scrutiny assessment u/s 143(3) read with Section 143(2) of the 1961 Act was never framed by Revenue against the assessee. It was submitted by learned DR that reopening of the concluded assessment u/s 147 of the 1961 Act was done within four years from the end of the assessment year and first proviso to Section 147 of the 1961 Act is

clearly not applicable. It was submitted by learned DR that the assessee is beneficiary of client code modification through which bogus F&O losses were generated and income of the assessee had escaped assessment. It was pointed out by learned DR that specific incriminating tangible information was received by AO that the assessee is beneficiary of manipulations through client code modification wherein fictitious F&O loss of Rs. 31,98,597.50 was claimed as set off against other income's of the assessee to defraud Revenue. It was submitted by learned DR that the AO has recorded his prima facie belief based on incriminating tangible information received from Director of Income-tax (Intelligence & Criminal Investigations), Mumbai as well by enquiries made prior to issuance of notice u/s 148 that the income of the assessee has escaped assessment which is indication of an independent application of mind by the AO. It was submitted by learned DR that it is a case wherein no scrutiny assessment was originally framed by AO u/s 143(3) read with Section 143(2) of the 1961 Act and the return of income was only processed originally u/s. 143(1) of the 1961 Act and hence there is no change of opinion by the AO. It was submitted that the AO has rightly reopened the concluded assessment for framing reassessment by invoking provisions of Section 147 of the 1961 Act. It was submitted that many brokers who were indulging in manipulation in client code modifications investigated by Department surrendered the amount of commission income received by them on these fictitious losses/profits generated for clients through modus operandi by client code modifications in trades through stock exchange and paid taxes to Revenue on these undisclosed income from brokerages . Our attention was drawn by learned DR to page 144 of the paper book filed with tribunal wherein judgment of Hon'ble Bombay High Court in the case of Coronation Agro Industries Limited(supra) is placed and it was submitted by learned DR that Coronation Agro India Ltd.(supra) was a case wherein original assessment was framed by Revenue u/s. 143(3) while in the instant case the return was originally processed u/s

143(1) of the 1961 Act wherein no scrutiny assessment was framed by Revenue u/s 143(3) of the 1961 Act in the instant appeal before the tribunal. It was submitted by learned DR that in case of Coronation Agro(supra) the notice u/s 148 was issued beyond four years from the end of assessment year and the first proviso to Section 147 was applicable. It was submitted by learned DR that in the case of Smt. Sunita Jain(supra) relied upon by learned counsel for the assessee reopening of the concluded assessment by invoking provisions of Section 147 was not done with respect to client code modification and hence this case is also distinguishable. It was submitted by learned DR by referring to page 143 of paper book which is ledger account of Inventure in the books of accounts of the assessee that all transaction took place in the month of March 2010. It was submitted that inquiries were made by AO from NSE which also revealed that there was a misuse of client code modification . The learned DR made prayers for confirming the additions as were made by the AO vide assessment order which were later confirmed by learned CIT(A).

5.4 The Ld. counsel for the assessee in rejoinder drew our attention to page 19-20 of the paper book wherein reasons for reopening of the concluded assessment u/s 147 of the 1961 Act were recorded . It was submitted that while recording reasons allegation of income escaping assessment to the tune of Rs. 1,19,69,919/- from fictitious F&O Losses were made by the AO in the hands of the assessee owing to client code modifications , while the assessee only had losses from F&O to the tune of Rs. 97,43,632/- and the financial statements of the assessee were before the AO , which reflected lack of application of mind by the AO. It was submitted that finally additions were made by AO for alleged bogus F&O loss to the tune of Rs. 31,98,597.50 by the AO vide reassessment order passed u/s 143(3) read with Section 147 of the 1961 Act.

6. We have considered rival contentions and perused the material on record including cited case laws. We have observed that the

assessee is engaged in the business of TV serials telecast, advertising, film distribution etc. and had income from sale of pre-recorded CD/DVD , royalty, commission and income from investment in shares. The assessee filed its return of income for the impugned assessment year on 07.09.2010 which was processed by Revenue u/s. 143(1) of the Act. Thus, admittedly no scrutiny assessment as is contemplated u/s. 143(3) read with Section 143(2) of the 1961 Act was originally framed by Revenue against the assessee. The AO received information from Director of Income-tax (Intelligence & Criminal Investigation) vide letter No. DIT(I&CI)/CCM/2014-15 dated 27.02.2015 through learned PCIT,Mumbai that some brokers were misusing the Client Code Modification facility in the F&O segment on NSE and had created non-genuine profit/losses which were then extended to various clients/beneficiaries according to their requirements. The assessee was listed as one of beneficiaries of the said client code modification in the aforesaid information received by the AO who has availed fictitious F&O Loss through the broker Inventure during the financial year 2009-10 relevant to impugned assessment year 2010-11. On receipt of information from learned DIT(I&CI), Mumbai through learned PCIT and prior to issuance of notice u/s 148 to the assessee, the AO conducted enquiries with broker Inventure by issuing notices u/s 133(6) of the 1961 Act asking as to client code modification entered in the F&O trade entered into by the assessee in financial year 2009-10 relevant to impugned assessment year 2010-11. The said broker gave reply vide letter dated 15.03.2015 which as per the AO the said reply filed by Broker Inventure was a general and evasive reply wherein specific query asked by the AO vis-a-vis client code modification entered into with reference to trade by assessee through the said broker was not answered by Inventure. The reply of the said broker Inventure vide letter dated 15.03.2015 is reproduced hereunder:

> "*We are SEBI registered Stock Broker having more than 40000 clients and more than 1000 trading location. We have given the right to operate the trading terminal*

functions such as entering the order modifying the order, cancelling the order etc. to our Sub Broker/Authorized Person /Dealers, who are executing the trades on behalf of our clients. Some clients have family account with us and execute large order in one code in order to get the trading opportunity during the market volatility. During the market trading or post-market closing, the NSE provides the facility to modify the trade within the same family/group of clients to rectify the errors made in entering the client code. Because of this reasons, some client code were modified as per the guidelines issued by the Exchange. We further submit to your honor that during the financial year 2009-10, we have more than Rs. 97,000 crore trading volume in NSE F&O segment Where as the total client code modification is less than 1% of the total trading volume."

It was also observed by the AO that spot verifications u/s 131(1A) of the 1961 Act were carried out by Revenue on brokers who were indulging in client code modifications with stock exchanges to manipulate F&O Losses/Profits and these brokers confirmed that they have misused the facility of client code modification in order to create fictitious losses/ profits. The said brokers then surrendered commission income to income-tax which they had earned on these manipulations perpetrated through client code modifications in trade on stock exchanges. The AO reopened the concluded assessment after recording reasons for reopening of concluded assessment u/s 147 of the 1961 Act and after seeking required approvals from appropriate authorities, which led to issuance of notice dated 23.03.2015 by the AO to the assessee u/s 148 of the 1961 Act . We are presently concerned with AY 2010-11 and thus the said notice dated 23.03.2015 issued by the AO u/s 148 was issued within four years from the end of the assessment and hence first proviso to Section 147 of the 1961 Act is not applicable. It is also undisputed that originally no assessment u/s 143(3) read with Section 143(2) was framed and return was originally processed u/s 143(1) of the 1961 Act. Thus, it could not be said that the AO had formed any opinion as to claim of set off of F&O Loss with other incomes filed by the assessee originally when the return of income was processed u/s 143(1) of the 1961 Act and hence

it is not a case of change of opinion. The decision of Hon'ble Supreme Court in the case of ACIT v. Rajesh Jhaveri Stock Brokers P. Ltd(2007) 291 ITR 500(SC) is relevant. At the stage of issuance of notice u/s 148 what is required is a prima-facie belief that based on incriminating tangible information received by the AO that income has escaped assessment. There is a requirement of live link between the tangible incriminating material received by the AO and the formation of belief that the income of the assessee has escaped assessment before invoking provisions of Section 148 of the 1961 Act. There is also requirement of independent application of mind of the AO before reopening of the concluded assessment u/s 147 of the 1961 Act. In the instant case, the AO received information from learned DIT(I&CI), Mumbai through learned PCIT, Mumbai that the assessee is beneficiary of obtaining fictitious F&O Loss from broker which was manipulated losses by modifying client code modifications. It had come to notice that many brokers were indulging in the tax evasions through modification in client code modifications in FY 2009-10 wherein fictitious profit/losses were created which was given by these brokers to their clients/beneficiaries in consideration of brokerage income which was also not disclosed to Revenue but when enquiry was conducted u/s 131(1A), these brokers surrendered these brokerage income from undisclosed sources. Further, the AO itself conducted enquiries prior to issuance of notice u/s 148 of the 1961 Act by issuing notice u/s 133(6) to Broker Inventure and the said broker never gave specific replies but gave general and evasive replies. Thus, the AO also applied independent mind before reopening of concluded assessment u/s 147 of the 1961 Act. Thus, to contend that figure of fictitious F&O losses claimed by the assessee as was received by the AO from learned CIT(I & CI), Mumbai through learned PCIt,Mumbai was in variance with actual F&O loss claimed by the assessee or what was finally disallowed by the AO has no relevance as at this stage only a prima facie belief is required of the AO before reopening of concluded assessment u/s 147 that income has escaped assessment and not a

fool proof conclusive case that income had infact escaped assessment. Thus, in our considered view, reopening of the concluded assessment by the AO by invoking provisions of Section 147 is valid and we sustain the same.

The assessee in response thereof to the notice issued by the AO u/s 148 of the 1961 Act submitted vide letter dated 08.04.2015 to treat return of income filed on 07.09.2010 as return filed in response to notice issued by the AO u/s 148 of the 1961 Act. Before, we proceed further , it will be profitable at this stage to reproduce reasons recorded by the AO for reopening of the concluded assessment u/s 147 of the 1961 Act which are placed in paper book filed by the assessee at page 19-20, which reads as under:

> *" In this case the assessee has filed return of income on 07-09-2010 declaring total income of Rs. 1,14,58,689/-. The same has been processed u/s 143(1) on 27-02-2012 accepting the returned income.*
>
> *The Client code modification facility (CCM) as approved by SEBI and provided by the Exchanges regarding share transactions to brokers is meant to rectify genuine mistakes of punching share transactions to brokers is meant to rectify genuine mistakes of punching of orders of a particular trade given by a particular client in its particular account maintained with the broker. In this facility the broker can change the client code of a particular trade and transfer the trade from one account to another account during the trading hours and time permitted by the Stock Exchange after the trading hours. After the modification of client code is made, it is submitted to the Stock Exchange to modify the client code in the exchange data. The Stock Exchange then records this data as client code modification data.*
>
> *As per letter received from Pr. CIT-16, Mumbai No. PCIT-16/CCM/2014-15 dated 10-03-2015 along with a copy of letter No. DIT(I&CI)/CCM/2014-15 dated 27.02.2015 of Director of Income-tax(Intell. & CR INV.), Mumbai ,* ***it has emerged that many assesses have engaged in Tax evasion through client code modification during F.Y.2009-10 , with the help of brokers who have misused this facility of CCM for creating artificial losses/profits and providing such fictitious profit/losses to various clients by charging some commission. Since the clients have used the fictitious losses for the purpose of reducing their taxable income, the claim of losses needs to be included in their income.***
>
> *As per the details received, M/s Time Media & Entertainment Pvt. Ltd. (PAN AAACT1581C) is one of the Beneficiary of CCM as per the List of*

Beneficiaries under the Jurisdiction of Pr. CIT-16, Mumbai, whose PAN is under this jurisdiction.

Therefore , in view of the above, the amount of Rs. 1,19,69,919/- (Rs.5,98,49,597-Rs.4,78,79,678)have escaped from assessment."

(Emphasis supplied by us)

Thus, as could be seen from the reasons recorded that it came to notice of the Revenue that in FY 2009-10 many brokers had misused this facility of client code modifications to artificially create profits/losses which were passed on various clients/ beneficiaries with a view to defraud revenue. These brokers also benefitted by charging commission incomes for arranging these fictitious losses/profits for clients/beneficiaries. This also led to invocation of provisions of Section 131(1A) of the 1961 Act by Revenue against these brokers wherein these brokers admitted to be engaged in manipulations vide client code modifications in trade entered through stock exchanges wherein fictitious losses/profits were created which were passed on clients/beneficiaries to defraud Revenue. These brokers surrendered income by way of brokerage income earned by them on these fictitious profits/losses passed on to various clients/beneficiaries. As we will see later in this order , the genesis to these client code modifications manipulations in FY 2009-10 lies to a sudden spurt in client code modifications in the month of March 2010 to the tune of Rs. 48,794 crores undertaken by brokers in NSE with an intent to defraud Revenue . This sudden spurt in client code modifications undertaken by Brokers in the month of March 2010 was subject to probe by SEBI and NSE as well by Income-tax Department. As we will see later in this order, there is mention of this sudden spurt in client code modifications in the month of March 2010 in various judicial orders pronounced by Courts/tribunal. It is also pertinent to mention here about the client code modification facility allowed by Stock Exchanges which is permitted in accordance with framework of SEBI/Stock Exchanges rules/regulations and circulars which are issued from time to time. We are reproducing herewith SEBI circular of 05TH July 2011

for the benefit of understanding the concept of client code modification undertaken by Brokers with Stock Exchanges, which is reproduced hereunder:

भारतीय प्रतिभूति और विनिमय बोर्ड
Securities and Exchange Board of India

CIRCULAR

CIR/DNPD/6/2011

July 05, 2011

To
Managing Director/ Chief Executive Officer
Recognised Stock Exchanges

Dear Sir/Madam,

Sub: Modification of Client Codes of Non-institutional Trades Executed on Stock Exchanges (All Segments)

1. In consultation with BSE, MCX-SX, NSE and USE, it has been decided that the Stock Exchanges may allow modifications of client codes of non-institutional trades only to rectify a genuine error in entry of client code at the time of placing / modifying the related order.

2. If a Stock Exchange wishes to allow trading members to modify client codes of non-institutional trades, it shall

   a. lay down strict objective criteria, with the approval of its Governing Board, for identification of genuine errors in client codes which may be modified, and disclose the same to market in advance,
   b. set up a mechanism to monitor that the trading members modify client codes only as per the strict objective criteria, and
   c. ensure that modification of client codes is covered in the internal audit of trading members prescribed by SEBI through its Circular No MRD/DMSCir-29/2008 dated October 21, 2008.

3. Notwithstanding the above,
   A. the Stock Exchanges shall levy a penalty from trading members and credit the same to its Investor Protection Fund as under:

'a' as % of 'b'	Penalty as % of 'a'
≤ 5	1
> 5	2

Where
a = Value (turnover) of non-institutional trades where client codes have been modified by a trading member in a segment during a month.
b = Value (turnover) of non-institutional trades of the trading member in the segment during the month.

B. The Stock Exchange shall conduct a special inspection of the trading member to ascertain whether the modifications of client codes are being carried on as per the strict objective criteria set by the Stock Exchange, as directed in Para 2 above, if 'a' as % of 'b', as defined above, exceeds 1% during a month and take appropriate disciplinary action, if any deficiency is observed.

भारतीय प्रतिभूति और विनिमय बोर्ड
Securities and Exchange Board of India

4. SEBI shall examine implementation of this circular during inspection of the Stock Exchange.

5. This circular is issued in exercise of the powers conferred under Section 11(1) of the Securities and Exchange Board of India Act 1992, read with Section 10 of the Securities Contracts (Regulation) Act, 1956 to protect the interests of investors in securities and to promote the development of, and to regulate the securities market.

6. This circular supersedes the circular No. CIR/DNPD/01/2011 dated January 3, 2011 and shall come into force from August 1, 2011.

7. This circular is available on SEBI website at www.sebi.gov.in under the category "Derivatives- Circulars".

Yours faithfully,

Sujit Prasad
General Manager
Derivatives and New Products Department
022-2644-9460
sujitp@sebi.gov.in

Page 2 of 2

These client code modifications are allowed by SEBI/Stock Exchanges only to rectify genuine errors. These errors are considered genuine which occurred due to punching errors committed by the staff of brokers while executing trade orders or shift is contemplated within relatives . The stock exchanges have also laid down the criteria's based on which client code modification are allowed . It is noted from the policy laid down by Bombay Stock Exchange that these client code modifications are allowed till 4 PM of the same day (NSE till 4.15 PM) in which securities trade is executed i.e. 30 minutes till after closure of trading hours. There is an further longer time extended for client code modifications with respect to currency derivatives with which we are not presently concerned. Say, if trade is executed on 01.01.2019 at 10.0 AM on stock exchange by Mr. A in buying 100 share of Company 'X' through Broker 'L' and the staff of the broker punches the client code of Mr. B while buying 100 shares of Company 'X' , the client code

modifications are allowed for genuine errors by BSE till 4 PM i.e. 30 minutes after closure of trading session of the same day which closes at 3.30 PM in securities market, wherein it was allowed to modify the trade to reflect 100 shares of Company 'X' being bought by Mr. A by modifying client code of Mr. B to that of Mr. A. Thus, contention of the assessee that client code modification are allowed within 30 minutes of the executing of the trade on stock exchange is not correct rather the same is allowed till 30 minutes of the closure of trading session of the stock exchange. Thus, to claim that there is no possibility of fraud being perpetrated through client code modifications owing to limited window of 30 minutes available to effect the aforesaid modification is not correct and rejected as there is an extended window for client code modifications available till 30 minutes from the end of trading session.

Now , coming back to the instant appeal before us, we have observed that the assessee has incurred total F&O loss to the tune of Rs. 97,44,423/- which was debited to P&L account out of which loss of Rs. 31,98,597/- was shown as loss arising out of client code modifications which stood disallowed by the AO. The said addition was later confirmed by learned CIT(A) The assessee had incurred F&O Loss while dealing through Broker Inventure of Rs. 34,67,657.96 , out of which F&O loss to the tune of Rs. 31,98,597.50 was held to be fictitious loss by the AO as was inflicted with client code modifications undertaken by broker with stock exchange. It is pertinent to mention that a massive spurt in client code modifications took place in the month of March 2010 to the tune of Rs. 48,794 crores and NSE had confirmed that this spurt was with an intention to evade taxes. The said sudden spurt in the month of March 2010 in client code modification was probed by SEBI, NSE and IT Department. The assessee incidentally also opened new account with said broker Inventure for undertaking F&O transactions in the month of March 2010 and the entire transactions for F&O trade executed by the assessee with Broker Inventure also took place in the month of March

2010. Incidentally , the assessee made first payment to broker Inventure of Rs. 25 lacs after opening the account on 02.03.2010 and second/final payment of Rs. 25 lacs was made on 09.03.2010. The F&O loss of Rs. 34,67,657.96 occurred in the month of March 2010 in quick succession within short spell and balance amount of Rs.15,32,623.36 was returned by the said broker Inventure to the assessee on 30.03.2010 through banking channel and the balance between both the parties got squared off in the month of March 2010 itself. It is stated by assessee that thereafter no transactions took place with said Broker Inventures and the account of the assessee with said Broker Inventure stood closed. Out of the total loss of Rs. 34,67,657.96 in F & O segment suffered by the assessee with respect to its trade with Broker Inventure , the F&O loss of Rs. 31,98,657.50 was inflicted with client code modifications and was held by the authorities below to be fictitious F&O Loss. The ratio of transactions of the assessee in F & O segment inflicted with client code modifications undertaken with Broker Inventure is as high as 92.21%. The said broker Inventure claimed in its reply to AO vide letter dated 15.03.2015, that its turnover is Rs. 97,000 crores and client code modifications undertaken by it is less than 1% but it failed to explain the reasons for undertaking client code modifications in the case of the assessee as high as 92.2% of the transactions with in short spell in the month of March 2010 itself which month incidentally was the last month of the fiscal year 2009-10 relevant to impugned assessment year 2010-11 where there could be an incentive to bring down income-tax by adopting unfair and illegitimate means and secondly this month of March 2010 also saw a sudden / massive spurt in the client code modifications to the tune of Rs. 48,794 crores undertaken at NSE which was reported by NSE to have been done with an intent to defraud Revenue by evading taxes. The DIT(I& CI) has in its letter dated 27.02.2015 also written that many assessee have engaged in tax evasion through client code modifications during F.Y. 2009-10, with the help of brokers who have misused the facility of client code

modification for creating artificial losses/profits and providing such fictitious profits/losses to various clients by charging some commission income on these fictitious profits/losses for their clients/beneficiaries. The factum of this unusual sudden spurt in client code modifications undertaken by Brokers in the Month of March 2010 at NSE was taken judicial note in the order dated 15.05.2017 passed by Mumbai-tribunal in the case of ITO v. Ninja Securities Private Limited in ITA No. 6570/Mum/2014 for AY 2010-11 to which one of us being Accountant Member was part of the Division Bench pronouncing the order, wherein tribunal observed at page 28 as under:

> *"....There was material on record that there was a large scale transactions of approx Rs 55000 crores entered by brokers through NSE in the month of March 2010 wherein there were modifications in client codes in F & O transactions undertaken by NSE Brokers where in transactions were shifted to another codes by brokers which led to consequent shifting of profit/losses from one entity to another entity and NSE itself has cast shadow of doubt to the sudden spurt in magnitude of client code modifications which spurted from 2.75 lacs modifications in the month of December 2010 involving Rs. 21,896 crores to 6.18 lacs modifications involving value of Rs. 48,794 crores, which again fell to 1.62 lacs modifications with corresponding value to the tune of Rs 11882 crores in April 2010 . Similarly there was a sudden spurt in the client code modifications in currency derivatives. The NSE has itself stated that it is directed towards large scale tax evasion . The NSE itself stated that these transactions were modified beyond normal trading hours and reflect violation of proviso (d) to Section 43(5) of the 1961 Act....."*

The attention is also drawn to judgment passed by Hon'ble Punjab and Haryana High Court in the case of Rakesh Gupta v. CIT reported in (2018) 405 ITR 213(P&H) , wherein Hon'ble Court took cognizance of the SEBI investigation being conducted with respect to client code modifications undertaken by Brokers on NSE in the month of March 2010, as under:-

> ***"13.*** *In this regard, a letter dated 08.03.2016 from the Principal Director of Income-Tax (Investigation) Ahmedabad, is of vital importance. The letter was addressed to the Chief Commissioner*

of Income-tax, Panchkula. The subject of the letter referred to a survey report in respect of Client Code Modification (CCM) being forwarded regarding the dissemination of beneficiary clients who have taken losses and shifted out profits during the financial years 2008-09 to 2011-12. The letter explains that modification of the client code is a practice under which brokers change the client code in sale and purchase orders of securities after the trades are conducted. It further rightly explains that while it is permissible to rectify inadvertent errors, there were concerns that modifications could be made to manipulate the activities in the market. Thus, for instance, if a particular transaction is undertaken in the name of a client, it cannot be shifted to the name or account of another client unless it was on account of an inadvertent error. ***The letter stated that SEBI had conducted a probe into the matter pursuant to the observations by the Finance Ministry about many such modifications having taken place in derivative transactions*** **in the National Stock Exchange during March, 2010.** "

Thus, there was an unusual and sudden spurt in client code modifications in the month of March 2010 undertaken by Brokers in Stock Exchanges. The assessee had also suffered F&O Loss of Rs.31,98,597.50 through Broker Inventure for transactions undertaken through NSE in the month of March 2010 which were inflicted by client code modifications undertaken by Brokers with Stock Exchanges and which were held to be fictitious losses by authorities below. The assessee transactions in F&O segment also happened in the month of March 2010. The transactions inflicted through client code modification incurred through Broker Inventure in the month of March 2010 itself were as high as 92.2% of total transactions executed by assessee with broker Inventure on quantum of loss ratio basis.

At this stage , we would like to now refer and reproduce the decision of Mumbai-tribunal in the case of Ninja Securities Private Limited(supra), wherein Mumbai-tribunal held as under:

"....With respect to the second issue raised vide Ground No. 2 concerning disallowance of loss of Rs. 3,67,83,145/- claimed by the assessee as F & O trading loss which had arisen due to client code modifications undertaken in the month of March 2010 by the brokers of NSE wherein said F & O transactions were modified through client code modification by the three brokers of National Stock Exchange namely

M/s Anugrah Stock & Broking Private Limited , M/s Labdhi Finance Corporation and M/s Wellworth Share and Stock Broking Limited and said F & O transaction were shown as assessee's transaction post modification to reflect loss in the hands of the assessee to the tune of Rs. 3,67,83,145/-, the said loss stood disallowed by the AO considering the same to be sham loss being colorable device adopted by the assessee to evade taxes. The AO observed that there were reports in various financial newspapers that the NSE had allowed its members brokers to make client modifications to the tune of Rs. 55,000 crores in March 2010. Investigations in the matter was carried by DIT(I&CI), Mumbai after obtaining the approval of the CBDT . The notices were issued to NSE calling for relevant details as under :

> *"(i) Details of all such modifications in the format prescribed under Rule 6DDA(v) of the Income Tax rules separately for institutional and non institutional clients.*
>
> *(ii) Details of trade time stamp for each transaction where modifications have been carried out.*
>
> *(iii) Details of all done in the modified and original client code (even those where code were not changed) for relevant dates:*
>
> *(iv) KYC copy of the clients included in the above where value of transaction exceeds Rs. One crore. The replies received from the NSE is as under:-*
>
> *"The number and value of modifications in the client code have gone up dramatically in the month of March, 2010 compared to earlier and succeeding months. This is illustrated in the following table and pertains to Non-institutional clients only in the equity derivatives segment (there is no change in the number of modifications in Institutional accounts consisting mainly of Mutual Funds and FIIs).*

Month	*No. of modifications*	*Value of modifications in crore of rupees*
December 2009	*2.75 lakhs*	*21,896*
January 2010	*3.36 lakhs*	*28,860*
February 2010	*4.05 lakhs*	*35,241*
March 2010	*6.18 lakhs*	*48,794*
April 2010	*1.62 lakhs*	*11,882*

> *(ii) The increase in the client code modifications in the equity derivative segment in March, 2010, is in spite of the fact that trading volume and turnover actually fell during this months.*

(iii) The number of client code modifications in the currency derivative segment in March, 2010 was 19395 and the value thereof was Rs.13282 crores while the comparative figures for January, 2010 was 863 modifications for a total value of Rs.461crores.

(iv) The above facts would indicate that the modifications made were part of an organized tax evasion racket which should be dealt with firmly.

(v) the important point to note is that client codes of deals carried out were changed by the brokers after the close of normal trading hours. The income tax act u/s 43(5) normally considers any transaction in which a contract for purchase or sale of any commodity including shares is settled other than by actual delivery or transfer as a speculative transaction. One of the exceptions to this position is contained in proviso (d) to S. 43(5) which states that an eligible transaction in respect of trading in derivative referred to in clause (act) of section 2 of the Securities Contracts Regulation Act, 1956 (42 of 1956) carried out in a recognized stock exchange) shall not be deemed to be a speculative transaction. An eligible transaction is one which is carried out. electronically on screen based systems and supported by a time stamped contract indicating the unique client identity number and PAN {Expln (i) to S. 43(5)(d)}; The manual change in client code is therefore against the spirit of the Act as laid out above.

(vi) Code changed can legitimately occur in some circumstances. For example, the broker may wrongly feed the client code of the husband when the shares are actually held by the wife. Similarly, there may be confusion between a HUF and individual having the same name. It is also observed that mutual funds follow a practice of purchasing shares under the code and then allotting to different schemes at the end of the day.

(vii) Other than the above, it is difficult to understand how a code change can legitimately occur.

viii) Code changes reported by the Exchange have been made to set off a trade made in normal trading hours though screen based trading in some earlier trading session. To clarify, a code change cannot take place from a static position it is always done to set off a trade which has already taken place.

(ix) There has always been practice on Dalal Street of booking artificial profits or losses in March to Impact tax liabilities. This requires buying or selling stocks intra-day so as to consciously incur a loss and use that as a tax offset. (Or conversely to create a profit where carried forward or current year losses are available). This is

normally done during normal trading hours using synchronized trades (called 123 trades: where orders are placed at the same time in system.)

x) The role of code modifications comes when these synchronized trades do not work due to market volatility. To clarify, suppose there are two clients, A that wants to book a loss and B that want to book a gain.

(xi) So A buys stock 'x' from, B at Rs. 100 a share in anticipation that the closing market price will be Rs. 90 rupees. But instead the stock, thanks to a volatile market, moves up and closes at a price of Rs. 110 if the position is squared at the end of the day. A would end up with a Rs.10 profit instead of a Rs.l0 loss and B is left holding a loss instead of the anticipated profit.

(xii) What the helpful broker does then is to swap the 2 client codes after the close to trading hours, thus gifting A a loss and B a profit. Since on the exchange the trades have been squared, there are no delivery obligations and everybody is satisfied.

(xiii) Market insiders say this subterfuge took a new, sophisticated proportions since 2004 with the advent of derivative trading and became rampant on the NSE as it was the only exchange with a liquid derivatives market.

(xiv) The above narration is one possible scenario for code changes aimed at tax evasion and not the only one.

(xv) The mere fact that a code change has occurred is not sufficient to arrive at a conclusion that the purpose was tax evasion. The broker concerned is very likely to give a certificate that he had made a mistake and there was no fault of the two parties concerned as was done in this case.

{xvi) As stated earlier a client code change implies that an earlier transaction has happened in the Stock Exchange it has sought to be set off by the present code change."

The A.O. after analyzing the facts and modus operandi of the above illustrations, observed as under:

"(a) it is seen that in the month of the March, 2010 the assessee has shown modified transaction in F&O segment.

(b) These transactions are entered by broker M/s Anugrah Stock & Broking Pvt. Ltd., M/s Labadhi Finance Corporation and M/s Wellworth Share & Stock Broking Ltd. and shown as modified in the assessee company's name.

(c) It. is seen from the details availed from NSE that the assessee has entered and settled the transactions on the same day and it has resulted in loss of Rs.l,55,89,067/- (i.e. Rs. 28,19,798- Rs. l,83,98,865).

(d) It has also observed from the assessee's F&O Transactions entered during the F.Y. 2009-1O has resulted in net profit of Rs.1,51,17,420/- (i.e. Rs. 2,04,97,205- Rs.53.,79,785).

(e) It is observed from the details that the assessee has adjusted the loss on sale of shares of other companies against the profit of the assessee company and resulted into low profit offered for taxation.

(f) There are total of 1113 transaction on sale side involving transaction value of Rs. 40,51,75,893/- and 1353 transaction on buy side involving transactions value of Rs. 40,79,95,691/-. These transactions are recorded between 04.03.2010 to 25.03.2010 i.e. within a span of 9 trading sessions on 4th, 5th, 9th, 10th , 11th, 15th, 22nd,23rd and 25th of March., 2010.

(g) This is absolutely very strange on part of any broker or an employee of a broker to so many human errors within a span of just 9 trading sessions in a particular pattern and timing involving such huge money and stakes in crores of rupees without the connivance of the broker and the client.

(h) A list of transactions as reported in the NSE with regard to the above stated client code modifications are enclosed and forming part of this order as annexure –A to this order.

(i) It could be seen from the above Annexure –A, the modifications are done in the trading hours which is against the normal trading trends and practices. Normally the genuine errors could be traced only at the end or towards the end of the trading session and corrected or modified under intimation to the exchange."

The assessee in response to notice dated 18-03-2013 issued by the AO did not file any reply before the AO rather sought directions from the Addl. CIT u/s 144A to the AO to not making any disallowance of loss incurred through the transactions of client code modifications, who observed that large number of code changes had been made in assessee's case during the month of March 2010 which were claimed to be punching errors . The assessee also claimed before the learned Addl. CIT that these client code changes had been done by broker and were done during the market hours . The learned Addl. CIT after considering the petition of the assessee directed the AO to verify the contentions and claims of the assessee and to ascertain the facts on the basis of information gathered from various sources. The AO was also directed by the learned Addl. CIT u/s 144A to determine whether the

client code changes, which had appeared in large numbers in the month of March 2010 had the effect of reducing the tax payable by the assessee and in-fact was used as a device for tax avoidance and to pass the assessment order accordingly .

It is important to note at this point of time that notice was issued by the AO on 18-03-2013 .The assessee in response to the notice of the AO instead of replying before the AO , approached the learned Addl. CIT vide letter dated 20-03-2013 seeking direction to the AO. The learned Addl. CIT after calling from report from the AO and granting opportunity of heard to the assessee, issue directions to the AO u/s 144A on 22-03-2013.The assessment were getting time barred on 31-03-2013 as provided u/s 153 of the 1961 Act. The AO passed assessment order on 28-03-2013 u/s 143(3) of the 1961 Act.

Thus, the A.O. doubted the genuineness of the transaction of losses of Rs. 3,67,83,145/- as in the opinion of the AO these transactions are structured pre-planned to generate a loss arising as business loss and these transaction were entered to avoid taxes and is a fiscal nullity being colorable device to evade taxes, as held by the AO. The AO observed that there is a nexus between the broker and the assessee in entering into these transactions which are preplanned and premeditated with object to generate losses to offset the profits made previously made or to be made in future with a view to avoid and evade taxes. The AO observed that the onus lies on the assessee to prove that these transactions are genuine. The A.O. finally concluded that the assessee's transactions have no commercial purpose apart from the avoidance of tax liability and are sham transaction. The A.O. also cited several case laws in support of his conclusion are illustrated vide his order page No. 20 to 24 to come to conclusion that these are not genuine transactions but sham and colorable transactions with objective of evading taxes. The A.O. accordingly disallowed the loss claimed of Rs. 3,67,83,146/- and added the same to total income of the assessee, vide assessment order dated 28-03-2013 passed u/s 143(3) of the 1961 Act.

The learned CIT(A) while deciding first appeal observed that directions were issued by learned Addl. CIT u/s 144A to AO to cause verifications from NSE as to factual position as per submissions of the assessee and to ascertain correct facts on the basis of information so gathered afterwards from various sources which was not done by the AO . The learned CIT(A) observed that the AO was also directed by learned Addl. CIT vide orders dated 22-03-2013 u/s 144A to determine whether client code change which has appeared in large number in the month of March 2010 , had the effect of reducing the tax payable by the assessee and to see whether the same was adopted as an device for tax avoidance. It was observed by learned CIT(A) that the AO has not made any further investigation or enquiry nor caused any verification from the brokers namely Anugrah Stock and Broking Private Limited, Labdhi Finance Corporation and M/s Wellworth Share and Stock Broking Ltd or from Vice President Investigation, NSE or from General Manager, SEBI. The finding was recorded by learned CIT(A) that when no further investigation or proper verification has been made by the AO, there is no compliance of order u/s 144A dated 22-03-2013 of the Addl.

CIT and hence it was observed by the learned CIT(A) that contentions of the assessee cannot be ignored or brushed aside and hence it was observed that assessment order of the AO cannot be sustained on legal footing. After recording the above finding, learned CIT(A) granted the relief to the assessee on the grounds that the AO did not conducted enquiry as per directions of the learned Addl. CIT and the AO disallowed the said loss merely on presumption that these transactions were sham transactions to evade and avoid taxes. The learned CIT(A) observed that these client code modifications necessitated by punching errors in the office of the broker were done during normal trading hours and were as per exchange norms and SEBI circulars. It was observed that there are in few cases similarity in clients codes which were modified such as client code modification from code ANC 21 to PNL 21 as also from 31951 to 31953 are similar and hence there is a genuine possibility of punching errors. The learned CIT(A) observed that when share trading income of Rs. 1,83,53,985/- is brought to tax by the AO , it is contradictory on the part of the AO to have disallowed transactional loss of Rs. 3,67,83,146/- . It was thus, held by learned CIT(A) that it was wrong on the part of the AO to disallow the loss by treating it as sham transaction more-so when no action has been taken by SEBI and NSE against the assessee. Thus the disallowance of loss of Rs. 3,67,83,146/- as was made by the AO was deleted by learned CIT(A) vide appellate order dated 05-08-2014.

We are afraid that this approach of learned CIT(A) disregarding the material on record and coming to certain conclusions without any material on record is completely flawed to the extent that it has made the order of learned CIT(A) enter the arena of perversity and this order of learned CIT(A) cannot be sustained in the eyes of law and is liable to be set aside. The powers of the learned CIT(A) is co-terminus with the powers of the AO including powers to enhance assessment, after following due procedures as contemplated by law. Attention is drawn to Section 251(1)(a) and 251(2) of the 1961 Act which provides as under :

> *"Powers of the [Commissioner (Appeals)].*
>
> *251. (1) In disposing of an appeal, the [Commissioner (Appeals)] shall have the following powers—*
>
> *(a) in an appeal against an order of assessment, he may confirm, reduce, enhance or 7 annul the assessment*
>
> *[(aa) ******
>
> *(b) ******
>
> *(c) ******
>
> *(2) The [Commissioner (Appeals)] shall not enhance an assessment or a penalty or reduce the amount of refund unless the appellant has had a reasonable opportunity of showing cause against such enhancement or reduction.*
>
> *Explanation.—In disposing of an appeal, the [Commissioner (Appeals)] may consider and decide any matter arising out of the proceedings in which the order*

appealed against was passed, notwithstanding that such matter was not raised before the [Commissioner (Appeals)] by the appellant."

If the powers of the learned CIT(A) are co-terminus to the powers of the AO including the power of enhancement, the same cannot be used in an arbitrary manner but need to be exercised in a manner to achieve the mandate of the 1961 Act which is directed towards collection of correct taxes from the taxpayer. Any exercise of the power by learned CIT(A) in an arbitrary manner or in disregard of the facts on records or coming to conclusions without any material on record will make the order of the learned CIT(A) perverse and unsustainable in the eyes of law.There was material on record that there was a large scale transactions of approx Rs 55000 crores entered by brokers through NSE in the month of March 2010 wherein there were modifications in client codes in F & O transactions undertaken by NSE Brokers wherein transactions were shifted to another codes by brokers which led to consequent shifting of profit/losses from one entity to another entity and NSE itself has cast shadow of doubt to the sudden spurt in magnitude of client code modifications which spurted from 2.75 lacs modifications in the month of December 2010 involving Rs. 21,896 crores to 6.18 lacs modifications involving value of Rs. 48,794 crores, which again fell to 1.62 lacs modifications with corresponding value to the tune of Rs 11882 crores in April 2010 . Similarly there was a sudden spurt in the client code modifications in currency derivatives. The NSE has itself stated that it is directed towards large scale tax evasion . The NSE itself stated that these transactions were modified beyond normal trading hours and reflect violation of proviso (d) to Section 43(5) of the 1961 Act. The relevant extract of NSE replies are as under:

"The number and value of modifications in the client code have gone up dramatically in the month of March, 2010 compared to earlier and succeeding months. This is illustrated in the following table and pertains to Non-institutional clients only in the equity derivatives segment (there is no change in the number of modifications in Institutional accounts consisting mainly of Mutual Funds and FIIs).

Month	*No. of modifications*	*Value of modifications in crore of rupees*
December 2009	*2.75 lakhs*	*21,896*
January 2010	*3.36 lakhs*	*28,860*
February 2010	*4.05 lakhs*	*35,241*
March 2010	*6.18 lakhs*	*48,794*
April 2010	*1.62 lakhs*	*11,882*

(ii) The increase in the client code modifications in the equity derivative segment in March, 2010, is in spite of the

fact that trading volume and turnover actually fell during this months.

(iii) The number of client code modifications in the currency derivative segment in March, 2010 was 19395 and the value thereof was Rs.13282 crores while the comparative figures for January, 2010 was 863 modifications for a total value of Rs.461crores.

(iv) The above facts would indicate that the modifications made were part of an organized tax evasion racket which should be dealt with firmly.

(v) the important point to note is that client codes of deals carried out were changed by the brokers after the close of normal trading hours. The income tax act u/s 43(5) normally considers any transaction in which a contract for purchase or sale of any commodity including shares is settled other than by actual delivery or transfer as a speculative transaction. One of the exceptions to this position is contained in proviso (d) to S. 43(5) which states that an eligible transaction in respect of trading in derivative referred to in clause (act) of section 2 of the Securities Contracts Regulation Act, 1956 (42 of 1956) carried out in a recognized stock exchange) shall not be deemed to be a speculative transaction. An eligible transaction is one which is carried out. electronically on screen based systems and supported by a time stamped contract indicating the unique client identity number and PAN {Expln (i) to S. 43(5)(d)}; The manual change in client code is therefore against the spirit of the Act as laid out above.

The sudden and huge spurt in the last months of the previous year itself is indicative of manipulations and collusive action by the person acting in concert to rig the profits/losses to manipulate with profits / losses and consequently taxes and NSE itself confirming that these facts indicate that it is a part of organized tax evasion racket, needed further probe . All the transactions in the case of the assessee happened in the month of March 2010 in just 9 trading sessions with three brokers namely Anugrah Stock & Broking Private Limited, Wellworth Share & Stock Broking Limited and Labdhi Finance Corporation wherein large number of sale and purchase transactions were entered in the name of the assessee through modified client codes in just 9 trading session . The relevant extract of the AO findings are as under:

(f) There are total of 1113 transaction on sale side involving transaction value of Rs. 40,51,75,893/- and 1353 transaction on buy side involving transactions value of Rs. 40,79,95,691/-. These transactions are recorded between 04.03.2010 to 25.03.2010 i.e. within a span of 9 trading sessions on 4th, 5th, 9th, 10th , 11th, 15th, 22nd,23rd and 25th of March., 2010.

(g) This is absolutely very strange on part of any broker or an employee of a broker to so many human errors within a span of just 9 trading sessions in a particular pattern and timing involving such huge money and stakes in crores of rupees without the connivance of the broker and the client.

The finding of learned CIT(A) that SEBI and NSE has not taken any action against the assessee is also not supported by any material on record as no such enquiry was conducted by AO and/or CIT(A) . It was only in response to initial enquiry conducted by DIT(I&CI) based on newspaper reports from NSE that NSE confirmed that there was a spectacular rise in client code modifications in March 2010 which indicates towards tax evasion, which information was passed on by DIT(I&CI) to the AO. No enquiry could be conducted by AO during assessment proceedings nor in response to directions of Addl. CIT dated 22-03-2013 . The learned CIT(A) also did not conducted any enquiry nor directed AO to conduct any enquiry during appellate proceedings. The powers of learned CIT(A) are co-terminus with the powers of the AO including power of assessment. When the powers are granted by statute, the same need to be exercised in a manner to achieve the mandate of the 1961 Act to compute correct taxes in the hands of tax-payer. The powers cannot be used in an arbitrary manner otherwise the orders passed in pursuance of such arbitrary use of powers will enter the arena of perversity. The learned CIT(A) was fully aware that the AO could not comply with directions of learned Addl. CIT issued u/w 144A to conduct relevant enquiry, examination and verification as was directed by learned Addl. CIT due to matter getting time barred on 31-03-2013 as direction were issued only on 22-03-2013, it was incumbent on the learned CIT(A) to conduct the necessary enquiry , examination and verifications as were directed by learned Addl. CIT or should have directed AO to conduct such enquiry and furnish remand report to the learned CIT(A) before any relief could be granted by learned CIT(A)). The AO after relying on large number of judicial precedents held the transactions to be collusive and sham with an intent to evade taxes. The learned CIT(A) whose powers being co-terminus with the powers of the AO entered into blame game by blaming the AO for not following the directions of the learned Addl. CIT in complete disregard of the fact that the directions of the learned Addl. CIT u/s 144A were issued only on 22-03-2013 while the assessment was getting time barred on 31-03-2013 as provided u/s 153 of the 1961 Act. The learned CIT(A) in exercise of powers granted u/s 251(1)(a) of the 1961 Act ought to have got the said directions complied with by persuing the same at its own end to bring it to logical conclusions or ought to have directed the AO to complete the enquiries and verifications as are necessary for the said purposes and submit remand report to learned CIT(A). The intent being to compute correct taxes in the hands of the assesse as per mandate of the 1961 Act instead of entering into blame game. If such powers are not used by learned CIT(A) to achieve the mandate of the 1961 Act to compute correct tax liability of the tax-payer, then the power of learned CIT(A) being co-terminus with the powers of AO will be reduced to dead words, which is not the intention of the legislature in granting such powers as there has to be effective use of powers by authorities who are vested with said powers directed to achieve the mandate of the

1961 ACT. In our considered view, the appellate order of learned CIT(A) is perverse and cannot be sustained keeping in view factual matrix of the case . The AO based on material on record on the touchstone of preponderance of human probabilities surrounding the case has come to conclusion that these losses are not genuine and are sham and collusive to evade taxes. The AO based hus decision on large number of judicial precedents which found mention in the assessment order at page 20-24. There is per-se no perversity in the assessment order of the AO as the facts surrounding the case clearly and strongly suggests and points to a collusive action on the part of the assessee and brokers who were acting in concert to avoid and evade taxes, which needed further probe to come to definitive conclusions as was rightly directed by learned Addl CIT vide directions dated 22-03-2013 u/s 144A of the 1961 Act. The huge magnitude of client code modifications in the last month of the previous year as well in the case of the assessee all the client code modifications being accorded and ascribed to punching errors cannot be mere chance to say that it is in the realm of suspicion or speculation .Rather the circumstances seen cumulatively takes it to a higher pedestal than being mere a suspicion. We are conscious of the fact that suspicion howsoever strong cannot take the place of proof. The liability to tax under the provisions of the 1961 Act is required to be fastened on the touchstone of preponderance of human probabilities , and strict proof / evidences as required under Indian Evidence Act, 1872 may not be pressed to fasten the tax-liability. No-doubt the assessee has placed on record broker confirmations but perusal of these conformations to suggest that such a large magnitude of client code modifications were carried out in the last month of the previous year i.e. March 2010 and that too in 9 trading sessions and all being ascribed to punching errors do not inspire confidence rather it clearly suggest a collusive, manipulative rigged action by persons acting in concert to evade and avoid taxes which needed further probe to fasten tax-liability on the assessee. We have also gone through brokers confirmation which are part of the paper book/page 37-67 and we have observed that client code is changed from 4403 to 61495 on 04-03-2010 by Wellworth Share and Stock Brokers Limited(pb/page 37), client code is changed from 31495 to 61495 on 08-03- 2010 by Wellworth Share and Stock Brokers Limited(pb/page 38),client code changed from 7416 to 61495 by Wellworth Share and Stock Brokers Limited on 15-03-2013 (pb/page 39) , client code changed from 61495 to 7744 by Wellworth Share and Stock Brokers Limited on 08-03-2010(pb/page 49) , client code changed from 61495 to 10057 by Wellworth Share and Stock Brokers Limited on 08-03-2010(pb/page 50), client code changed from 61495 to 8428 by Wellworth Share and Stock Brokers Limited on 10-03- 2010(pb/51), client code changed from 61495 to 7744 by Wellworth Share and Stock Brokers Limited on 10-03-2010(pb/page 52), client code changed from 61495 to 74561 by Wellworth Share and Stock Brokers Limited on 11- 03-2010 (pb/53) , client code is changed from 61495 to 8014 on 11-03-2010 by Wellworth Share and Stock Brokers Limited(pb/page 54 , client code is changed from 61495 to 74652 on 11-03-2010 by Wellworth Share and Stock Brokers Limited(pb/page 55 , client code is changed from 61495 to 7015 on 15-03-2010 by Wellworth Share and Stock Brokers Limited(pb/page 56)))etc.. The above is not exhaustive list but few instances quoted above to reflect that there is vast difference between

the wrong codes from where the transactions were shifted to a correct code and possibility of punching error with such differential codes and that too in only 9 trading sessions which happened to be the month of March 2010(last month of previous year) in large magnitude of transactions was not mere coincidence and is a strong pointer to manipulation and collusive action of certain person acting in concert to evade taxes. This also raises another important question as to how many client codes are maintained by the assessee with the same broker and the reasons to have multiple codes. As could be seen above that large number of client codes are maintained by the assessee with the broker namely Wellworth Share and Stock Brokers Limited namely code numbers 61495,7744,10057, 8428, 74561, 6449 , 8014, 7015,74562 etc. Regarding the contention of the assessee that NSE/SEBI permits the client code modifications, we have gone through the relevant circulars which are placed in paper book/page 68-72, we have observed that the said circulars clearly allows only 'genuine' client code modifications of transactions in the stock exchange. If the transaction is held to be 'non-genuine', we are afraid circulars of NSE/SEBI relied upon will not be applicable. Reference is drawn to circular no 663 dated 29-07-2010(Ref. No.: NSE/INVG/2011/184840 issued by NSE wherein it is clearly stipulated as under(relevant portion is extracted below):

> *" The Exchange has provided the facility of client code modification only to rectify genuine errors. Further, as per point 2(a) and 3(B) of the SEBI circular date dated July 5, 2011 , the following client code modifications would be considered as genuine modifications , provided there is no consistent pattern in such modifications;*

i) Where original client code/name and modified client code/name are similar to each other but such modification are not repetitive.

ii) Where original client code and modified client code belong to a family. (Family for this purpose means spouse, dependent parents, dependent children and HUF)"

The assessee case does not fall under the above category of genuine client code modifications allowed by NSE as we have seen that in large number of client code modifications, there are no similarity between wrong code and correct code and secondly there are repetitive client code modifications. Thus, client code modifications which are tainted with collusive action and manipulations shall go out of the protection granted by these circulars of NSE/SEBI. These aspects requires proper enquiry, examination and verifications which under the circumstances authorities below ought to have done to bring it to logical conclusion and to reach to the end of the financial trail to unearth scheme of tax evasion and avoidance adopted by persons acting in concert including entering into synchronized transactions simultaneously of purchase and sale of the same securities at same time to neutralize the collective profit/loss to zero but at the same time distribute profits/loss separately arising from each of the squared transactions . These requires coordinated enquiries by various agencies to reach to the

bottom of the truth. To term all such inconsistencies as are pointed out as mere suspicion shall not be correct as collectively they are pointing towards a collusive and manipulative action on part of certain persons acting in concert to avoid taxation. We are fully aware that suspicion howsoever strong cannot take place of proof but these inconsistencies collectively are on higher pedestal than merely being a suspicions which requires deeper probe to unearth the collusive action on behalf of certain parties acting in concert to manipulate the system to evade and avoid taxes. The assessee has placed reliance on decision of the tribunal in the case of Pat Commodity Services Private Limited(supra) which was decided on its own facts and there were small fraction of transactions effected by client code modification while in the instant case we have seen that large number of transactions with large magnitude were affected by client code modifications in the month of March 2010 which was itself categorized by NSE were effected towards tax evasion . Similarly , the assessee has placed reliance on decision of Hon'ble Bombay High Court in the case of Coronation Agro Industries Limited v. DCT in ITA no. 2627 of 2016 vide judgment dated 23-11-2016 wherein Hon'ble Bombay High Court was seized with an issue of escapement of income u/s 148 of the 1961, wherein Hon'ble jurisdictional High Court held that the notice u/s 148 of the 1961 Act was without jurisdiction as it lacks reason to believe that income chargeable to tax has escaped assessment and on facts it was held that the AO is suspecting income to have escaped assessment rather having reasons to believe that income has escaped assessment. These cases relied upon by the assessee were clearly distinguishable and are not relevant for deciding the instant appeal wherein facts are materially different as set out above. For Now, we are of the considered view, the appellate order of the learned CIT(A) cannot be sustain in the eyes of law as it is suffering from serious flaw and is perverse as indicated by us as above, and hence we are inclined to set aside the order of learned CIT(A) and restore the matter to the file of the learned AO for fresh adjudication of the issue on merits in accordance with law and in compliance with directions issued by Addl. CIT vide orders dated 22-03-2013 passed u/s 144A of the 1961 Act . Needless to say proper and adequate opportunity of being heard shall be granted by the AO to the assessee in accordance with principles of natural justice in accordance with law. The AO shall admit all relevant evidences and explanations submitted by the assessee in its defense. We order accordingly.

10. In the result, appeal filed by the Revenue in ITA No. 6570/Mum/2014 for assessment year 2010-11 is partly allowed for statistical purposes as indicated above."

It would also be profitable at this stage to reproduce the judgment of Hon'ble Punjab and Haryana High Court in the case of Rakesh Gupta v. CIT(supra) wherein the Hon'ble Punjab and High Court dealt with this issue of client code modification in detail, by holding as under:

*"**19.** It is evident that the AO before issuing the notice had applied his mind independently to the information received from the Investigation Wing. Although the information was derived from the Investigation Wing, the satisfaction to the effect that Client Code Modification (CCM) has been used for shifting losses and to manipulate the income by the petitioner is his. It is not a case where merely on receipt of information a notice had been issued. Thus although the information may be borrowed the satisfaction was not. The respondents with their reply have annexed the material chart on the basis of which the AO recorded his reasons. The merely receipt of information from another source would not be a ground to challenge the initiation of proceedings. The only requirement would be the satisfaction of the AO regarding and based on the said information. The issue of borrowed satisfaction and issuance of notice on the direction of a higher authority is not there. The data qua the petitioner was analysed by the AO and thereafter, notice was issued. The reliance on the concluding lines of the information received from Ahmedabad to contend that it contained a direction to initiate proceedings is ill founded. It was only a suggestion to the concerned AO.*

***20.** From a perusal of the chart, it is evident that it was not a case of one or two CCMs. The CCM has been used 74 times between 19.12.2008 and 10.09.2009.*

***21.** In Sheo Nath Singh v. AAC [1971] 82 ITR 147 (SC), relied upon by Mrs. Suri, the Supreme Court held:—*

"In our judgment, the law laid down by this court in the above case is fully applicable to the facts of the present case. There can be no manner of doubt that the words "reason to believe" suggest that the belief must be that of an honest and reasonable person based upon reasonable grounds and that the Income-tax Officer may act on direct or circumstantial evidence but not on mere suspicion, gossip or rumour. The Income-tax Officer would be acting without jurisdiction if the reason for his belief that the conditions are satisfied does not exist or is not material or relevant to the belief required by the section. The court can always examine this aspect though the declaration or sufficiency of the reasons for the belief cannot be investigated by the court."

It is important to note that the Supreme Court found in that case that there was no material or fact which had been stated in the reasons for starting the proceedings for re-opening the assessment. In the case before us, as already discussed, this is not so.

***22.** As we will now indicate it is not necessary that the AO must know or be certain that income has escaped assessment. The AO must have reason to believe it has. He may finally accept the assessee's case. That would make no difference to the validity of the invocation of sections 147 and 148.*

***23.** In ITO v. Purushottam Das Bangur [1997] 90 Taxman 541/224 ITR 362 (SC), relied upon by Mr. Putney, the Supreme Court rejected the contention of the assessee that the information received from the Deputy Director, Directorate of Inspector (Investigation) was not a definite information and should not be acted upon by the Income Tax Officer for taking action under Section 147 of the Act. It was held that the*

information contained in the letter could form the basis for forming an opinion that there was reason to believe that income had escaped assessment without any further verification. In that case, the assessee claimed to have suffered a long term capital loss. The AO accepted the case and made the assessment order. What happened thereafter and the decision of the Supreme Court in respect thereof is as follows :-

> *"Subsequently, the Income Tax Officer received a letter dated March 21, 1974 from Shri S.M. Bagai, Deputy Director, Directorate of Inspector (Investigation), Special Cell, New Delhi, wherein it was stated that on information obtained from the Bombay Stock Exchange Directory the book value per equity share of Maharaja Shree Umaid Mills Ltd, rose form Rs. 318.55 for the year ending December 21, 1965, to Rs. 401 for the year ending December 31, 1970, and the earning per share rose from Rs. 8.37 per share to Rs. 44 per share during the abovementioned period and that the dividend percentage also rose from 2 per cent to 10 per cent, for the same period, but the quotations of the shares in Calcutta Stock Exchange fell from Rs. 168 to Rs. 85 per share during this period. In the said letter of Shri Bagai it was stated that it was clear from these facts that the quotations appearing are as a result of certain manipulated transactions between the group and in cannot be said that to reflect the fair market value of the company. Alongwith the said letter Shri Bagai had annexed the information which was gathered by him on the basis of the Bombay Stock Exchange Directory and other information. The said letter of Shri Bagai was received by the Income Tax Officer on March 26, 1974. On March 27, 1974, he issued a notice under Section 147 (b) of the Act whereby the assessee was informed that the Income Tax Officer had the reason to believe that assessee's income chargeable to tax for the assessment year 1969-70 had escaped assessment and, therefore, the assessing authority proposed to reassess the income for the said assessment year and the assessee was required to deliver to him a return in the prescribed form of his income for the said year. Feeling aggrieved by the said notice, the assessee filed Writ Petition No. 1177 of 1974 in the Rajasthan High Court.*

** ** **

On the basis of the information contained in the letter of Shri Bagai and the documents annexed to it, the Income Tax Officer could have had reason to believe that the fair market value of the shares was far more than the sale price and the market quotations from Calcutta Stock Association shown by the assessee at the time of original assessment were manipulated ones and as a result income chargeable to tax had escaped assessment. It could not be said that the information that was contained in paragraph 2 of the letter of Shri Bagai was not definite information and it could not be acted upon by the Income Tax Officer for taking action under Section 147 (b) of the Act.

Ms. Gauri Rasgotra, the learned counsel appearing for the respondents, has urged that the letter of Shri Bagai was received by the Income- tax Officer on March 26, 1974 and on the very next day, that is, on March 27, 1974, he issued the impugned notice under Section 147 (b) of the Act and that he did not have conducted any inquiry or investigation into the information sent by Shri Bagai. Merely because the impugned notice was sent on the next day after receipt of the letter of Shri Bagai does not mean that the Income Tax

Officer did not apply his mind to the information contained in the said letter of Shri Bagai. On the basis of the said facts and information contained in the said letter, the Income Tax officer, without any further investigation, could have formed the opinion that there was reason to believe that the income of the assessee chargeable to tax had escaped assessment. The High Court, in our opinion, was in error in proceeding on the basis that it could not be said that the Income Tax Officer had in his possession information on the basis of which he could have reasons to believe that income of the assessee chargeable to tax had escaped assessment for the relevant assessment years. For the reasons aforementioned, we are unable to uphold the impugned judgment of the High Court. The appeal is, therefore, allowed, the impugned judgment of the High Court is set aside and the Writ Petitions filed by the respondents are dismissed. No order as to costs."

(Emphasis Supplied)

The judgment clearly applies to the case before us. The reliance upon the information supplied by the ADIT was justified. There is nothing to indicate that the information collected did not pertain to or was not concerned with the persons referred to. The respondent made his own inferences on the basis thereof.

24. *In AGR Investment Ltd. v. Addl. CIT [2011] 9 taxmann.com 62/197 Taxman 177/333 ITR 146 (Delhi), relied upon by Mr. Putney, in a challenge to the initiation of proceedings under Section 147 of the Act, the Delhi High Court held that specific information received from the office of Director of Income Tax (Investigation) regarding transactions entered into by the assessee Company for accommodation entries is not a change of opinion and is material for the AO having reason to believe that income had escaped assessment. We respectfully agree with this view.*

25. *The AO had in his possession information collected by a Wing of the department, specially constituted for the purpose of collecting information. The data concerning the assessee was part of the information received. The information was specific and not vague. In challenge to initiation of proceedings the Court has to prima facie satisfy itself regarding existence of reasons to believe. It is not for this Court to go into the sufficiency of the reasons. Even the final outcome of the proceedings is not relevant. Reliance was rightly placed on the following decisions of the Hon'ble Apex Court to justify the proceedings under Sections 147/148 in view thereof.*

26. *In Kantamani Venkata Narayana & Sons v. First Addl. ITO AIR 1976 SC 587, the Supreme Court held as under :—*

"The High Court has pointed out that no final decision about failure to disclose fully and truly all material facts bearing on the assessment of income and consequent escapement of income from assessment and tax could be recorded in the proceedings before them. It certainly was not within the province of the High Court to finally determine that question. The High Court was only concerned to decide whether the conditions which invested the Income Tax Officer with power to re-open the assessment did exist, and there is nothing in the Judgment of the High Court which indicates that they disagreed with the view of the Trial Court that the conditions did exist."

27. *In Central Provinces Manganese Ore Co. Ltd. v. I.T.O. [1991] 59 Taxman 17, the Supreme Court held as under :—*

> *"11. So far as the first condition is concerned, the Income-tax Officer, in his recorded reasons, has relied upon the fact as found by the Custom Authorities that the appellant under-invoiced the goods he exported. It is no doubt correct that the said finding may not be binding upon the Income- tax authorities but it can be a valid reason to believe that the chargeable income has been under-assessed. The final outcome of the proceedings is not relevant. What is relevant is the existence of reasons to make the Income-tax Officer believe that there has been under- assessment of the assessee's income for a particular year. We are satisfied that the first condition to invoke the jurisdiction of the Income-tax Officer under Section 147 (a) of the Act was satisfied."*

28. *In Raymond Woollen Mills Ltd. v. ITO [1999] 236 ITR 34 (SC), relied upon by Mr. Putney, the Supreme Court held :—*

> *"In this case, we do not have to give a final decision as to whether there is suppression of material facts by the assessee or not. We have only to see whether there was prima facie some material on the basis of which the Department could reopen the case. The sufficiency or correctness of the material is not a thing to be considered at this stage. We are of the view that the court cannot strike down the reopening of the case in the facts of this case. It will be open to the assessee to prove that the assumption of facts made in the notice was erroneous. The assessee may also prove that no new facts came to the knowledge of the Income-tax Officer after completion of the assessment proceeding. We are not expressing any opinion on the merits of the case. The questions of fact and law are left open to be investigated and decided by the assessing authority. The appellant will be entitled to take all the points before the assessing authority. The appeals are dismissed. There will be no order as to costs."*

29. *In Asstt. CIT v. Rajesh Jhaveri Stock Brokers (P.) Ltd. [2007] 161 Taxman 316/291 ITR 500 (SC), relied upon by Mr. Putney, the Supreme Court held :—*

'16 Section 147 authorises and permits the Assessing Officer to assess or reassess income chargeable to tax if he has reason to believe that income for any assessment year has escaped assessment. The word "reason" in the phrase "reason to believe" would mean cause or justification. If the Assessing Officer has cause or justification to know or suppose that income had escaped assessment, it can be said to have reason to believe that an income had escaped assessment. The expression cannot be read to mean that the Assessing Officer should have finally ascertained the fact by legal evidence or conclusion. The function of the Assessing Officer is to administer the statute with solicitude for the public exchequer with an inbuilt idea of fairness to taxpayers. As observed by the Supreme Court in Central Provinces Manganese Ore Co. Ltd. v. ITO [1991] 191 ITR 662, for initiation of action under section 147 (a) (as the provision stood at the relevant time) fulfilment of the two requisite conditions in that regard is essential. At that stage, the final outcome of the proceeding is not relevant. In other words, at the initiation stage, what is required is "reason to believe", but not the established fact of escapement of income. At the stage of issue of notice, the only question is whether there was relevant material on which a reasonable person could have formed a requisite belief. Whether the materials would conclusively prove the escapement is not the concern at that stage. This is so because the formation of belief by the Assessing Officer is within the realm of

subjective satisfaction (see ITO v. Selected Dalurband Coal Co. P. Ltd. [1996] 217 ITR 597 (SC); Raymond Woollen Mills Ltd. v. ITO [1999] 236 ITR 34 (SC).'

30. *Mrs. Suri's reliance upon an interim order passed by the Bombay High Court in Coronation Agro Industries Ltd. v. Dy. CIT [2017] 82 taxmann.com 75/390 ITR 464, wherein it was recorded that the reason mentioned prima facie appeared to be a reason to suspect and not to believe is not well founded. It is only an interim order. No final order has been produced.*

31. *Mrs. Suri's reliance upon the decision of this Court in CIT v. Smt. Paramjit Kaur [2008] 168 Taxman 39/[2009] 311 ITR 38 is not well founded. In that case, the Court found that there was no reason to believe and that re-opening was merely on suspicion.*

32. *Mrs. Suri relied upon a decision of the Delhi High Court in CIT v. Gupta Abhushan (P.) Ltd., [2009] 178 Taxman 473/312 ITR 166. In that case, the re-opening of an assessment was set aside as the material found in the survey conducted for the assessment year 2002- 03 was being used in the assessment year 1999-2000 without there being any basis that the material pertained to the relevant assessment years. It was observed that the reason recorded was that the AO had a mere suspicion that there was a likelihood of there being a discrepancy in the stocks in the earlier years also based on the fact that there was a discrepancy in the stock when the survey was conducted on 07.03.2002. There Court, therefore, held that this was merely a reason to suspect and not a reason to believe. In the case before us, the material pertained to the assessment year in question itself.*

33. *Decision of the Allahabad High Court in Dass Friends Builders (P.) Ltd. v. Dy. CIT [2006] 153 Taxman 282/280 ITR 77 does not support the petitioner's case. The Allahabad High Court set aside the re-opening as rejection of the account books for the assessment year 1996-97 was being made a basis to determine the profit percentage for the assessment year 1995-96 without there being any material for the relevant assessment year.*

34. *Mrs. Suri relied upon the following observations of the Supreme Court in ITO v. Lakhmani Mewal Das, [1976] 103 ITR 437 (SC):*

"11. As stated earlier, the reasons for the formation of the belief must have a rational connection with or relevant bearing on the formation of the belief. Rational connection postulates that there must be a direct nexus or live link between the material coming to the notice of the Income-tax Officer and the formation of his belief that there has been escapement of the income of the assessee from assessment in the particular year because of his failure to disclose fully and truly all material facts. It is no doubt true that the Court cannot go into the sufficiency or adequacy of the material and substitute its own opinion for that of the Income-tax Officer on the point as to whether action should be initiated for reopening assessment. At the same time we have to bear in mind that it is not any and every material, howsoever vague and indefinite or distant, remote and far-fetched, which would warrant the formation of the belief relating to escapement of the income of the assessee from assessment. The fact that the words "definite information" which were there in Section 34 of the Act of 1922 at one time before its amendment in 1948 are there in Section 147 of the Act of 1961 would not lead to the conclusion that action can now be taken for reopening assessment even if the information is wholly vague, indefinite, far-fetched and remote. The reason for the formation of the belief must be held in good faith and should not be a mere pretence.

12. The powers of the Income-tax Officer to reopen assessment though wide are not plenary. The words of the statute are "reason to believe" and not "reason to suspect." The reopening of the assessment after the lapse of many years is a serious matter. The Act, no doubt, contemplates the reopening of the assessment if grounds exist for believing that income of the assessee has escaped assessment. The underlying reason for that is that instances of concealed income or other income escaping assessment in a large number of cases come to the notice of the income-tax authorities after the assessment has been completed. The provisions of the Act in this respect depart from the normal rule that there should be, subject to right of appeal and revision, finality about Orders made in judicial and quasi indicial proceedings. It is, therefore, essential that before such action is taken the requirements of the law should be satisfied. The live link or close nexus which should be there between the material before the Income-tax Officer in the present case and the belief which he was to form regarding the escapement of the income of the assessee from assessment because of the latter's failure or omission to disclose fully and truly all material facts was missing in the case. In any event, the link was too tenuous to provide a legally sound basis for reopening the assessment. The majority of the learned Judges in the High Court, in our opinion, were not in error in holding that the said material could not have led to the formation of the belief that the income of the assessee respondent had escaped assessment because of his failure or omission to disclose fully and truly all material facts. We would, therefore, uphold the view of the majority and dismiss the appeal with costs."

Mr. Putney did not and indeed could not dispute any of the observations. He however rightly contended that they do not apply to the present case. In the case before us, there is a direct nexus or live link between the material coming to the notice of the AO, namely the said material submitted by the Investigation Wing, and the formation of the AO's belief that there has been escapement of income. We have already referred to this aspect of the matter. Suffice it to recollect that details of the CCM were furnished in the information. The information was in respect of several brokers. The information pertaining to the petitioner's broker was culled out and tabulated. There were 74 cases of the petitioner's broker having modified the petitioner's transactions. The information was directly on the issue of the transactions. It cannot by any stretch of imagination be said to be vague, indefinite or distant. For the reasons we have already stated, this was not a case where the AO merely had reason to support that income had escaped assessment.

***35.** The judgment of the Delhi High Court in CIT v. SFIL Stock Broking Ltd. [2010] 325 ITR 285 is clearly distinguishable. In that case, the reasons themselves recorded that the AO had been directed to get notices issued under Section 148 by the Deputy Director (Investigation) and subsequently by the Additional CIT. The judgment was based on the finding that the proceedings had been initiated only on the basis of these directions and without any independent application of mind by the AO.*

***36.** In CIT v. Atul Jain, [2008] 299 ITR 382 (Delhi), the Delhi High Court upheld the decision of the Tribunal setting aside the proceedings under Sections 147 and 148. The Delhi High Court, however, found that the information did not include the source of the capital gains; the court was not told which shares had been transacted and with whom the transaction had taken place; there were absolutely no details available and the information supplied was scanty and vague and even the basis for the reasons was absent. It was further observed that the AO had not recorded his satisfaction about the correctness or otherwise*

of the information or his satisfaction that a case had been made out for issuing a notice under Section 148. This is not the case before us. The AO has not recorded such satisfaction.

37. *The judgment of the Delhi High Court in Pr. CIT v. Meenakshi Overseas (P.) Ltd. [2017] 82 taxmann.com 300/395 ITR 677 does not support the petitioner's case either. The judgment turned on the finding that there were only conclusions and no reasons to believe those conclusions were recorded by the AO and that the crucial link between the information made available to the AO and the formation of belief was absent. That is not so in the case before us. There is a clear link between the information analysed by the AO and the relevant transactions.*

For the same reasons, the decision of the Delhi High Court in Pr. CIT v. RMG Polyvinyl (I) Ltd. [2017] 83 taxmann.com 348/249 Taxman 610/396 ITR 5 (Delhi) does not carry the petitioner's case further.

38. *In Chhugumal Rajput v. S.P. Chaliha [1971] 79 ITR 603 (SC), the Supreme Court allowed the assessee's appeal on the finding that the ITO had not set out any reasons for coming to the conclusion that it was a fit case to issue notice under section 148. The material on the basis of which the proceedings had been initiated was not mentioned in the record. The reasons only referred to certain communications without adverting to the facts contained therein. The ITO had not even come to a prima facie conclusion that the transactions were not genuine. It was also observed that the ITO had only a vague feeling that the transactions may be bogus. It is in these circumstances that the Supreme Court held that the ITO could not have reason to believe that by reason of the omission to disclose fully and truly all the material facts necessary for assessment for the year in question, income chargeable to tax had escaped assessment. This decision, therefore, is distinguishable and does not support the petitioner's case.*

39. *Mrs. Suri's contention that information from the broker was sought after issuance of the notice shows that there was no enquiry prior to the issuance of the notice and hence, the proceedings are bad is not well founded. Once it is held that the proceedings under Sections 147 and 148 have been validly initiated, the AO is not prevented from looking into the matter further, including by gathering further information. He in fact is bound to do so.*

40. *Mrs. Suri placed strong reliance upon the judgment of a Division Bench of the Gujarat High Court in Harikishan Sunderlal Virmani v. Dy. CIT [2017] 88 taxmann.com 548/394 ITR 146. Firstly, in that case, the assessment was under Section 143 (3) whereas in the case before us, it was under Section 143 (1). The reasons furnished in that case and the finding of the court were referred to and relied upon by Mrs. Suri in extenso. It is only fair, therefore, that we set out both :—*

'3.1 At the outset, it is required to be noted that the impugned notice under section 148 of the Act to reopen the assessment in exercise of the power under section 147 of the Act, has been issued beyond the period of four years. Therefore, considering the proviso to section 147 of the act, unless and until it is found that there was a failure on the part of the assessee in not disclosing truly and fully relevant material for assessment, reopening beyond four years is not permissible. It also cannot be disputed that even to reopen the proceedings, there must be satisfaction of the Assessing Officer and the Assessing Officer himself, on the basis of the material before him is required to

form an opinion that the income has escaped assessment due to failure on the part of the assessee in not disclosing truly and fully material necessary for the assessment.

3.2. The reasons recorded to reopen the assessment are as under :—

"2. Reasons for reopening of the assessment - Assessment year 2009 reg.

The assessee had e-filed his return of income for the assessment year 2009-10 on September 30, 2010 declaring therein total income of Rs.2,09,39,600/-. Subsequently, the case was selected in CASS within the meaning of section 143(3) of the Act. The assessment proceedings was completed under section 143(3) of the Act on November 30, 2010 determining the assessed income at Rs.2,09,60,910/-.

2. Thereafter, information has been received from the Principal Director of Income Tax (Investigation), Ahmedabad vide confidential letter No. PDIT (Inv)/AHD/CCM/Dissemination/15-16 dated March 8, 2016.

On perusal of the data supplied by the office of the Principal Director of Income-tax (Investigation), Ahmedabad it is noticed that assessee carried out share trading through the broker, Guinness Securities Limited. And as per the guidelines of the SEBI the client code of the assessee with the aforesaid broker was WW/2647. In order to verify the genuineness of the modification of client code in the case of the assessee, by applying Levenshtein distance analysis or digit edit analysis utility, in those cases where the assessee is original client and transactions were carried out from assessee's client code then subsequently client code was modified to other client the details of such case are as under :—

OC	*OCC*	*MC*	*MCC*	*Distance as per Levenshte in distanced analysis*	*Net reduction in income due to CCM*
Harikishan Sunderlal Virmani	*WW/2647*	*Nomau R. Chaturvedi*	*WW/2108*	*3*	*Rs. 1,19,848*

In order to verify the genuineness of the error, the Levenshtein distance analysis or digit edit analysis utility is also provided by the investigation Wing. This utility gives a clear indication as to whether the code is wrongly typed or is completely replaced. If the number of digits changed from original code to modified code is 1, then it can be reasonably argued that the OCC (Original Client Code) may have been typed wrongly by mistake. Similarly, if the number of digits changed is more say 4 or 5, it cannot be genuine mistake but a deliberate change. To this extent, Levenshtein distance analysis or digit edit analysis act as a clear indicator for genuineness in client code modification. In short, the longer the distance (i.e. number of digits changed), the lesser the chance of genuineness.

3. Hence, the editing of client code above it is termed as deliberate change and establishes the non-genuineness and contrived nature of the code change.

4. In view of the above facts, I have reason to believe that the income to the extent of Rs.1,19,848/- has escaped assessment, which required to brought under tax. Therefore, this case is a fit case for initiating the proceeding under section 147 of the Act."

3.3 Thus from the reasons recorded, the reopening of the assessment is on the information/data supplied by the office of the Principal Director of Income-tax (Investigation), Ahmedabad and the information received from the Principal Director of Income-tax (Investigation), Ahmedabad vide his confidential letter dated March 8, 2016. From the information received, it appears that though the client code of the assessee with the broker-Guinness Securities Limited was WW/2647, modified client code was found to be WW/2108 and therefore, to verify the genuineness of the modification of the client code, by applying Levenshtein distance analysis or digit edit analysis utility, distance was found to be 3 and therefore, it is believed that the code is not wrongly typed and it is termed as deliberate change and establishing non-genuineness and contrived nature of the code change. From the reasons recorded, it does not appear that verification of the material on record there is independent formation of opinion by the Assessing Officer and that any income has escaped assessment due to any failure on the part of the assessee in not disclosing truly and correct facts/material necessary for assessment. From the reasons recorded, it appears that the impugned reopening proceedings are on the borrowed satisfaction. No independent opinion is formed. On the plain reading of the reasons recorded what emerges is that the Assessing Officer on considering the information received from the Principal Director of Income-tax (Investigation), Ahmedabad, reassessment proceedings have been initiated on the ground that the income escaped assessment. However, there is no assertion regarding the basis on which material on record, he has come to such conclusion. Therefore, the material on the basis of which the Assessing Officer seeks to assume the jurisdiction under section 147 of the Act is the information received from the external source viz. the Principal Director of Income-tax (Investigation), Ahmedabad. It cannot be disputed that on the basis of the information received from another agency, there cannot be any reassessment proceedings. However, after considering the information/material received from other source, the Assessing Officer is required to consider the material on record in case of the assessee and thereafter is required to form an independent opinion on the basis of the material on record that the income has escaped assessment. Without forming such an opinion, solely and mechanically relying upon the information received from other source, there cannot be any reassessment for the verification.

3.4. At this stage it is required to be noted that even in the reasons recorded, there is no allegation that there was any failure on the part of the assessee in not disclosing truly and fully material facts necessary for assessment. Under the circumstances, the assumption of the jurisdiction to reopen the assessment beyond the period of four years in exercise of powers under section 147 of the Act is bad in law and contrary to the provisions of section 147 of the Act. Under the circumstances, on the aforesaid ground alone, the impugned reassessment proceedings deserve to be quashed and set aside.'

***41.** Firstly, there is a significant difference between that case which involved only one CCM and the case before us which involves 74 CMMs. Further, in our view, the reasons furnished in that case were sufficient to justify proceedings under Sections 147 and 148. The Assessing Officer had received information from the Principal Director of Income-tax (Investigation), Ahmedabad. As is evident from the reasons itself, the Assessing Officer perused the data and noticed the nature of the transactions carried out through his brokers. He also noted that the Levenshtein distance analysis had been provided by the*

Investigation Wing. What is important is that he considered the Levenshtein method as giving a clear indication as to whether the code is wrongly typed or is completely replaced. In other words, he accepted the method as an appropriate aid for determining whether there were inadvertent errors or deliberate shifts of the transactions. Having done so he applied this method and came to the prima-facie conclusion that it was not a case of an inadvertent error but was a deliberate change. The reasons clearly indicate an application of mind by the AO to the material received by him. They do not by any stretch of imagination constitute borrowed satisfaction. It is his personal satisfaction on an analysis of information received, which with respect is perfectly in accordance with law. In our view, the AO in that case had reason to believe that the income had escaped assessment. Whether this prima-facie view would have been finally endorsed or not, especially in view of the fact that the matter involved only one CMM, is irrelevant. We are, with respect, unable to agree with the finding of the Gujarat High Court that the reopening was on borrowed satisfaction and that no independent opinion had been formed. Nor do we subscribe to the view that there was no assessment regarding the material on record on the basis of which the AO had come to the conclusion. The material, the information received was analysed and the decision was based thereon pursuant to an independent application of mind. The AO had considered the material on record and formed an independent opinion on the basis thereof.

In the circumstances, we are, with respect, unable to agree with the decision of the Gujarat High Court.

42. *Even if in the case before us, the AO had to establish that the income had escaped assessment on account of the failure on the part of the assessee in disclosing truly and fully the material facts necessary for assessment, the test would be met. Admittedly, there was no analysis or application of mind in respect thereof. The assessment was under Section 143 (1) in any event. Thus, in any view of the matter, the decision to reopen the assessment is valid and well founded.*

43. *This brings us to Mrs. Suri's contention that the satisfaction recorded by the Principal Commissioner of Income Tax, Panchkula, under Section 151 of the Act was mechanical. We do not agree. From a perusal of the record, it is evident that the section has been duly complied with and he has not signed on the dotted line. If he approves the reasons he is not bound to reiterate the same. That would be an empty formality. Mr. Putney's reliance upon the following observations of the Calcutta High Court in ITO v. Mahadeo Lal Tulsian [1977] 110 ITR 786 is well founded :—*

"... He has contended that there had been no due compliance with the provisions of section 151 (2) of the said Act since the Commissioner of Income-tax had failed to arrive at a bona fide satisfaction or record the same. Here again, the issue has to be considered from the point of view of what the facts establish in substance. Now, facts indicate that the proposal for reopening the assessment with reasons indicated hereinbefore was placed before the Commissioner of Income- tax. Obviously he applied his mind as is indicated by his endorsement : "Yes, I am satisfied." If the Commissioner records his satisfaction in a positive manner, as aforesaid, and there being no other material before us to show that notwithstanding such a record the Commissioner never applied his mind but merely signed on a dotted line without application of his mind, we are unable to accept the contention that the Commissioner never arrived at a bona fide

satisfaction in recording the same. This objection raised by Mr. Banarjee, therefore, must fail and is overruled."

We are in respectful agreement with the judgment.

44. *Mrs. Suri relied upon judgment of the Supreme Court in Chhugamal Rajpal's case (supra) and in particular paragraph 9 thereof which reads as under :—*

"9. In his report the Income-tax Officer does not set out any reason for coming to the conclusion that this is a fit case to issue notice under Section 148. The material that he had before him for issuing notice under Section 148 is not mentioned in the report. In his report he vaguely refers to certain communications received by him from the C.I.T., Bihar and Orissa. He does not mention the facts contained in those communications. All that he says is that from those communications "it appears that these persons (alleged creditors) are name lenders and the transactions are bogus". He has not even come to a prima facie conclusion that the transactions to which he referred are not genuine transactions. He appears to have had only a vague feeling that they may be bogus transactions. Such a conclusion does not fulfil the requirements of Section 151 (2). What that provision requires is that he must give reasons for issuing a notice under Section 148. In other words he must have some prima facie grounds before him for taking action under Section 148. Further his report mentions : "Hence proper investigation regarding these loans is necessary. In other words his conclusion is that there is a case for investigating as to the truth of the alleged transactions. That is not the same thing as saying that there are reasons to issue notice under Section 148. Before issuing a notice under Section 148, the Income-tax Officer must have either reasons to believe that by reason of the omission or failure on the part of these assessee to make a return under Section 139 for any assessment year to the Income-tax Officer or to disclose fully and truly all material facts necessary for his assessment for that year, income chargeable to tax has escaped assessment for that year or alternatively notwithstanding that there has been no omission or failure as mentioned above on the part of the assessee, the Income-tax Officer has in consequence of information in his possession reason to believe that income chargeable to tax has escaped assessment for any assessment year. Unless the requirements of clause (a) or (b) of Section 147 are satisfied, the Income-tax Officer has no jurisdiction to issue a notice under Section 148. From the report submitted by the Income-tax Officer to the Commissioner, it is clear that he could not have had reasons to believe that by reason of the assessee's omission to disclose fully and truly all material' facts necessary for his assessment for the accounting year in question, income chargeable to tax has escaped assessment for that year; nor could it be said that he as a consequence of information in his possession, had reasons to believe that the income chargeable to tax has escaped assessment for that year. We are not satisfied that the Income-tax Officer had any material before him which could satisfy the requirements of either Clause (a) or Clause (b) of Section 147. Therefore he could not have issued a notice under Section 148. Further the report submitted by him under Section 151 (2) does not mention any reason for coming to the conclusion that it is a fit case for the issue of a notice under Section 148. We are also of the opinion that the Commissioner has mechanically accorded permission. He did not himself record that he was satisfied that this was a fit case for the issue of a notice under Section 148. To Question No. 8 in the report which reads "Whether the, Commissioner is satisfied that it is a case for the I issue of notice under Section 148", he just noted the word "yes" and affixed his signatures there under. We are of the opinion that if only he had read the report carefully, he could never have come to the conclusion on the material

before him that this is a fit case to issue notice under Section 148. The important safeguards provided in Sections 147 and 151 were lightly treated by the Income-tax Officer as well as by the Commissioner. Both of them, appear to have taken the duty imposed on them under those provisions as of little importance. They have substituted the form for the substance."

(Emphasis Supplied)

This judgment does not support the petitioner's case. It is clearly distinguishable. As noted in the earlier part of paragraph 9, the Supreme Court held that the reasons recorded by the ITO for initiating proceedings under Sections 147 and 148 were not in accordance with law. As in that case, the Commissioner merely accorded permission under Section 151 without stating any reason himself it is axiomatic that his order would also not be in accordance with Section 151. The case before us is entirely different. We have found that the reasons recorded by the AO justify the initiation of proceedings under Sections 147 and 148. As the Principal Commissioner agreed with these reasons, it was not necessary for him in his order according sanction to reiterate the reasons furnished by the AO. There is nothing that indicates that he did not apply his mind to the reasons furnished by the AO.

45. *Reasons to believe are there. The reasons are based on tangible material. The return and account books of assessee had not undergone scrutiny at the time of assessment. The information is specific and not vague. A reasonable person can form an opinion on the basis of the material. The information received could form the basis of reason to believe that income has escaped assessment and the re-opening is not on mere suspicion. Hence, the assumption of jurisdiction is in accordance with law.*

46. *In this view of the matter it is not necessary to consider Mr. Putney's other submissions on behalf of the Revenue.*

47. *The writ petition is dismissed."*

Thus , in our considered view , the additions have been rightly made by the authorities below and we are inclined to sustain the same both on legal ground as well on merits . We summarise reasons for our conclusions holding in favour of Revenue , as under:

1. There was an unexplained massive spurt in client code modifications undertaken by Brokers in the month of March 2010 to the tune of Rs. 48,794 crores in NSE(refer to decision of Mumbai-tribunal in the case of Ninja Securities(supra) at page 29). The chart is reproduced in preceding para's of this order(page 33 of this order) which is reproduced in judicial order passed by Mumbai tribunal in the case of Ninja Securities(supra) at page 29 of the order in the case of Ninja Securities(supra). Incidentally, the assessee had also incurred F&O loss which were inflicted by client code modifications in the

month of March 2010 itself. These unusual and sudden spurt in client code modifications undertaken by brokers with NSE was subject matter of probe by SEBI/NSE. It is reported by NSE that aforesaid sudden spurt in client code modifications undertaken by brokers with Stock Exchanges in the month of March 2010 was with an intention to evade taxes. The client code modifications in the month of April 2010 fell substantially to Rs. 11882 crores(page 33 of this order), while the same was Rs. 21,896 crores in December 2009.

2. On investigation by Income Tax Authorities u/s 131(1A) of the 1961 Act, many of the brokers had surrendered commission income to tax by accepting that these client code modification undertaken by them were bogus transactions. These brokers paid taxes on surrendered commission income earned by them from creating artificial loss/profits which was passed on to their clients/beneficiaries.

3. The AO received incriminating information received from DIT(I & IC), Mumbai through learned PCIT, Mumbai that many brokers were manipulating client code modifications with an intent to defraud Revenue and evade taxes. The name of the assessee was listed as one of the beneficiaries of obtaining fictitious F&O loss through brokers. The learned DR has filed such tangible incriminating information received by the AO wherein assessee name is listed as one of the beneficiary of said fictitious F&O Losses , which is placed in file.

4. The AO issued notices u/s 133(6) to Brokers including Inventure through which the assessee undertook transactions in F&O to confirm the genuineness of these transactions. The said Broker Inventure gave evasive and general reply not giving specific replies to queries raised by the AO as to its transactions with the assessee. The aforesaid notice was issued by the AO after receiving incriminating tangible information from ld. DIT(I&CI) through learned PCIT but before issuing notice u/s 148 of the 1961 Act to the assessee. This reflected

application of mind by the AO independently before reopening of the concluded assessment u/s 147 of the 1961 Act.

5. This led the AO to reopen the concluded assessment by invoking provisions of Section 147 of the 1961 Act by issuance of notice dated 23.03.2015.

6. The enquires were conducted by the AO with NSE who confirmed in its reply that these client code modifications were undertaken by brokers with stock exchanges to evade taxes.

7. The assessee has opened new account for undertaking F&O transaction with Broker Inventure, in the month of March 2010.

8. In quick succession in the month of March 2010 itself F&O transactions were undertaken by the assessee in this new account opened by assessee with Inventure which led to the losses to the tune of Rs. 34,67,657.96 in F & O segment suffered by the assessee , the F&O loss of Rs. 31,98,657.50 was inflicted with client code modifications and was held by the authorities below to be fictitious F&O Loss. The ratio of transactions of the assessee in F & O segment inflicted with client code modifications undertaken with Broker Inventure is as high as 92.21% based on quantum ratio basis. The said broker Inventure claimed that its turnover is Rs. 97,000 crores and client code modifications were less than 1% but it failed to explain that as to how the client code modifications were to the tune of 92.2% in the case of the assessee.

9. This account to trade in F&O opened by assessee with Broker Inventure was closed in the month of March 2010 itself and the balance was squared off in the month of March 2010 itself.

10. The assessee has erroneously stated that client code modifications can be done within 30 minutes of the execution of the trade transaction in securities with stock exchanges but the fact of the matter is that BSE provide client code modification window upto

30 minutes from the end of the trading session i.e. upto 4PM.Thus, to claim that a very limited window of 30 minutes is available for undertaking client code modifications is not correct.

11. It could not be explained by the assessee as to how these large punching errors made by the broker Inventure while executing trade deal of the assessee on stock exchanges were genuine within guidelines of SEBI/Stock Exchanges. In the midst of tangible incriminating material received by the AO, the onus was on the assessee to rebut the same based on cogent evidences which assessee failed in the instant case.

12. Specific tangible incriminating information was received by the AO from Director(Intelligence & Criminal Investigation) through PCIT that the assessee is indulging in manipulation in client code modification in F&O trade , wherein assessee was listed as one of the beneficiaries of bogus F&O loss which was set off against other income to reduce taxes.

13. Originally scrutiny assessment was not framed by the AO u/s. 143(3) read with Section 143(2) of the 1961 Act but return of income was processed by Revenue originally u/s 143(1) of the 1961 Act. Since, no scrutiny assessment was originally framed then it could not be said that the AO formed any opinion originally on these F& O Losses suffered by the assessee which was inflicted with client code modifications . Thus, it could not said that there is any change of opinion of the AO while invoking provisions of Section 147 of the 1961 Act in re-opening of the concluded assessment . Reliance is placed on the decision of Hon'ble Supreme Court in the case of ACIT v. Rajesh Jhaveri Stock Brokers P. Ltd(2007) 291 ITR 500(SC).

14. The re-opening of the concluded assessment was done by the AO u/s 147 of the 1961 Act by issuance of notice u/s 148, dated 23.03.2015 which was done within four years from the end of the assessment year and the first proviso to Section 148 is not applicable.

Thus, based on our above discussions, we hold that re-opening of the concluded assessment by the AO u/s 147 of the 1961 Act was valid and is therefore upheld/sustained . Further , based on our above discussions on touch stone of preponderance of probabilities we hold that additions made by the AO to the income of the assessee by holding F&O loss to the tune of Rs. 31,98,657.50 as fictitious loss being inflicted by manipulative client code modification was validly done by the AO and hence additions to the tune of Rs. 31,98,657.50 as was made by the AO which was later confirmed by learned CIT(A) by treating aforesaid F&O loss as bogus loss is upheld. Further, we upheld the additions to the tune of 1% of the said fictitious losses to the income of the assessee by way of commission paid by the assessee to the brokers for arranging these fictitious losses. We also note that learned DR has correctly distinguished the decisions relied upon by the assessee, which we have duly referred in preceding para's of this order. In the case of Coronation Agro(supra) , originally assessment was framed u/s 143(3) of the 1961 Act . The assessment year was AY 2009-10 before Hon'ble Bombay High court in the case of Coronation Agro(supra) while in the instant case , it was a period of March 2010 wherein there were suddent spurt in the client code modifications wherein NSE has also reported was marked with tax evasion. The brokers have also surrendered their commission income which were not disclosed to Revenue having been earned from providing fictitious profits/losses to their clients/beneficiaries. The assessee was also listed as one of the beneficiary in the tangible incriminating material received from learned DIT(I & CI) received through learned PCIT, Mumbai of the fictitious losses from F&O which were set off against other income's. The assessee also relied upon the case of Mrs. Sunita Jain(supra) wherein the Ahmedabad tribunal vide order dated 09.03.2017 quashed reassessment as the same was based on the statement recorded of one Mr Mukesh Choksi and the copy of the same was not supplied to the tax-payer and cross examination was also not provided to the tax-payer. It was a case of providing accommodation entries in penny shares and manipulation in the prices of the shares to provide fictitious losses/profits in shares. The said case is thus distinguishable on factual matrix and was

decided on its own merits. We also note that assessee also relied upon decision of tribunal in Gyandeep Khemka(supra) which was not related to client code modifications undertaken in the month of March 2010 which month was peculiarly affected by sudden spurt in client code mondifications and also the percentage of trade inflicted with client code modification was not as high in the case of Gyandeep Khemka(supra) which was merely 0.47% while in the case of the assessee client code modifications were as high as 92.2% . Thus, in the case of Gyandeep Khemka(supra) , client code modifications were within tolerable zone/limits as was 0.47% of the total trade and hence the said case is not of any help to the assessee. We also note that Revenue has not come in appeal before tribunal against part relief granted by learned CIT(A) to the assessee as neither learned DR nor learned AR has brought factum of filing of an appeal by Revenue to our notice and we have adjudicated the instant appeal considering that part relief granted by learned CIT(A) to the assessee had attained finality . The appellate order of learned CIT(A) stood affirmed and appeal of the assessee stood dismissed. We order accordingly.

7. In the result, the appeal of the assessee in ITA no.6534/Mum/2017 for AY 2010-11 stand dismissed.

Order pronounced in the open court on 18.06.2019.

आदेश की घोषणा खुले न्यायालय में दिनांकः 18.06.2019 को की गई

Sd/-	Sd/-
(SANDEEP GOSAIN)	(RAMIT KOCHAR)
JUDICIAL MEMBER	ACCOUNTANT MEMBER

Mumbai, dated: 18.06.2019

Nishant Verma
Sr. Private Secretary

copy to…

1. The appellant
2. The Respondent
3. The CIT(A) – Concerned, Mumbai
4. The CIT- Concerned, Mumbai
5. The DR Bench,
6. Master File

// Tue copy//

BY ORDER

DY/ASSTT. REGISTRAR
ITAT, MUMBAI

आयकर अपीलीय अधिकरण "B" न्यायपीठ मुंबई में।

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

BEFORE SHRI JOGINDER SINGH, JUDICIAL MEMBER
AND SHRI RAMIT KOCHAR, ACCOUNTANT MEMBER

आयकर अपील सं./I.T.A. No.6570/Mum/2014

(**निर्धारण वर्ष /** Assessment Year : 2010-11)

ITO 9(2)(3), Room No. 225, 2nd floor, Aayakar Bhavan, M.K. Rd., Mumbai – 400 020.	**बनाम**/ v.	M/s Ninja Securities Pvt. Ltd., 29, Laxminarayan Shopping Centre, Poddar Road, Malad (E), Mumbai – 400 097.
स्थायी लेखा सं./PAN : AAACN2336B		
(अपीलार्थी **/Appellant**)	..	(प्रत्यर्थी / **Respondent**)

Revenue by	Shri Suman Kumar, D.R.
Revenue by :	Shri Bhupendra Shah

सुनवाई की तारीख **/Date of Hearing : 06-04-2017**
घोषणा की तारीख /**Date of Pronouncement : 15-05-2017**

आदेश / O R D E R

PER RAMIT KOCHAR, Accountant Member

This appeal, filed by the Revenue, being ITA No. 6570/Mum/2014, is directed against the appellate order dated 5th August, 2014 passed by learned Commissioner of Income Tax (Appeals)- 20, Mumbai (hereinafter called "the CIT(A)"), for the assessment year 2010-11, the appellate proceedings before the learned CIT(A) arising from the assessment order dated 28th March, 2013 passed by the learned Assessing Officer (hereinafter called "the AO") u/s 143(3) of the Income-tax Act,1961 (Hereinafter called "the Act").

2. The grounds of appeal raised by the Revenue in the memo of appeal filed with the Income-Tax Appellate Tribunal, Mumbai (hereinafter called "the tribunal") read as under:-

> "1. Whether on the facts and in the circumstances of the case and in law, the Ld. CIT(A) was justified in deleting of Rs. 8,63,137/- u/s. 14A made on account of expenditure incurred towards earning exempt income in the form of dividend ?".
>
> 2. Whether on the facts and in the circumstances of the case and in law, the Ld. CIT(A) was justified in deleting the addition of loss of Rs. 3,67,85,146/- on account of client code modifications made by the assessee in the month of March 2010 when the entire gamut of facts clearly point towards these being sham transactions?.
>
> 3. The appellant prays that the order of the CIT(A) on the grounds above, may be set aside and that of the Assessing Officer be restored."

3. The brief facts of the case are that the assessee company is engaged in the business of trading in shares, securities and F&O transactions. In this appeal, the Revenue is aggrieved by two disallowances, one is disallowance u/s 14A read with Rule 8D of the Income-tax Rules, 1962 and second one is disallowance on artificial loss incurred through client code modifications. During assessment proceedings u/s 143(3) r.w.s. 143(2), the A.O. observed that the assessee had earned exempt income and further the assessee had shown dividend income amounting to Rs. 15,97,859/- and had claimed the said amount as exempt. The assessee was asked to show cause as to why the disallowance u/s 14A of the Act should not be made in the case of the assessee. In reply, the assessee submitted as under:-

> "Justification for disallowance for expenses incurred for dividend:
>
> During the year there is no expenses incurred by the company for earning the dividend which has been claimed as exempt in computation of income. The expenses incurred for payment of interest on loans are for the loans which have been taken for the purpose of giving margin money to the broker for the future and options transactions. The expenses other than interest on loans which has been incurred are for the purpose of trading in shares/Future and option with the intension of gaining from the share trading/future and option business. The company has never intended to gain any income by way of the dividend. Though the dividends are received during the year, as an incidental income. The company has never incurred any expenses with the intention to earn dividend income, hence no disallowance can be made."

The A.O. considered the submissions of the assessee which were rejected by the A.O. whereby the AO observed that the assessee except for claiming that no expenses have been incurred has not provided any details to prove that the accounts for the taxable income and exempt income were separately maintained and in the absence of such evidences, the explanation offered by the assessee were rejected by the AO. It was also observed by the A.O. that the assessee had purchased the securities and held as it as investments which are capable of earning dividend income which is exempt from tax. The AO observed that the assessee had earned dividend income which was claimed exempt from income-tax. The A.O. observed that section 14A of the Act is clearly applicable and all the expenses which has been incurred in relation to earning of exempt income shall be disallowed. The A.O. observed that the assessee has not proved that the interest which was paid is directly attributable to FDRs made and the nexus could not be established in the absence of any evidence. In the absence of any evidence to prove one to one nexus of funds received and utilized, the AO held that it could only be inferred that interest bearing loans were also utilized for purchasing the shares. The A.O. observed that the expenditure incurred by way of interest during the previous year which was not directly attributable to any particular income or receipt, hence, in accordance with the formula of Rule 8D is

applicable in this case. The AO invoked provisions of Section 14A(2) and the claim of the assessee that no expenditure was incurred in relation to the income which does not form part of the total income under the Act was rejected by the AO. The mechanism as provided u/s 14A(3) was invoked and method as prescribed under Rule 8D of the 1962 Rules was applied. The A.O. accordingly applied Rule 8D and worked out the disallowance u/s 14A of the Act as under:-

Particulars	Amount (Rs)	Amount (Rs)
i) Director expenditure relating to exempt income being STT & D-Mat charges paid		--
ii) Amount computed as per Rule 8D(2)(ii) [AXB/C]		8,63,137
A = Interest expenses	876268	
B = Average Investment including shares in closing and opening inventories	106428532	
C = Average total asset	108047609	
iii) 0.5% of average investment (0.5% x Rs. 106428532)		5,32,143/-
Total disallowance as per Rule 8D(i+iii+iii)		Rs. 13,95,280/-

Thus, the A.O. worked out an amount of Rs. 13,95,280/- towards disallowance u/s 14A of the Act, vide assessment order dated 28-03-2013 passed by the AO u/s 143(3) of the 1961 Act.

4. The second issue is with regard to disallowance of loss of Rs. 3,67,83,145/- incurred through client code modifications w.r.t. trade in shares and securities on NSE through its broker. The A.O. observed that during the year the assessee had entered into certain trades in shares and securities on NSE through its brokers and the P&L account showed a loss of Rs. 3,67,83,145/- claimed on account of share trading loss. The assessee was

asked to furnish the details by the AO vide letter dated 18-03-2013 which are reproduced as under:-

> "It is seen that in the month of the March 2010 you are shown modified transition in F&O as your own transactions. These transitions are entered by brokers M/s ANUGRAH STOCK & BROKING PVT. LTD., M/s LABDHI FINANCE CORPORATION and M/s WELLWORTH SHARE & STOCK BROKING LIMITED and shown as modified in your name. Kindly be noted that these transactions are entered and settled on the same day and it has resulted in loss of Rs. 1,55,89,067/- (i.e. Rs. 28,19,798 – Rs. 1,83,98,865). Whereas it may be noted that the F&O transactions entered by you from 01.04.2009 to 31.03.2010 has resulted in net profit of Rs. 1,51,17,420/- (i.e. Rs. 2,04,97,205/- - Rs. 53,79,785/-). You are requested to show cause as to why the loss of Rs. 1,55,89,067/- in respect of modified transactions shall not be disallowed."

The assessee did not submit any reply before the AO but instead sought directions from Addl. CIT, Range – 9(2) for issuance of directions u/s 144A of the Act to the AO for not making any disallowance of loss incurred through the transaction of client code modifications. The assessee contended that the client code modifications were the correction of the punching errors at the broker side and the assessee had no role to play on this. The assessee had also filed confirmations from the brokers on such corrections made in the codes as per the guidelines of NSE. The addl. CIT, Range – 9(2) issued following directions to the A.O. u/s 144A of the Act:-

> "The assessee has made an application u/s 144A of the I.T. Act vide letter dated 20.3.2013, which was received in the office on 20.3.2013. During the course of scrutiny assessment, a question in relation to understatement or overstatement of profit or loss was raised. In relation to the said question, the assessee has sought the guidance of the undersigned and made the said application. Accordingly, a report in the regard as called for from the concerned A.O. i.e. ITO 9(2), Mumbai. The A.O. has submitted a report vide letter dated 20.3.2013.

A hearing was also fixed with the assessee in the matter on 21/3/2013. Shri Sunul Shah, CA and AR appeared. He was asked if he had any further submissions to make on the basis of report made by the Assessing Officer, However, AR has reiterated the submission made earlier:-

The brief facts of the case are as follows:- . .

(a) In the month of the March 2010, the assessee has shown modified transition in his F&O.

(b) These transactions are entered by brokers. M/s Anugrah Stock & Broking Pvt Ltd, M/s Labdhi Finance Corporation and M/s Wellworth Share & Stock Braking Ltd. and shown as modified in the assessee company's name.

(c) It was also reported by the Assessing Officer that the assessee has entered and settled the transactions on the same day and it has resulted in loss of Rs. 1,55,89,067/- (i.e. 28,19,798 – Rs. 1,83,98,865/-).

It was further reported that the assessee's F&O transactions entered during the F.Y. 2009-10 has resulted in net profit of Rs. 1,51,17,420/-/- (i.e. 2,04,97,205 – Rs. 53,79,785/-).

(d) The assessee has adjusted the loss of other companies against the profit of the assessee company and this has resulted into low profit offered for taxation.

in his application made u/s 144A the assessee' has stated that the modified transactions are due to the error which has occurred in the punching by the respective brokers. He has taken the plea that the error in punching in the broker's office cannot be reason for any alleged understatement or overstatement of profit or loss by the assessee. Further, the brokers have confirmed having done the modifications during the market hours and as per the exchange norms. It has been further stated that the change of client code can be executed only at the office of the main broker and not by the assessee company under any circumstances.

> The assessee has therefore requested in his application to look into the matter and issue necessary directions to the Assessing Officer.
>
> After going through the submissions made by the assessee, and the report furnished by the Assessing Officer, it is observed that there is no denying the fact that a large number of code changes have been made in the assessee's case during the month of March, 2010. In the letters of confirmation from the brokers which have been filed, it is observed that in practically all such confirmation letters reason given by the broker is error in punching client code. The exact reasons for such changes are not given by the brokers. Also, though it is not denied that the changes in client code have been made by the brokers, however, the same may have been done on the instructions.
>
> In their allocation made u/s 144A dtd. 20.03.2013, the assessee has also contended that the brokers have confirmed having done the modifications during the market hours and as per exchange norms.
>
> The A.O. is therefore, directed to correctly verify the factual position as per the submissions made by the assesee and to ascertain the correct facts on the basis of information gathered from various sources.
>
> The assessing Officer is also directed to determine whether the client code change, which have appeared in large numbers during the month of March, 2010 have had the effect of reducing the tax payable by the assessee and are in effect a device for tax avoidance and to pass the assessment order accordingly."

The A.O. after considering the directions of the Addl. CIT vide order dated 22-03-2013 u/s 144A of the Act observed that from the report of various financial newspapers indicated that the NSE had allowed its member brokers to make clients modifications to the tune of Rs. 55,000 crores in March, 2010 against which investigation had been started by DIT (I&CI), Mumbai after obtaining approval from CBDT and the results and findings of the said inquiries with reference to the assessee's transactions had been forwarded to

the A.O. Notices were issued to the NSE calling for relevant data includes the following:-

> "(i) Details of all such modifications in the format prescribed under Rule 6DDA(v) of the Income Tax rules separately for institutional and non institutional clients.
>
> (ii) Details of trade time stamp for each transaction where modifications have been carried out.
>
> (iii) Details of all done in the modified and original client code (even those where code were not changed) for relevant dates:
>
> (iv) KYC copy of the clients included in the above where value of transaction exceeds Rs. One crore.
>
> The replies from the NSE is as under:-
>
> "The number and value of modifications in the client code have gone up dramatically in the month of March, 2010 compared to earlier and succeeding months. This is illustrated in the following table and pertains to Non-institutional clients only in the equity derivatives segment (there is no change in the number of modifications in Institutional accounts consisting mainly of Mutual Funds and FIIs).

Month	No. of modifications	Value of modifications in crore of rupees
December, 2009	2.75 lakhs	21,896
January, 2010	3.36 lakhs	28,860
February, 2010	4.05 lakhs	35,241
March, 2010	6.18 lakhs	48,794
April, 2010	1.62 lakhs	11,882

> **(ii) The increase in the client code modifications in the equity derivative segment in March, 2010, is in spite of the fact that trading volume and turnover actually fell during this months.**
>
> **(iii) The number of client code modifications in the currency derivative segment in March, 2010 was 19395 and the value thereof was Rs.13282 crores while the comparative**

figures for January, 2010 was 863 modifications for a total value of Rs.461crores.

(iv) **The above facts would indicate that the modifications made were part of an organized tax evasion racket which should be dealt with firmly.**

(v) **the important point to note is that client codes of deals carried out were changed by the brokers after the close of normal trading hours. The income tax act u/s 43(5) normally considers any transaction in which a contract for purchase or sale of any commodity including shares is settled other than by actual delivery or transfer as a speculative transaction. One of the exceptions to this position is contained in proviso (d) to S. 43(5) which states that an eligible transaction in respect of trading in derivative referred to in clause (act) of section 2 of the Securities Contracts Regulation Act, 1956 (42 of 1956) carried out in a recognized stock exchange) shall not be deemed to be a speculative transaction. An eligible transaction is one which is carried out. electronically on screen based systems and supported by a time stamped contract indicating the unique client identity number and PAN {Expln (i) to S. 43(5)(d)}; The manual change in client code is therefore against the spirit of the Act as laid out above.**

(vi) Code changed can legitimately occur in some circumstances. For example, the broker may wrongly feed the client code of the husband when the shares are actually held by the wife. Similarly, there may be confusion between a HUF and individual having the same name. It is also observed that mutual funds follow a practice of purchasing shares under the code and then allotting to different schemes at the end of the day.

(vii) Other than the above, it is difficult to understand how a code change can legitimately occur.

(viii) Code changes reported by the Exchange have been made to set off a trade made in normal trading hours though screen based trading in some earlier trading session. To clarify, a code change cannot take place from a static position it is always done to set off a trade which has already taken place.

(ix) **There has always been practice on Dalal Street of booking artificial profits or losses in March to Impact tax liabilities.** This requires buying or selling stocks intra-day so as to consciously incur a loss and use that as a tax offset. (Or conversely to create a profit where carried forward or current year losses are available). This is normally done during normal trading hours using synchronized trades (called 123 trades: where orders are placed at the same time in system.)

x) The role of code modifications comes when these synchronized trades do not work due to market volatility. To clarify, suppose there are two clients, A that wants to book a loss and B that want to book a gain.

(xi) So A buys stock 'x' from, B at Rs. 100 a share in anticipation that the closing market price will be Rs. 90 rupees. But instead the stock, thanks to a volatile market, moves up and closes at a price of Rs. 110 if the position is squared at the end of the day. A would end up with a Rs.10 profit instead of a Rs.l0 loss and B is left holding a loss instead of the anticipated profit.

(xii) **What the helpful broker does then is to swap the 2 client codes after the close to trading hours, thus gifting A a loss and B a profit.** Since on the exchange the trades have been squared, there are no delivery obligations and everybody is satisfied.

(xiii) **Market insiders say this subterfuge took a new, sophisticated proportions since 2004 with the advent of derivative trading and became rampant on the NSE as it was the only exchange with a liquid derivatives market.**

(xiv) The above narration is one possible scenario for code changes aimed at tax evasion and not the only one.

(xv) The mere fact that a code change has occurred is not sufficient to arrive at a conclusion that the purpose was tax evasion. The broker concerned is very likely to give a certificate that he had made a mistake and there was no fault of the two parties concerned as was done in this case.

{xvi) As stated earlier a client code change implies that an earlier transaction has happened in the Stock Exchange it has sought to be set off by the present code change."

The A.O. after analyzing the facts and modus operandi of the above illustrations, observed as under:

> "(a) it is seen that in the month of the March, 2010 the assessee has shown modified transaction in F&O segment.
>
> (b) These transactions are entered by broker M/s Anugrah Stock & Broking Pvt. Ltd., M/s Labadhi Finance Corporation and M/s Wellworth Share & Stock Broking Ltd. and shown as modified in the assessee company's name.
>
> (c) It. is seen from the details availed from NSE that the assessee has entered and settled the transactions on the same day and it has resulted in loss of Rs.l,55,89,067/- (i.e. Rs. 28,19,798- Rs. l,83,98,865).
>
> (d) It has also observed from the assessee's F&O Transactions entered during the F.Y. 2009-1O has resulted in net profit of Rs.1,51,17,420/- (i.e. Rs. 2,04,97,205- Rs.53.,79,785).
>
> (e) It is observed from the details that the assessee has adjusted the loss on sale of shares of other companies against the profit of the assessee company and resulted into low profit offered for taxation.
>
> (f) There are total of 1113 transaction on sale side involving transaction value of Rs. 40,51,75,893/- and 1353 transaction on buy side involving transactions value of Rs. 40,79,95,691/-. These transactions are recorded between 04.03.2010 to 25.03.2010 i.e. within a span of 9 trading sessions on 4th, 5th, 9th, 10th , 11th, 15th, 22nd,23rd and 25th of March., 2010.
>
> (g) This is absolutely very strange on part of any broker or an employee of a broker to so many human errors within a span of just 9 trading sessions in a particular pattern and timing involving such huge money and stakes in crores of rupees without the connivance of the broker and the client.
>
> (h) A list of transactions as reported in the NSE with regard to the above stated client code modifications are enclosed and forming part of this order as annexure –A to this order.

> (i) It could be seen from the above Annexure –A, the modifications are done in the trading hours which is against the normal trading trends and practices. Normally the genuine errors could be traced only at the end or towards the end of the trading session and corrected or modified under intimation to the exchange."

Thus, the A.O. doubted the genuineness of the transaction of losses of Rs. 3,67,83,145/- as in the opinion of the AO these transactions are structured pre-planned to generate a loss arising as business loss and these transaction were entered to avoid taxes and is a fiscal nullity. The AO observed that there is a nexus between the broker and the assessee in entering into these transactions which are preplanned and premeditated with object to generate losses to offset the profits made previously made or to be made in future with a view to avoid and evade taxes. The AO observed that the onus lies on the assessee to prove that these transactions are genuine. The A.O. finally concluded that the assessee's transactions have no commercial purpose apart from the avoidance of tax liability and are sham transaction. The A.O. also cited several case laws in support of his conclusion are illustrated vide his order page No. 20 to 24. The A.O. accordingly disallowed the loss claimed of Rs. 3,67,83,146/- and added the same to total income of the assessee, vide assessment order dated 28-03-2013 passed u/s 143(3) of the 1961 Act.

5. Aggrieved by the assessment order dated 28-03-2013 passed by the A.O. u/s 143(3) of the 1961 Act, the assessee carried the matter in appeal before the ld. CIT(A) who partly allowed the appeal of the assessee. The ld. CIT(A) gave part relief to the assessee w.r.t disallowance u/s 14A of the 1961 Act vide appellate orders dated 05-08-2014 passed by learned CIT(A), by holding as under:-

"I have considered the issue under appeal, carefully. I find that appellant is engaged in the business of trading in shares, securities and F&O transaction with surplus fund, there is share trading investment of Rs. 12,50,94,940/-. Since there is a common activities related to share trading and also involvement in investment capable of dividend, the part of expenditure debited in profit and loss account is definitely attributable to the investment activities. There cannot be any denial that some part of the administrative expenses, office, salary and wages and other related expenses is not at all related to investment in shares. Therefore, the arguments of the ld. A.R. that no expenditure has been incurred for earning dividend of Rs. 15,97,859/-, is not tenable. However, the argument that interest expenditure is not related to investment as same was incurred in connection with loan taken for giving margin money to the broker for F&O transaction, therefore, the interest expenditure of Rs. 8,76,268/- is not directly or indirectly related to earning of dividend, is convincing one. Further, it is pertinent to mention that Assessing Officer has not clarified as to how such interest expenditure debited in profit and loss account is related to earning of dividend. Obviously, the explanation of the appellant and evidences on records support the contention that interest expenditure is not related to earning of dividend. Because of this fact it is not correct on the part of the Assessing Officer to disallow interest expenditure mechanically under Rule 8D(2)(ii) to the extent of Rs. 8,63,137/-. Assessing Officer is therefore directed to delete the disallowance of expenditure of Rs. 8,63,137/-. As regards disallowance of expenditure of Rs. 5,32,143, being 0.5% of average investment, the finding of the Assessing Officer is found to be worth approval. Appellant has not been successful in rebutting the finding of the Assessing Officer that for earning of' dividend there is no element of expenditure. Apparently, investment activities requires support of office, employees, directors. Similarly, the part of the administrative expenses and office expenses can always be attributable for such investment activities. There cannot be any denial of such fact. Appellant has not been able to establish that no expenditure is require for investment activities which is done after thorough analysis of the investee companies, market trend, ups and downs in the price, review of feasibility of' investment etc. . Because of these fats and various expenses shown in schedule - 3, the various case laws relied upon by Ld.A.R.is not found applicable to the facts of this case. In this case, there is obvious element of expenditure attributable to earning of

> dividend of Rs. 15,97,859/-. Therefore expenditure worked out to the extent of Rs. 5,32,143/- under Rule 8D is correct and deserves to be confirmed. Accordingly, disallowance of expenditure of Rs. 5,32,143/- is sustained and balance expenditure of Rs. 8,63,137/- is deleted.
>
> In the result, Ground No.1 is partly allowed."

With respect to the second disallowance concerning the loss on account of client code modifications, the assessee filed detail submission and the ld. CIT(A) after considering the same deleted the disallowance made by the A.O. by giving his observation in his appellate order at page 9 to 12., vide appellate orders dated 05-08-2014 passed by learned CIT(A).The learned CIT(A) observed that directions were issued by learned Addl. CIT u/s 144A to AO to cause verifications from NSE as to factual position as per submissions of the assessee and to ascertain correct facts on the basis of information so gathered afterwards from various sources which was not done by the AO . The learned CIT(A) observed that the AO was also directed by learned Addl. CIT to determine whether client code change which has appeared in large number in the month of March 2010 , had the effect of reducing the tax payable by the assessee and to see whether the same was adopted as an device for tax avoidance. It was observed by learned CIT(A) that the AO has not made any further investigation or enquiry nor caused any verification from the brokers namely Anugrah Stock and Broking Private Limited, Labdhi Finance Corporation and M/s Wellworth Share and Stock Broking Ltd or from Vice President Investigation, NSE or from General Manager, SEBI. The finding was recorded by learned CIT(A) that when no further investigation or proper verification has been made by the AO , there is no compliance of order u/s 144A dated 22-03-2013 of the Addl. CIT and hence it was observed by the learned CIT(A) that contentions of the assessee cannot be ignored or brushed aside and hence it was observed that assessment order of the AO cannot be sustained on legal footing. After recording the above finding, learned CIT(A)

granted the relief to the assessee on the grounds that the AO did not conducted enquiry as per directions of the learned Addl. CIT and the AO disallowed the said loss merely on presumption that these transactions were sham transactions to evade and avoid taxes. The learned CIT(A) observed that these client code modifications necessitated by punching errors in the office of the broker were done during normal trading hours and were as per exchange norms and SEBI circulars. It was observed that there are in few cases similarity in clients codes which were modified such as client code modification from code ANC 21 to PNL 21 as also from 31951 to 31953 . The learned CIT(A) observed that when share trading income of Rs. 1,83,53,985/- is brought to tax by the AO , it is contradictory on the part of the AO to disallowed transactional loss of Rs. 3,67,83,146/- . It was thus, held that it was wrong on the part of the AO to disallow the loss by treating it as sham transaction more-so when no action has been taken by SEBI and NSE against the assessee. Thus the disallowance of loss of Rs. 3,67,83,146/- as was made by the AO was deleted by learned CIT(A) vide appellate order dated 05-08-2014.

6. Aggrieved by the appellate order dated 05-08-2014 passed by the ld. CIT(A), the Revenue is in appeal before the Tribunal.

7. The ld. D.R. submitted that the ld. CIT(A) was not justified in deleting an amount of Rs. 8,63,137/- u/s 14A of the Act r.w.r.8D(2)(ii) of Income-tax Rules, 1962 on account of interest expenditure incurred by the assessee . The learned DR relied upon order of the AO . It was submitted that the assessee did earned dividend income of Rs. 15,97,859/- which was claimed exempt by the assessee. The learned DR justified invocation of Rule8D(2)(ii) of the Income-tax Rules, 1962 r.w.s. 14A of the 1961 Act by the AO for making disallowance of interest expenditure by the AO. The learned DR also assailed the appellate order of learned CIT(A) deleting the addition of loss of Rs.

3,67,83,146/- on account of client code modifications made by the assessee. The ld. D.R. drew our attention to the orders of the A.O. and drew our attention to assessment order of the AO wherein it was stated that there were large scale client code modifications undertaken by brokers of NSE wherein clients modification to the tune of Rs. 55,000 crores were undertaken and NSE had itself stated that there is tax evasion . It was submitted that investigation in the matter had been started by the DIT(I&CI),Mumbai after obtaining the approval of CBDT and the outcome of the inquiries with reference to the assessee was intimated to the A.O. and accordingly the disallowances were made.

8. The ld. counsel for the assessee submitted that the Mumbai Tribunal in assessee's own case in ITA No. 4847/Mum/2016 for A.Y. 2012-13 vide orders dated 7th March, 2017 whereby the Tribunal has considered the disallowance u/s 14A r.w.s. Rule 8D and held that the no disallowance can be made u/s 14A r.w. Rule 8D for the securities held as stock-in-trade. The ld. counsel for the assessee drew our attention to the page 9 of the paper book filed with the tribunal whereby the copy of P&L account for the year ended March, 2010 is placed and submitted that the assessee's income mainly consists of brokerage and share trading income and the shares were held as stock-in-trade. He submitted that the assessee's own capital consisting of share capital and reserves was Rs.7,98,75,873/- and investments as on 31-03-2010 was only Rs.3,78,000/- hence, the ld. CIT(A) had rightly allowed the interest expenses incurred by the assessee. It was submitted that shares of Rs.12,50,94,940/- were held as closing stock-in-trade as at 31-03-2010 and our attention was drawn to page 9 and 13 of paper book filed with the tribunal wherein Profit and loss account and schedules to the account are placed. It is submitted that if shares are not held as investments but as stock-in-trade, no disallowance u/s 14A is warranted as profit from trading are chargeable to tax as business income and shares were held not for earning dividend income

but for earning profits from business. The learned counsel also submitted that owned funds of Rs.7.98 crores representing by share capital and reserves are much higher than investment of Rs.3,78,000/- held by the assessee in shares .With respect to client code modifications, it was submitted that confirmations were filed from brokers which are placed in paper book/page 37-67. It was submitted that SBI and NSE circulars allow client code modifications which are placed in paper book/page 68-72. Learned counsel relied upon the appellate order of learned CIT(A) granting relief to the assessee. The learned counsel for the assessee relied upon orders of the Mumbai-tribunal in ITA no. 3498 and 3499/Mum/2012 for assessment year 2006-07 and 2007-08 vide orders dated 07-08-2015 in the case of ITO v. Pat Commodity Services Private Limited to contend that learned CIT(A) rightly allowed the loss of Rs. 3,67,83,146/- sustained on securities which were covered by client code modifications.

9. We have carefully considered rival contentions and also perused the material available on record including case laws relied upon .

We have observed that the assessee company is engaged in the business of trading in shares, securities and F&O transactions.

We have observed that the assessee has not come in appeal before the tribunal w.r.t. the additions of Rs.5,32,143/- made by the AO of disallowance u/r 8D(2)(iii) of the 1962 rules r.w.s. 14A of the 1961 Act being 0.5% of the investments which were later confirmed by learned CIT(A) in his appellate orders dated 05-08-2014, which now has attained finality as the assessee did not challenge the appellate order of learned CIT(A) as it is not brought on record by the assessee before the Bench that the assessee had filed any appeal against the appellate order dated 05-08-2014 passed by the learned CIT(A).We have observed that Revenue is aggrieved in this case by deletion of

addition of Rs..8,63,137/- by learned CIT(A) which addition was made by the AO by applying Rule 8D(2)(ii) r.w.s. 14A w.r.t. interest expenditure incurred by the assessee . The assessee did earn dividend income of Rs.15,97,859/- which was claimed as exempt under the 1961 Act. We have observed from the perusal of audited financial statements which are placed in paper book filed with the tribunal by the assessee that the assessee has made investments in shares to the tune of Rs. 3,78,000/- (Previous Year Rs. 3,78,000/- as on 31-03-2009) which were held as 'Investments' in its books of accounts as on 31-03-2010 , while investments in shares and securities as on 31-03-2010 were Rs. 12,50,94,940 which were held as stock-in-trade (previous year as on 31-03-2009 of Rs. 8,70,06,123/-) –ref. pb/page 3-18). We have also observed that the assessee's own funds are to the tune of Rs.7,98,02,973/- (consisting of share capital + reserves-miscellaneous expenditure(debit)). We have observed that the Mumbai-tribunal has decided this issue in the assessee's own case in ITA no. 4847/Mum/2016 for assessment year 2012-13 vide orders dated 07-03-2017, wherein the tribunal held as under:

> ***"4.****During the course of hearing before us, the Authorised Representative (AR) relied upon the cases of HDFC Bank Ltd (383 ITR 529), India Advantages Securities Ltd (380 ITR 471), Max India Ltd (290 CTR 76). The Departmental Representative (DR) left the issue to the discretion of the Bench.*
>
> ***5.****After hearing the rival submissions, we find that the only issue to be decided is as to whether the expenditure eligible to stock in trade can be disallowed invoking the provisions of section 14 A r.w.r.8D of the Rules. We find that in the cases relied upon by the AR, it has been clearly held that no disallowance u/s.14A r.w.r 8D of the Rules, can be made for the securities held as stock in trade. The reason behind it is not difficult to understand. Income arising from the business of an assessee is taxed*

under the head business and profession. So, all the expenses have to be considered while computing the business income. On the other hand, if the securities are held as investment and an assessee earns exempt income, same can be subjected to disallowance as envisaged by the provisions of section 14A.In the case under consideration the assessee is dealing in shares and F &O segments and offering its income under the head business income .Therefore, in our opinion, the FAA was not justified in confirming the disallowance made for expenses incurred with regard to stock in trade. Reversing his order ,we decide the effective ground of appeal in favour of the assessee.

As a result ,appeal filed by the assessee stands allowed."

Respectfully following the aforesaid decision of the tribunal in ITA no. 4847/Mum/2016 for assessment year 2012-13 dated 07-03-2017 in assessee's own case , we dismiss the appeal of the Revenue by applying the ratio of law laid down by the tribunal in aforesaid decision, with which we concur as the facts in the instant appeal before us are similar. We order accordingly.

With respect to the second issue raised vide Ground No. 2 concerning disallowance of loss of Rs. 3,67,83,145/- claimed by the assessee as F & O trading loss which had arisen due to client code modifications undertaken in the month of March 2010 by the brokers of NSE wherein said F & O transactions were modified through client code modification by the three brokers of National Stock Exchange namely M/s Anugrah Stock & Broking Private Limited , M/s Labdhi Finance Corporation and M/s Wellworth Share and Stock Broking Limited and said F & O transaction were shown as assessee's transaction post modification to reflect loss in the hands of the assessee to the tune of Rs. 3,67,83,145/-, the said loss stood disallowed by

the AO considering the same to be sham loss being colorable device adopted by the assessee to evade taxes. The AO observed that there were reports in various financial newspapers that the NSE had allowed its members brokers to make client modifications to the tune of Rs. 55,000 crores in March 2010. Investigations in the matter was carried by DIT(I&CI), Mumbai after obtaining the approval of the CBDT . The notices were issued to NSE calling for relevant details as under :

> "(i) Details of all such modifications in the format prescribed under Rule 6DDA(v) of the Income Tax rules separately for institutional and non institutional clients.
>
> (ii) Details of trade time stamp for each transaction where modifications have been carried out.
>
> (iii) Details of all done in the modified and original client code (even those where code were not changed) for relevant dates:
>
> (iv) KYC copy of the clients included in the above where value of transaction exceeds Rs. One crore.

The replies received from the NSE is as under:-

> "The number and value of modifications in the client code have gone up dramatically in the month of March, 2010 compared to earlier and succeeding months. This is illustrated in the following table and pertains to Non-institutional clients only in the equity derivatives segment (there is no change in the number of modifications in Institutional accounts consisting mainly of Mutual Funds and FIIs).

Month	No. of modifications	Value of modifications in crore of rupees
December, 2009	2.75 lakhs	21,896
January, 2010	3.36 lakhs	28,860
February, 2010	4.05 lakhs	35,241
March, 2010	6.18 lakhs	48,794
April, 2010	1.62 lakhs	11,882

(ii) The increase in the client code modifications in the equity derivative segment in March, 2010, is in spite of the fact that trading volume and turnover actually fell during this months.

(iii) The number of client code modifications in the currency derivative segment in March, 2010 was 19395 and the value thereof was Rs.13282 crores while the comparative figures for January, 2010 was 863 modifications for a total value of Rs.461crores.

(iv) The above facts would indicate that the modifications made were part of an organized tax evasion racket which should be dealt with firmly.

(v) the important point to note is that client codes of deals carried out were changed by the brokers after the close of normal trading hours. The income tax act u/s 43(5) normally considers any transaction in which a contract for purchase or sale of any commodity including shares is settled other than by actual delivery or transfer as a speculative transaction. One of the exceptions to this position is contained in proviso (d) to S. 43(5) which states that an eligible transaction in respect of trading in derivative referred to in clause (act) of section 2 of the Securities Contracts Regulation Act, 1956 (42 of 1956) carried out in a recognized stock exchange) shall not be deemed to be a speculative transaction. An eligible transaction is one which is carried out. electronically on screen based systems and supported by a time stamped contract indicating the unique client identity number and PAN {Expln (i) to S. 43(5)(d)}; The manual change in client code is therefore against the spirit of the Act as laid out above.

(vi) Code changed can legitimately occur in some circumstances. For example, the broker may wrongly feed the client code of the husband when the shares are actually held by the wife. Similarly, there may be confusion between a HUF and individual having the same name. It is also observed that mutual funds follow a practice of purchasing shares under the code and then allotting to different schemes at the end of the day.

(vii) Other than the above, it is difficult to understand how a code change can legitimately occur.

(viii) Code changes reported by the Exchange have been made to set off a trade made in normal trading hours though screen based trading in some earlier trading session. To clarify, a code change cannot take place from a static position it is always done to set off a trade which has already taken place.

(ix) **There has always been practice on Dalal Street of booking artificial profits or losses in March to Impact tax liabilities.** This requires buying or selling stocks intra-day so as to consciously incur a loss and use that as a tax offset. (Or conversely to create a profit where carried forward or current year losses are available). This is normally done during normal trading hours using synchronized trades (called 123 trades: where orders are placed at the same time in system.)

x) The role of code modifications comes when these synchronized trades do not work due to market volatility. To clarify, suppose there are two clients, A that wants to book a loss and B that want to book a gain.

(xi) So A buys stock 'x' from, B at Rs. 100 a share in anticipation that the closing market price will be Rs. 90 rupees. But instead the stock, thanks to a volatile market, moves up and closes at a price of Rs. 110 if the position is squared at the end of the day. A would end up with a Rs.10 profit instead of a Rs.l0 loss and B is left holding a loss instead of the anticipated profit.

(xii) What the helpful broker does then is to swap the 2 client codes after the close to trading hours, thus gifting A a loss and B a profit. Since on the exchange the trades have been squared, there are no delivery obligations and everybody is satisfied.

(xiii) **Market insiders say this subterfuge took a new, sophisticated proportions since 2004 with the advent of derivative trading and became rampant on the NSE as it was the only exchange with a liquid derivatives market.**

(xiv) **The above narration is one possible scenario for code changes aimed at tax evasion and not the only one.**

(xv) The mere fact that a code change has occurred is not sufficient to arrive at a conclusion that the purpose was tax evasion. The broker concerned is very likely to give a certificate

that he had made a mistake and there was no fault of the two parties concerned as was done in this case.

{xvi) As stated earlier a client code change implies that an earlier transaction has happened in the Stock Exchange it has sought to be set off by the present code change."

The A.O. after analyzing the facts and modus operandi of the above illustrations, observed as under:

"(a) it is seen that in the month of the March, 2010 the assessee has shown modified transaction in F&O segment.

(b) These transactions are entered by broker M/s Anugrah Stock & Broking Pvt. Ltd., M/s Labadhi Finance Corporation and M/s Wellworth Share & Stock Broking Ltd. and shown as modified in the assessee company's name.

(c) It. is seen from the details availed from NSE that the assessee has entered and settled the transactions on the same day and it has resulted in loss of Rs.l,55,89,067/- (i.e. Rs. 28,19,798- Rs. l,83,98,865).

(d) It has also observed from the assessee's F&O Transactions entered during the F.Y. 2009-1O has resulted in net profit of Rs.1,51,17,420/- (i.e. Rs. 2,04,97,205- Rs.53.,79,785).

(e) It is observed from the details that the assessee has adjusted the loss on sale of shares of other companies against the profit of the assessee company and resulted into low profit offered for taxation.

(f) **There are total of 1113 transaction on sale side involving transaction value of Rs. 40,51,75,893/- and 1353 transaction on buy side involving transactions value of Rs. 40,79,95,691/-. These transactions are recorded between 04.03.2010 to 25.03.2010 i.e. within a span of 9 trading sessions on 4th, 5th, 9th, 10th , 11th, 15th, 22nd,23rd and 25th of March., 2010.**

(**g) This is absolutely very strange on part of any broker or an employee of a broker to so many human errors within a**

span of just 9 trading sessions in a particular pattern and timing involving such huge money and stakes in crores of rupees without the connivance of the broker and the client.

(h) A list of transactions as reported in the NSE with regard to the above stated client code modifications are enclosed and forming part of this order as annexure –A to this order.

(i) It could be seen from the above Annexure –A, the modifications are done in the trading hours which is against the normal trading trends and practices. Normally the genuine errors could be traced only at the end or towards the end of the trading session and corrected or modified under intimation to the exchange."

The assessee in response to notice dated 18-03-2013 issued by the AO did not file any reply before the AO rather sought directions from the Addl. CIT u/s 144A to the AO to not making any disallowance of loss incurred through the transactions of client code modifications, who observed that large number of code changes had been made in assessee's case during the month of March 2010 which were claimed to be punching errors . The assessee also claimed before the learned Addl. CIT that these client code changes had been done by broker and were done during the market hours . The learned Addl. CIT after considering the petition of the assessee directed the AO to verify the contentions and claims of the assessee and to ascertain the facts on the basis of information gathered from various sources. The AO was also directed by the learned Addl. CIT u/s 144A to determine whether the client code changes, which had appeared in large numbers in the month of March 2010 had the effect of reducing the tax payable by the assessee and in-fact was used as a device for tax avoidance and to pass the assessment order accordingly .

It is important to note at this point of time that notice was issued by the AO on 18-03-2013 .The assessee in response to the notice of the AO instead of replying before the AO , approached the learned Addl. CIT vide letter dated

20-03-2013 seeking direction to the AO. The learned Addl. CIT after calling from report from the AO and granting opportunity of heard to the assessee, issue directions to the AO u/s 144A on 22-03-2013.The assessment were getting time barred on 31-03-2013 as provided u/s 153 of the 1961 Act. The AO passed assessment order on 28-03-2013 u/s 143(3) of the 1961 Act.

Thus, the A.O. doubted the genuineness of the transaction of losses of Rs. 3,67,83,145/- as in the opinion of the AO these transactions are structured pre-planned to generate a loss arising as business loss and these transaction were entered to avoid taxes and is a fiscal nullity being colorable device to evade taxes, as held by the AO. The AO observed that there is a nexus between the broker and the assessee in entering into these transactions which are preplanned and premeditated with object to generate losses to offset the profits made previously made or to be made in future with a view to avoid and evade taxes. The AO observed that the onus lies on the assessee to prove that these transactions are genuine. The A.O. finally concluded that the assessee's transactions have no commercial purpose apart from the avoidance of tax liability and are sham transaction. The A.O. also cited several case laws in support of his conclusion are illustrated vide his order page No. 20 to 24 to come to conclusion that these are not genuine transactions but sham and colorable transactions with objective of evading taxes. The A.O. accordingly disallowed the loss claimed of Rs. 3,67,83,146/- and added the same to total income of the assessee, vide assessment order dated 28-03-2013 passed u/s 143(3) of the 1961 Act.

The learned CIT(A) while deciding first appeal observed that directions were issued by learned Addl. CIT u/s 144A to AO to cause verifications from NSE as to factual position as per submissions of the assessee and to ascertain correct facts on the basis of information so gathered afterwards from various sources which was not done by the AO . The learned CIT(A) observed that the

AO was also directed by learned Addl. CIT vide orders dated 22-03-2013 u/s 144A to determine whether client code change which has appeared in large number in the month of March 2010 , had the effect of reducing the tax payable by the assessee and to see whether the same was adopted as an device for tax avoidance. It was observed by learned CIT(A) that the AO has not made any further investigation or enquiry nor caused any verification from the brokers namely Anugrah Stock and Broking Private Limited, Labdhi Finance Corporation and M/s Wellworth Share and Stock Broking Ltd or from Vice President Investigation, NSE or from General Manager, SEBI. The finding was recorded by learned CIT(A) that when no further investigation or proper verification has been made by the AO, there is no compliance of order u/s 144A dated 22-03-2013 of the Addl. CIT and hence it was observed by the learned CIT(A) that contentions of the assessee cannot be ignored or brushed aside and hence it was observed that assessment order of the AO cannot be sustained on legal footing. After recording the above finding, learned CIT(A) granted the relief to the assessee on the grounds that the AO did not conducted enquiry as per directions of the learned Addl. CIT and the AO disallowed the said loss merely on presumption that these transactions were sham transactions to evade and avoid taxes. The learned CIT(A) observed that these client code modifications necessitated by punching errors in the office of the broker were done during normal trading hours and were as per exchange norms and SEBI circulars. It was observed that there are in few cases similarity in clients codes which were modified such as client code modification from code ANC 21 to PNL 21 as also from 31951 to 31953 are similar and hence there is a genuine possibility of punching errors. The learned CIT(A) observed that when share trading income of Rs. 1,83,53,985/- is brought to tax by the AO , it is contradictory on the part of the AO to have disallowed transactional loss of Rs. 3,67,83,146/- . It was thus, held by learned CIT(A) that it was wrong on the part of the AO to disallow the loss by treating it as sham transaction more-so when no action has been taken by

SEBI and NSE against the assessee. Thus the disallowance of loss of Rs. 3,67,83,146/- as was made by the AO was deleted by learned CIT(A) vide appellate order dated 05-08-2014.

We are afraid that this approach of learned CIT(A) disregarding the material on record and coming to certain conclusions without any material on record is completely flawed to the extent that it has made the order of learned CIT(A) enter the arena of perversity and this order of learned CIT(A) cannot be sustained in the eyes of law and is liable to be set aside. The powers of the learned CIT(A) is co-terminus with the powers of the AO including powers to enhance assessment, after following due procedures as contemplated by law. Attention is drawn to Section 251(1)(a) and 251(2) of the 1961 Act which provides as under :

> ***"Powers of the [Commissioner (Appeals)].***
>
> ***251.*** *(1) In disposing of an appeal, the [Commissioner (Appeals)] shall have the following powers—*
>
> *(a) in an appeal against an order of assessment, he may confirm, reduce, enhance or [7]annul the assessment*
>
> *[(aa) *******
>
> *(b) *******
>
> *(c) *******
>
> *(2) The [Commissioner (Appeals)] shall not enhance an assessment or a penalty or reduce the amount of refund unless the appellant has had a reasonable opportunity of showing cause against such enhancement or reduction.*
>
> *Explanation.—In disposing of an appeal, the [Commissioner (Appeals)] may consider and decide any matter arising out of the proceedings in which the order appealed against was passed, notwithstanding that such matter was not raised before the [Commissioner (Appeals)] by the appellant."*

If the powers of the learned CIT(A) are co-terminus to the powers of the AO including the power of enhancement, the same cannot be used in an arbitrary

manner but need to be exercised in a manner to achieve the mandate of the 1961 Act which is directed towards collection of correct taxes from the tax-payer. Any exercise of the power by learned CIT(A) in an arbitrary manner or in disregard of the facts on records or coming to conclusions without any material on record will make the order of the learned CIT(A) perverse and un-sustainable in the eyes of law.There was material on record that there was a large scale transactions of approx Rs 55000 crores entered by brokers through NSE in the month of March 2010 wherein there were modifications in client codes in F & O transactions undertaken by NSE Brokers wherein transactions were shifted to another codes by brokers which led to consequent shifting of profit/losses from one entity to another entity and NSE itself has cast shadow of doubt to the sudden spurt in magnitude of client code modifications which spurted from 2.75 lacs modifications in the month of December 2010 involving Rs. 21,896 crores to 6.18 lacs modifications involving value of Rs. 48,794 crores, which again fell to 1.62 lacs modifications with corresponding value to the tune of Rs 11882 crores in April 2010 . Similarly there was a sudden spurt in the client code modifications in currency derivatives. The NSE has itself stated that it is directed towards large scale tax evasion . The NSE itself stated that these transactions were modified beyond normal trading hours and reflect violation of proviso (d) to Section 43(5) of the 1961 Act. The relevant extract of NSE replies are as under:

> "The number and value of modifications in the client code have gone up dramatically in the month of March, 2010 compared to earlier and succeeding months. This is illustrated in the following table and pertains to Non-institutional clients only in the equity derivatives segment (there is no change in the number of modifications in Institutional accounts consisting mainly of Mutual Funds and FIIs).

Month	No. of modifications	Value of modifications in crore of rupees

December, 2009	2.75 lakhs	21,896
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April, 2010	1.62 lakhs	11,882

(ii) The increase in the client code modifications in the equity derivative segment in March, 2010, is in spite of the fact that trading volume and turnover actually fell during this months.

(iii) The number of client code modifications in the currency derivative segment in March, 2010 was 19395 and the value thereof was Rs.13282 crores while the comparative figures for January, 2010 was 863 modifications for a total value of Rs.461crores.

(iv) The above facts would indicate that the modifications made were part of an organized tax evasion racket which should be dealt with firmly.

(v) the important point to note is that client codes of deals carried out were changed by the brokers after the close of normal trading hours. The income tax act u/s 43(5) normally considers any transaction in which a contract for purchase or sale of any commodity including shares is settled other than by actual delivery or transfer as a speculative transaction. One of the exceptions to this position is contained in proviso (d) to S. 43(5) which states that an eligible transaction in respect of trading in derivative referred to in clause (act) of section 2 of the Securities Contracts Regulation Act, 1956 (42 of 1956) carried out in a recognized stock exchange) shall not be deemed to be a speculative transaction. An eligible transaction is one which is carried out. electronically on screen based systems and supported by a time stamped contract indicating the unique client identity number and PAN {Expln (i) to S. 43(5)(d)}; The manual change in client code is therefore against the spirit of the Act as laid out above.

The sudden and huge spurt in the last months of the previous year itself is indicative of manipulations and collusive action by the person acting in concert to rig the profits/losses to manipulate with profits / losses and consequently taxes and NSE itself confirming that these facts indicate that it is a part of organized tax evasion racket, needed further probe . All the transactions in the case of the assessee happened in the month of March 2010 in just 9 trading sessions with three brokers namely Anugrah Stock & Broking Private Limited, Wellworth Share & Stock Broking Limited and Labdhi Finance Corporation wherein large number of sale and purchase transactions were entered in the name of the assessee through modified client codes in just 9 trading session . The relevant extract of the AO findings are as under:

> (f) **There are total of 1113 transaction on sale side involving transaction value of Rs. 40,51,75,893/- and 1353 transaction on buy side involving transactions value of Rs. 40,79,95,691/-. These transactions are recorded between 04.03.2010 to 25.03.2010 i.e. within a span of 9 trading sessions on 4th, 5th, 9th, 10th , 11th, 15th, 22nd,23rd and 25th of March., 2010.**
>
> (**g) This is absolutely very strange on part of any broker or an employee of a broker to so many human errors within a span of just 9 trading sessions in a particular pattern and timing involving such huge money and stakes in crores of rupees without the connivance of the broker and the client.**

The finding of learned CIT(A) that SEBI and NSE has not taken any action against the assessee is also not supported by any material on record as no such enquiry was conducted by AO and/or CIT(A) . It was only in response to initial enquiry conducted by DIT(I&CI) based on newspaper reports from NSE that NSE confirmed that there was a spectacular rise in client code modifications in March 2010 which indicates towards tax evasion, which

information was passed on by DIT(I&CI) to the AO. No enquiry could be conducted by AO during assessment proceedings nor in response to directions of Addl. CIT dated 22-03-2013 . The learned CIT(A) also did not conducted any enquiry nor directed AO to conduct any enquiry during appellate proceedings. The powers of learned CIT(A) are co-terminus with the powers of the AO including power of assessment. When the powers are granted by statute, the same need to be exercised in a manner to achieve the mandate of the 1961 Act to compute correct taxes in the hands of tax-payer. The powers cannot be used in an arbitrary manner otherwise the orders passed in pursuance of such arbitrary use of powers will enter the arena of perversity. The learned CIT(A) was fully aware that the AO could not comply with directions of learned Addl. CIT issued u/w 144A to conduct relevant enquiry, examination and verification as was directed by learned Addl. CIT due to matter getting time barred on 31-03-2013 as direction were issued only on 22-03-2013, it was incumbent on the learned CIT(A) to conduct the necessary enquiry , examination and verifications as were directed by learned Addl. CIT or should have directed AO to conduct such enquiry and furnish remand report to the learned CIT(A) before any relief could be granted by learned CIT(A)). The AO after relying on large number of judicial precedents held the transactions to be collusive and sham with an intent to evade taxes. The learned CIT(A) whose powers being co-terminus with the powers of the AO entered into blame game by blaming the AO for not following the directions of the learned Addl. CIT in complete disregard of the fact that the directions of the learned Addl. CIT u/s 144A were issued only on 22-03-2013 while the assessment was getting time barred on 31-03-2013 as provided u/s 153 of the 1961 Act. The learned CIT(A) in exercise of powers granted u/s 251(1)(a) of the 1961 Act ought to have got the said directions complied with by persuing the same at its own end to bring it to logical conclusions or ought to have directed the AO to complete the enquiries and verifications as are necessary for the said purposes and submit remand report to learned CIT(A).

The intent being to compute correct taxes in the hands of the assesse as per mandate of the 1961 Act instead of entering into blame game. If such powers are not used by learned CIT(A) to achieve the mandate of the 1961 Act to compute correct tax liability of the tax-payer, then the power of learned CIT(A) being co-terminus with the powers of AO will be reduced to dead words, which is not the intention of the legislature in granting such powers as there has to be effective use of powers by authorities who are vested with said powers directed to achieve the mandate of the 1961 ACT. In our considered view, the appellate order of learned CIT(A) is perverse and cannot be sustained keeping in view factual matrix of the case . The AO based on material on record on the touchstone of preponderance of human probabilities surrounding the case has come to conclusion that these losses are not genuine and are sham and collusive to evade taxes. The AO based hus decision on large number of judicial precedents which found mention in the assessment order at page 20-24. There is per-se no perversity in the assessment order of the AO as the facts surrounding the case clearly and strongly suggests and points to a collusive action on the part of the assessee and brokers who were acting in concert to avoid and evade taxes, which needed further probe to come to definitive conclusions as was rightly directed by learned Addl CIT vide directions dated 22-03-2013 u/s 144A of the 1961 Act. The huge magnitude of client code modifications in the last month of the previous year as well in the case of the assessee all the client code modifications being accorded and ascribed to punching errors cannot be mere chance to say that it is in the realm of suspicion or speculation .Rather the circumstances seen cumulatively takes it to a higher pedestal than being mere a suspicion. We are conscious of the fact that suspicion howsoever stron cannot take the place of proof. The liability to tax under the provisions of the 1961 Act is required to be fastened on the touchstone of preponderance of human probabilities , and strict proof / evidences as required under Indian Evidence Act, 1872 may not be pressed to fasten the tax-liability. No-doubt

the assessee has placed on record broker confirmations but perusal of these conformations to suggest that such a large magnitude of client code modifications were carried out in the last month of the previous year i.e. March 2010 and that too in 9 trading sessions and all being ascribed to punching errors do not inspire confidence rather it clearly suggest a collusive, manipulative rigged action by persons acting in concert to evade and avoid taxes which needed further probe to fasten tax-liability on the assessee. We have also gone through brokers confirmation which are part of the paper book/page 37-67 and we have observed that client code is changed from 4403 to 61495 on 04-03-2010 by Wellworth Share and Stock Brokers Limited(pb/page 37), client code is changed from 31495 to 61495 on 08-03-2010 by Wellworth Share and Stock Brokers Limited(pb/page 38),client code changed from 7416 to 61495 by Wellworth Share and Stock Brokers Limited on 15-03-2013 (pb/page 39) , client code changed from 61495 to 7744 by Wellworth Share and Stock Brokers Limited on 08-03-2010(pb/page 49) , client code changed from 61495 to 10057 by Wellworth Share and Stock Brokers Limited on 08-03-2010(pb/page 50), client code changed from 61495 to 8428 by Wellworth Share and Stock Brokers Limited on 10-03-2010(pb/51), client code changed from 61495 to 7744 by Wellworth Share and Stock Brokers Limited on 10-03-2010(pb/page 52), client code changed from 61495 to 74561 by Wellworth Share and Stock Brokers Limited on 11-03-2010 (pb/53) , client code is changed from 61495 to 8014 on 11-03-2010 by Wellworth Share and Stock Brokers Limited(pb/page 54 , client code is changed from 61495 to 74652 on 11-03-2010 by Wellworth Share and Stock Brokers Limited(pb/page 55 , client code is changed from 61495 to 7015 on 15-03-2010 by Wellworth Share and Stock Brokers Limited(pb/page 56)))etc.. The above is not exhaustive list but few instances quoted above to reflect that there is vast difference between the wrong codes from where the transactions were shifted to a correct code and possibility of punching error with such differential codes and that too in only 9 trading sessions which happened to

be the month of March 2010(last month of previous year) in large magnitude of transactions was not mere coincidence and is a strong pointer to manipulation and collusive action of certain person acting in concert to evade taxes. This also raises another important question as to how many client codes are maintained by the assessee with the same broker and the reasons to have multiple codes. As could be seen above that large number of client codes are maintained by the assessee with the broker namely Wellworth Share and Stock Brokers Limited namely code numbers 61495,7744,10057, 8428, 74561, 6449 , 8014, 7015,74562 etc. Regarding the contention of the assessee that NSE/SEBI permits the client code modifications, we have gone through the relevant circulars which are placed in paper book/page 68-72, we have observed that the said circulars clearly allows only **'genuine'** client code modifications of transactions in the stock exchange. If the transaction is held to be 'non-genuine', we are afraid circulars of NSE/SEBI relied upon will not be applicable. Reference is drawn to circular no 663 dated 29-07-2010(Ref. No.: NSE/INVG/2011/184840 issued by NSE wherein it is clearly stipulated as under(relevant portion is extracted below):

> " The Exchange has provided the facility of client code modification only to rectify **genuine errors.** Further, as per point 2(a) and 3(B) of the SEBI circular date dated July 5, 2011 , the following client code modifications would be considered as genuine modifications , provided there is no consistent pattern in such modifications;
> i) Where original client code/name and modified client code/name are similar to each other but such modification are not repetitive.
> ii) Where original client code and modified client code belong to a family. (Family for this purpose means spouse, dependent parents, dependent children and HUF) "

The assessee case does not fall under the above category of genuine client code modifications allowed by NSE as we have seen that in large number of client code modifications, there are no similarity between wrong code and correct code and secondly there are repetitive client code modifications.

Thus, client code modifications which are tainted with collusive action and manipulations shall go out of the protection granted by these circulars of NSE/SEBI. These aspects requires proper enquiry, examination and verifications which under the circumstances authorities below ought to have done to bring it to logical conclusion and to reach to the end of the financial trail to unearth scheme of tax evasion and avoidance adopted by persons acting in concert including entering into synchronized transactions simultaneously of purchase and sale of the same securities at same time to neutralize the collective profit/loss to zero but at the same time distribute profits/loss separately arising from each of the squared transactions . These requires coordinated enquiries by various agencies to reach to the bottom of the truth. To term all such inconsistencies as are pointed out as mere suspicion shall not be correct as collectively they are pointing towards a collusive and manipulative action on part of certain persons acting in concert to avoid taxation. We are fully aware that suspicion howsoever strong cannot take place of proof but these inconsistencies collectively are on higher pedestal than merely being a suspicions which requires deeper probe to unearth the collusive action on behalf of certain parties acting in concert to manipulate the system to evade and avoid taxes. The assessee has placed reliance on decision of the tribunal in the case of Pat Commodity Services Private Limited(supra) which was decided on its own facts and there were small fraction of transactions effected by client code modification while in the instant case we have seen that large number of transactions with large magnitude were affected by client code modifications in the month of March 2010 which was itself categorized by NSE were effected towards tax evasion . Similarly , the assessee has placed reliance on decision of Hon'ble Bombay High Court in the case of Coronation Agro Industries Limited v. DCT in ITA no. 2627 of 2016 vide judgment dated 23-11-2016 wherein Hon'ble Bombay High Court was seized with an issue of escapement of income u/s 148 of the 1961, wherein Hon'ble jurisdictional High Court held that the notice u/s 148

of the 1961 Act was without jurisdiction as it lacks reason to believe that income chargeable to tax has escaped assessment and on facts it was held that the AO is suspecting income to have escaped assessment rather having reasons to believe that income has escaped assessment. These cases relied upon by the assessee were clearly distinguishable and are not relevant for deciding the instant appeal wherein facts are materially different as set out above. For Now, we are of the considered view, the appellate order of the learned CIT(A) cannot be sustain in the eyes of law as it is suffering from serious flaw and is perverse as indicated by us as above, and hence we are inclined to set aside the order of learned CIT(A) and restore the matter to the file of the learned AO for fresh adjudication of the issue on merits in accordance with law and in compliance with directions issued by Addl. CIT vide orders dated 22-03-2013 passed u/s 144A of the 1961 Act . Needless to say proper and adequate opportunity of being heard shall be granted by the AO to the assessee in accordance with principles of natural justice in accordance with law. The AO shall admit all relevant evidences and explanations submitted by the assessee in its defense. We order accordingly.

10. In the result, appeal filed by the Revenue in ITA No. 6570/Mum/2014 for assessment year 2010-11 is partly allowed for statistical purposes as indicated above.

Order pronounced in the open court on 15th May, 2017.

आदेश की घोषणा खुले न्यायालय में दिनांकः 15-05-2017 को की गई ।

Sd/-	Sd/-
(JOGINDER SINGH)	(RAMIT KOCHAR)
JUDICIAL MEMBER	ACCOUNTANT MEMBER

मुंबई Mumbai; दिनांक Dated 15-05-2017

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व.नि.स./ R.K., Ex. Sr. PS

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

1. अपीलार्थी / The Appellant
2. प्रत्यर्थी / The Respondent.
3. आयकर आयुक्त(अपील) / The CIT(A)- concerned, Mumbai
4. आयकर आयुक्त / CIT- Concerned, Mumbai
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, मुंबई / DR, ITAT, Mumbai "B" Bench
6. गार्ड फाईल / Guard file.

आदेशानुसार/ BY ORDER,

सत्यापित प्रति //True Copy//

उप/सहायक पंजीकार (Dy./Asstt. Registrar)
आयकर अपीलीय अधिकरण, मुंबई / **ITAT, Mumbai**