

**IN THE INCOME TAX APPELLATE TRIBUNAL
MUMBAI BENCH "G" MUMBAI**

**BEFORE SHRI OM PRAKASH KANT (ACCOUNTANT MEMBER)
AND
SHRI PAWAN SINGH (JUDICIAL MEMBER)**

**ITA No. 3222/MUM/2026
Assessment Year: 2009-10**

Ganita Technologies & Services Pvt. Ltd. [Sucessor In Interest to Vocation Invt & FIN Co. Pvt. Ltd.), 72-A, Mittal Tower, Nariman Point, Mumbai-400021, Maharashtra.	Vs.	ACIT 2(3)(1), Room No. 552, Aayakar Bhavan, Maharshi Karve Marg, Mumbai-400020, Maharashtra.
PAN No. AABCG0166D		
Appellant		Respondent

Assessee by : Shri Satish Kumar, CA

Revenue by : Shri Rajgopal Parthasarathi – SR
DR.

Date of Hearing : 28/07/2026
Date of pronouncement : 18/08/2026

ORDER

PER OM PRAKASH KANT, AM

This appeal by the assessee is directed against order dated 06.03.2026 passed by the learned Assistant/Joint Commissioner of Income-Tax (Appeals)-1, Bengaluru, (in short 'the learned CIT(A)'), for Assessment Year 2009-10. The assessee has challenged the validity of the reassessment proceedings as well as the addition of



Rs.1,06,40,281/- made by the Assessing Officer on account of alleged shifting of profit/loss through Client Code Modification (“CCM”) undertaken by the broker. The grounds raised are reproduced as under:

“1. The Ld. ADDL/JCIT (A) erred in law and on facts in upholding the reopening of the-assessment u/s 148 of the Act as valid though notice u/s 148 was issued-without fulfilling the conditions laid down under the said section. Thus the-reopening is not valid and the assessment framed on the basis of invalid-notice should be cancelled.

2. The Ld. ADDL/JCIT (A) erred in law and on facts in confirming the addition of Rs. 1,06,40,281/- by alleging that the assessee has shifted profit to another entities through client code modification undertaken by its broker in the transactions undertaken at recognized stock exchanges ignoring the submissions and evidences placed on record. Thus, the addition so made should be deleted.

3. The appellant craves leave to add, substitute modify, DELETE OR amend all OR any ground of appeal on before OR at the time of hearing.”

2. Briefly stated, the assessee filed its return of income for the year under consideration on 14.09.2009 declaring a total loss of Rs.56,25,983/-. The said return was processed under section 143(1) of the Income-tax Act, 1961 [in short, “the Act”] on 25.01.2010. No assessment under section 143(3) of the Act was made at that stage.

2.1 Subsequently, information was received by the Assessing Officer from the Investigation Wing, Ahmedabad, regarding alleged misuse of the Client Code Modification facility by certain brokers and their clients for shifting profits and losses from one client code to another and the assessee was one of the beneficiary of the misuse of client code modification (CCM) for artificially shifting of



profit and loss from original client code to the modified client code with an intention to reduce the legitimate tax liability which would have arisen had the original trades not been modified.

2.2 On the basis of such information, the assessment was reopened by issuance of notice under section 148 of the Act dated 29.03.2016. In response thereto, the assessee filed its return on 04.04.2016, declaring the income as returned originally.

2.3 During the course of reassessment proceedings, the Assessing Officer referred to information regarding CCM transactions allegedly involving the assessee. According to the Assessing Officer, the assessee had obtained a loss entry of Rs.12,16,895/- through CCM and was further involved in other CCM transactions amounting to Rs.94,23,386/-. The aggregate amount was accordingly taken at Rs.1,06,40,281/- and was treated by the Assessing Officer as a loss artificially brought into the assessee's books through misuse of the CCM facility. But no reply was filed on the part of the assessee. The Assessing Officer referred to the theoretical method of client code modification and also referred to the inquiry carried out by SEBI for controlling the misuse of client code modification, and thereafter he held the assessee to be the beneficiary of the loss of (-) Rs. 1,06,40,281/- by way of misuse of client code modification vide his order dated 27.12.2016 passed under section 147 of the Act.



3. The assessee carried the matter in appeal before the learned CIT(A), challenging both the assumption of jurisdiction under section 147 and the addition on merits. The learned CIT(A), however, rejected the challenge to reopening as well as the challenge to the addition. Aggrieved, the assessee is in further appeal before the Income-tax Appellate Tribunal (in short 'the Tribunal') by way of raising grounds as reproduced above.

4. Before us, the Id Counsel filed a paper book (Pages 1 -192) comprising of documents related to both grounds challenging validity of reassessment as well as on merit.

5. Ground No. 1 of the appeal of the assessee is in relation to the validity of the reassessment proceedings. The challenge to the reassessment proceedings is founded on two distinct grounds. First, it is contended that the reopening amounts to a change of opinion. Secondly, it is contended that the notice under section 148 itself was issued in the name of a non-existent entity consequent upon its amalgamation and, therefore, the entire reassessment proceeding is void *ab-initio*. These two objections operate in different fields and, therefore, require separate consideration.

Alleged change of opinion

5.1 The learned CIT(A) noted that the assessee had filed its return of income for Assessment Year 2009-10 declaring a loss of Rs.56,25,953/-, which was processed under section 143(1) of the



Act. Since no scrutiny assessment under section 143(3) had been undertaken, the learned CIT(A) observed that no opinion had earlier been formed on the issue subsequently considered in reassessment. The learned CIT(A) further noted that notice under section 148 dated 29.03.2016 was issued after recording reasons and obtaining approval under section 151, on the basis of information received from the Investigation Wing, Ahmedabad, concerning alleged misuse of the Client Code Modification facility and alleged escapement of income of Rs.1,06,40,281/-. The assessee objected to the reopening on the ground that the Assessing Officer had acted on borrowed satisfaction and had not independently verified the information.

5.2 On consideration of the reasons recorded, the learned CIT(A) held that the information available with the Assessing Officer was specific to the assessee, quantified the alleged escapement and referred to transaction-level information relating to CCM transactions. According to the learned CIT(A), the reasons, therefore, could not be regarded as vague or merely reproducing general information received from the Investigation Wing. The learned CIT(A) considered the judicial precedents relied upon by the assessee, including **Pr. CIT v. G&G Pharma India Ltd.** and **CIT v. Smt. Laxmi Mehrotra**, and distinguished them on facts. He further referred to **PCIT v. Paramount Communication Pvt. Ltd.** for the proposition that specific information received from the Investigation



Wing may constitute tangible material for formation of a prima facie belief regarding escapement of income. The learned CIT(A) accordingly held that the Assessing Officer had applied his mind to the information received and had independently formed the requisite belief regarding escapement of income. He further observed that the mere fact that the information originated from the Investigation Wing did not, by itself, render the reopening invalid.

5.3 As regards the plea of change of opinion, the learned CIT(A) observed that the original return had been processed only under section 143(1) and no scrutiny assessment under section 143(3) had been made. Therefore, according to the learned CIT(A), there was no earlier opinion on the issue which could subsequently be said to have been changed.

5.4 On the aforesaid reasoning, the learned CIT(A) concluded that the Assessing Officer had tangible material having a prima facie nexus with the alleged escapement of income and that the statutory conditions for assumption of jurisdiction under section 147 were satisfied. The challenge to the validity of the reassessment was accordingly rejected.

6. The learned counsel for the assessee assailed the assumption of jurisdiction under section 147 on several grounds. It was submitted that the reasons recorded are factually incorrect, internally inconsistent and do not disclose any independent



application of mind by the Assessing Officer. According to the learned counsel, the Assessing Officer merely reproduced the general information received from the Investigation Wing regarding alleged misuse of Client Code Modification facility, without bringing on record any assessee-specific material demonstrating that the impugned modifications were carried out at the instance of the assessee or resulted in escapement of its income. It was contended that the reasons do not disclose any live nexus between the material relied upon and the alleged escapement, particularly when the amount stated in the reasons differs materially from the figures subsequently referred to in the proceedings. It was further submitted that neither the relevant investigation report nor the statements of the brokers relied upon by the Revenue were furnished to the assessee and no independent enquiry was conducted with the broker under sections 131 or 133(6). The learned counsel thus contended that the reopening was founded upon borrowed satisfaction and mere suspicion rather than the statutory 'reason to believe'. Reliance was placed, inter alia, upon **CIT v. Kelvinator of India Ltd., 320 ITR 561 (SC)**, **ACIT v. Rajesh Jhaveri Stock Brokers (P.) Ltd., 291 ITR 500 (SC)**, **Coronation Agro Industries Ltd. v. DCIT, 390 ITR 464 (Bom.)**, and the decisions of the coordinate Benches relied upon in the written submissions. It was further urged that the reopening



amounted to a review/change of opinion and, therefore, was impermissible in law.

7. We have heard the rival submissions and perused the reasons recorded as well as the material available on record. The assessee has challenged the reopening principally on the grounds of change of opinion, borrowed satisfaction and absence of a live nexus between the information received and the alleged escapement of income.

7.1 The contention regarding change of opinion proceeds on the premise that the Assessing Officer had earlier examined the issue and thereafter sought to reopen the assessment on a different view of the same material. The record, however, shows that the original return of income filed by the assessee was processed under section 143(1) of the Act and no scrutiny assessment under section 143(3) was undertaken. Thus, there was no earlier opinion of the Assessing Officer on the issue of CCM transactions which could subsequently be said to have been changed. The plea of change of opinion is therefore without merit. The ratio of **CIT v. Kelvinator of India Ltd.**, (*supra*), therefore, does not advance the assessee's case. The position is settled by **ACIT v. Rajesh Jhaveri Stock Brokers (P.) Ltd.**, (*supra*), that processing under section 143(1) does not constitute an assessment giving rise to a change of opinion.



7.2 As regards alleged borrowed satisfaction, the reasons recorded refer to specific information concerning the assessee's CCM transactions and the consequent escapement of income. The Assessing Officer, after considering the information, recorded his own satisfaction regarding escapement of income. The mere fact that the information originated from the Investigation Wing does not render the satisfaction borrowed. At the stage of reopening, the Assessing Officer is required to have material giving rise to a reasonable belief of escapement of income; he is not required to conclusively establish the proposed addition. The sufficiency or adequacy of such material is a matter falling outside the scope of examination at this stage.

7.3 The assessee's reliance on **Coronation Agro Industries Ltd. v. DCIT, 390 ITR 464 (Bom.)**, is distinguishable on facts. In the present case, the reasons specifically refer to the assessee's CCM transactions and the alleged income effect. Thus, the information cannot be characterised as merely general information concerning CCM transactions without any nexus with the assessee.

7.4 The contention regarding non-furnishing of investigation material likewise does not, by itself, invalidate the assumption of jurisdiction. The assessee's right to confront and rebut such material is relevant while examining the sustainability of the addition on merits.



7.5 In view of the foregoing, we hold that the Assessing Officer had tangible material before him and had recorded an independent belief that income chargeable to tax had escaped assessment. The reopening, therefore, cannot be held invalid on the grounds urged by the assessee. In our opinion, the learned CIT(A) has passed a well-reasoned order on the issue and dispute and accordingly we uphold the same. The grounds challenging assumption of jurisdiction under section 147 are accordingly **dismissed**.

Notice under section 148 issued in the name of a non-existent entity

8. The learned CIT(A) considered the assessee's additional legal ground challenging the validity of the reassessment on the ground that the assessment order had been passed in the name of **Vocation Investment and Finance Private Limited**, which had amalgamated with **Ganita Technologies and Services Private Limited** pursuant to a Scheme of Amalgamation sanctioned by the Hon'ble Bombay High Court on 12.09.2014, with appointed date 01.10.2013. The learned CIT(A) noted that, although the notice under section 148 dated 29.03.2016 was issued in the name of the amalgamating company, the successor company participated in the reassessment proceedings through its authorised representatives, furnished submissions and documents, and contested the proposed



additions on merits without raising any objection regarding the amalgamation at that stage. The learned CIT(A) observed that, upon amalgamation, the transferor company ceased to exist and its assets and liabilities vested in the transferee company. However, according to him, the question was whether, in the facts of the case, the assessment framed in the name of the amalgamating company constituted a jurisdictional defect or a procedural defect capable of being cured. Referring to sections 170 and 292B of the Act, the learned CIT(A) held that the tax liabilities of the amalgamating company devolved upon the successor and that a mistake, defect or omission in a proceeding would not invalidate it if the proceeding was, in substance and effect, in conformity with the intent and purpose of the Act.

8.1 The learned CIT(A) considered the decisions relied upon by the assessee, particularly **PCIT v. Maruti Suzuki India Ltd. (supra)**, and distinguished the same on the basis that the effect of amalgamation has to be considered in the light of the facts of each case, including the knowledge of the Assessing Officer and the conduct and participation of the successor entity. He also referred to **Sky Light Hospitality LLP v. ACIT (supra)** and **CIT v. Mahagun Realtors Pvt. Ltd. (supra)** in support of the proposition that, in appropriate circumstances, an error in describing the assessee may constitute a curable defect where the successor is aware of and participates in the proceedings.



8.2 On the facts before him, the learned CIT(A) found that the successor company had full knowledge of the reassessment proceedings, participated therein and contested the additions on merits. He accordingly held that the assessment, though bearing the name of the amalgamating company, was in substance against the successor entity and that no prejudice had been demonstrated. The learned CIT(A), therefore, concluded that the defect in mentioning the name of the amalgamating company was procedural and curable under section 292B and did not render the reassessment proceedings void. The additional ground challenging the validity of the assessment on the ground that it was framed in the name of a non-existent entity was accordingly **dismissed**.

8.3 The material on record shows that the assessee-company i.e. Vocation investment and Finance co. pvt ltd , had amalgamated with **Ganita Technologies and Services Private Limited** pursuant to a Scheme of Amalgamation sanctioned by the Hon'ble Bombay High Court on 12.09.2014, with the appointed date being 01.10.2013. Thus, on the date on which notice under section 148 was issued, i.e. 29.03.2016, the amalgamating company had ceased to exist pursuant to the sanctioned scheme.

8.4 We find that the notice under section 148 dated 29.03.2016, however, was issued in the name of the erstwhile amalgamating company. The reassessment proceedings were thereafter continued



and the assessment order dated 27.12.2016 was also passed in that name.

8.5 The question, therefore, is not merely whether there was an error in describing the assessee in the assessment order. The more fundamental question is whether jurisdiction under section 147 could at all have been assumed by issuing the **foundational notice under section 148 against an entity which had ceased to exist in law.**

8.6 The Hon'ble Supreme Court has authoritatively considered this issue in **Principal Commissioner of Income-tax v. Maruti Suzuki India Ltd., 416 ITR 613 (SC)**. The Court held that upon amalgamation, the amalgamating company ceases to exist and cannot thereafter be regarded as a person against whom assessment proceedings can be initiated. The Court further held that issuance of the jurisdictional notice in the name of the non-existent amalgamating company renders the subsequent assessment proceedings invalid; participation by the successor in the proceedings does not operate as an estoppel against law. The Revenue may, however, rely upon the subsequent decision of the Hon'ble Supreme Court in **Principal Commissioner of Income-tax v. Mahagun Realtors (P.) Ltd., 443 ITR 194 (SC)**. That decision cannot be read as laying down a proposition that every assessment framed in the name of an amalgamating company is necessarily valid merely because the successor participated in the proceedings.



The decision turned upon its particular facts, including the conduct of the assessee, the absence of intimation regarding amalgamation, the manner in which the return was filed and the assessee's consistent conduct of holding itself out as the assessee. The Hon'ble Supreme Court expressly observed that whether amalgamation by itself invalidates an assessment cannot be determined merely by applying the principle of corporate dissolution, but depends upon the terms of amalgamation and the facts and circumstances of the case.

8.7 In the present case, the material available before us establishes that the amalgamation had taken effect substantially prior to issuance of notice under section 148. The notice constituting the very foundation for assumption of jurisdiction under section 147 was issued in the name of the amalgamating company. The fact that the successor subsequently participated in the reassessment proceedings cannot, by itself, confer jurisdiction upon the Assessing Officer where the jurisdictional notice was addressed to an entity which had ceased to exist. The defect, therefore, is not one of mere description or nomenclature in a proceeding otherwise validly initiated against the correct assessee. It goes to the root of the assumption of jurisdiction. Section 292B cannot be invoked to validate a proceeding which was initiated against a non-existent person in the absence of a valid jurisdictional notice.



8.8 We accordingly hold that the notice issued under section 148 dated 29.03.2016 in the name of the non-existent amalgamating company was invalid and that the reassessment proceedings founded upon such notice cannot be sustained in law. The reassessment order dated 27.12.2016 is consequently liable to be quashed.

9. Having quashed the reassessment proceedings on this jurisdictional ground, the addition made in the reassessment order ordinarily does not survive for adjudication. Nevertheless, since the assessee has raised a substantive challenge to the addition on merits and detailed submissions have been advanced thereon, we consider it appropriate to deal with the same in the alternative.

10. Ground No. 2 of the appeal of the assessee relates to addition on merit. The relevant finding of the learned CIT(A) is reproduced as under: On merits, the learned CIT(A) noted that the Assessing Officer had relied upon information received from the Investigation Wing, Ahmedabad, concerning alleged misuse of the Client Code Modification ("CCM") facility and had identified the assessee as a beneficiary of loss entries aggregating to **Rs.1,06,40,281/-**.

10.1 The learned CIT(A) noted that, according to the Assessing Officer, the relevant trades were initially executed under one client code and subsequently modified to the assessee's client code on the same day. The Assessing Officer considered the frequency,



magnitude and timing of the modifications to be inconsistent with isolated or inadvertent clerical errors and concluded that the losses had been artificially shifted to the assessee. The learned CIT(A) considered the assessee's contention that CCM was a permissible facility under the applicable stock-exchange regulations and that the modifications were made within the prescribed time. The assessee had also contended that there was no direct evidence of collusion, cash trail or payment of commission and that the statements of third parties relied upon by the Revenue had neither been furnished nor subjected to cross-examination. The learned CIT(A), however, held that the mere permissibility of CCM did not preclude its misuse. According to him, the material gathered by the Investigation Wing, read with the pattern and magnitude of the modifications and the corresponding trading data, indicated that the transactions were not merely inadvertent corrections but represented systematic allocation of losses. Referring to the principles laid down by the Hon'ble Supreme Court in **McDowell & Co. Ltd. v. CTO, 154 ITR 148 (SC)**, **CIT v. Durga Prasad More, 82 ITR 540 (SC)** and **Sumati Dayal v. CIT, 214 ITR 801 (SC)**, the learned CIT(A) considered the surrounding circumstances, timing and pattern of the transactions relevant for determining their genuineness. He observed that the assessee had not furnished satisfactory contemporaneous evidence explaining the repeated modifications resulting in substantial losses.



10.2 The learned CIT(A) further observed that the Assessing Officer had not relied solely upon third-party statements, but had also considered the assessee's transaction data and exchange records. He, therefore, distinguished the decision in **Andaman Timber Industries v. CCE, (supra)** relied upon by the assessee, on the ground that the addition in the present case was not founded exclusively upon statements of third parties. The learned CIT(A) also rejected the assessee's contention regarding absence of a cash trail or commission payment, observing that direct evidence of consideration may not necessarily be available in transactions alleged to involve accommodation arrangements. He further held that the assessee had not established that any corresponding profit had been offered to tax by the alleged counterparty so as to support its contention regarding double taxation. On an overall consideration of the investigation material, the pattern and magnitude of the CCM transactions and the surrounding circumstances, the learned CIT(A) concluded that the losses claimed by the assessee did not represent genuine trading losses but were the result of systematic shifting of losses through CCM. He accordingly sustained the addition of **Rs.1,06,40,281/-** and dismissed the assessee's ground on merits.

11. Before us, the learned counsel for the assessee submitted that the addition of **Rs.1,06,40,281/-** on account of alleged profit/loss shifting through Client Code Modification ("CCM") was made



without any assessee-specific material. He submitted that during the reassessment proceedings the assessee had furnished the details of income from market operations, ledger account of **SMC Global Securities Ltd.**, futures and options gain/loss accounts, audited financial statements and tax audit report.

11.1 It was contended that the assessee was not a registered stock-broker and could not itself carry out CCM; the modifications, if any, were undertaken by the broker. There was no material to establish that the modifications were made at the instance of the assessee or pursuant to any arrangement for shifting profits or losses. The learned counsel further submitted that the Revenue had not brought on record any evidence of exchange of money, cash trail, commission or other consideration between the assessee, the broker and the alleged beneficiaries. Nor was there any material showing collusion between the parties or any adverse action by SEBI or the stock exchange against the assessee or its broker. It was further submitted that the CCM facility was a recognised mechanism for correcting genuine errors in punching client codes, subject to the applicable regulatory conditions. Therefore, the mere fact that client codes were modified could not, by itself, establish that the resulting loss was fictitious or arranged for tax purposes.

11.2 The learned counsel also submitted that the Investigation Wing's findings concerning certain brokers could not be



mechanically applied to the assessee's transactions, particularly when the assessee's broker, **SMC Global Securities Ltd.**, was not shown to have been subjected to any such investigation. No independent enquiry was made by the Assessing Officer from the broker under section 133(6), nor was any material brought on record from SEBI or the stock exchange establishing that the assessee's transactions were non-genuine. It was further contended that the assessee was not confronted with the relevant portion of the Investigation Wing's report or the statements of brokers relied upon by the Assessing Officer. Consequently, the assessee was denied an effective opportunity to rebut the material or seek cross-examination. The addition, according to the learned counsel, was therefore founded upon general observations regarding CCM and not upon cogent evidence relating to the assessee's own transactions. The learned counsel also drew attention to the variation in the figures appearing at different stages of the proceedings. According to the reasons recorded, the alleged net CCM loss was **Rs.12,16,896/-**, whereas the notice under section 142(1) and the subsequent show-cause notice referred to different figures, ultimately aggregating to **Rs.1,06,40,281/-**. It was submitted that the Revenue had not explained the basis for such variation or established how the additional amount of **Rs.94,23,386/-** was connected with the alleged CCM transactions of the assessee.



11.3 In conclusion, the learned counsel submitted that the assessee's transactions were duly recorded in its books and supported by contemporaneous documents, whereas the Revenue had failed to establish any specific arrangement, collusion or consideration underlying the CCM transactions. The addition of **Rs.1,06,40,281/-**, according to the assessee, was thus based merely on suspicion, assumption and generalisation and deserved to be deleted.

12. We have considered the rival submissions and perused the assessment order, the order of the learned CIT(A), the material placed on record and the judicial precedents relied upon by both sides. The issue for our consideration is whether the Assessing Officer was justified in treating the alleged CCM transactions resulting in loss of **Rs.1,06,40,281/-** as an artificial loss arranged for shifting taxable income. There is no dispute that Client Code Modification was a facility available to stock-brokers for correction of genuine errors in punching client codes, subject to the applicable regulatory framework. Therefore, the mere fact that a client code was modified cannot, by itself, lead to the conclusion that the resultant transaction or loss was fictitious. The relevant enquiry is whether, in the facts of the assessee's case, the Revenue has brought sufficient material to establish that the modifications were deliberately undertaken at the instance of the assessee for the purpose of shifting taxable profit or loss.



12.1 The Assessing Officer has principally relied upon the information and investigation conducted by the Investigation Wing regarding alleged misuse of CCM by certain brokers. The learned CIT(A) has also drawn an adverse inference from the magnitude and pattern of the modifications and applied the principles of human probabilities. We do not dispute that the surrounding circumstances and the test of human probabilities are relevant while examining the genuineness of a transaction, as held by the Hon'ble Supreme Court in **CIT v. Durga Prasad More, 82 ITR 540 (SC)** and **Sumati Dayal v. CIT, 214 ITR 801 (SC)**. Likewise, a transaction which is established to be a colourable device cannot be protected merely by its legal form, as explained in **McDowell & Co. Ltd. v. CTO, 154 ITR 148 (SC)**. However, the application of these principles necessarily requires the existence of circumstances and material connecting the assessee with the alleged device.

12.2 In the present case, the assessee was not itself a stock-broker and, therefore, could not undertake CCM independently. The modifications, if any, were carried out at the broker's end. The Revenue has not brought on record any material to establish that the assessee instructed the broker to modify the client codes, or that the broker had acted pursuant to any pre-arranged understanding with the assessee for shifting profits or losses.



12.3 We also find that no material has been brought on record to demonstrate any exchange of money, cash consideration, commission or other benefit between the assessee and any person in connection with the alleged shifting of losses. There is also no finding of any specific relationship or collusion between the assessee and the parties to whose client codes the corresponding transactions allegedly belonged. The Assessing Officer has not examined the corresponding parties so as to establish the alleged arrangement. In this regard, the observations of the coordinate Benches in **DCIT v. Comet Investment (P.) Ltd., ITA No.5802/Mum/2017**, order dated 13.05.2019, relied upon by the assessee, is relevant. The said decision emphasises that CCM by itself cannot justify an adverse inference without further corroborative material connecting the assessee with the alleged arrangement. The learned counsel further relied on the decision of the coordinate bench of the Tribunal in the case of **Shri Nilesh Natwarlal Shah in ITA No. 38/RJT/2018** for Assessment Year 2009-10, wherein similar addition has been made on client code modification has been deleted observing as under:

“11. We have heard the rival contentions of both the parties and perused the materials available on record. From the preceding discussion, we note that the assessee was alleged to have diverted his profit amounting to Rs. 2,51,46,835/- on account of client code modification by shifting in losses and shifting out profit. Accordingly, the AO made the addition of Rs. 2,51,46,835/- to the total income of the assessee and also an addition of Rs. 5,02,937/- being commission expenses in consequent to client code modification. The view taken by the AO was subsequently reversed by the learned CIT (A). Client Code Modification means modification /change of



the client codes after execution of trades. Stock Exchanges provide a facility to modify any client code after the trade has been executed to rectify any error or wrong data entry done by the brokers at the time of punching orders. However, such Client Code modification is subject to certain guidelines as to the time limit within which the client code modification is to be carried out, terminal /system on which such modifications can be done etc. The facility is mainly to provide a system for modification of client codes in case genuine errors in punching / placing the orders. It is to be used as an exception and not a routine. To prevent misuse of the facility Stock Exchanges levy penalty / fine for all non-institutional client code modifications.

11.1 Coming to the facts of the present case, admittedly client codes were modified of the assessee as per the Data received from the NSE. However, the first question that arises whether such client codes were modified at the instance of the assessee or there was some punching error at the end of the share broker. It is because the stock exchange permits the share broker to rectify the mistakes occurred while punching the data. If that be so, then there cannot be any fault which can be attributed to the assessee for the mistakes committed by the share broker.

11.2 Furthermore, the client code modifications give rise to the doubt/suspicion which requires detailed investigations from the parties concerned to reveal the truth. Merely, there were client codes modifications carried out by the broker, the same cannot be the basis to draw an inference against the assessee. In fact, in the case of client code modification the code of the other party is entered at the place of the assessee. Thus the other party also required to be investigated whether the other party was involved in such transaction. Besides this other corroborative evidence has to be brought on record suggesting that there was the exchange of cash among the parties involved in such client code modification transaction. But we note that no such exercise has been carried out by the authorities below. As such there is no whisper in the order of the authorities below that there was the cash transfer between the parties for transferring the income of the assessee to the other party.

Thus, in the absence of such verification/examination carried out by the authorities below, we are not inclined to uphold their findings.

11.3 Further, the assessee during the year made total trade for 56,582 time whereas client code was modified at 51 instance only and majority of the same were done in second and third quarter only. Thus, the instances of code modification are very insignificant to hold that the same was done with the intention to evade tax.

11.4 In view of the above and after considering the facts in totality, we are not inclined to interfere in the findings of the learned CIT (A). Accordingly we hereby confirm the finding of the learned CIT (A) and direct the AO to



delete the addition made by him. Hence, the ground of appeal raised by the Revenue is hereby dismissed.”

12.4 In the present case, the assessee furnished its trading records, ledger account of SMC Global Securities Ltd., futures and options accounts, audited financial statements and other relevant material. The Revenue has not demonstrated that these primary records were false or fabricated. Nor is there any material on record to show that the assessee's broker, SMC Global Securities Ltd., was found to have undertaken such CCM transactions as part of an arrangement with the assessee. No adverse action by SEBI or the stock exchange against the assessee or its broker in respect of the transactions in question has been brought on record.

12.5 We are conscious that the learned CIT(A) has observed that the Investigation Wing had unearthed a modus operandi involving misuse of CCM and that the impugned transactions displayed a pattern consistent with such modus operandi. However, a general modus operandi established in the case of certain brokers or market participants cannot, without further corroboration, be automatically attributed to every assessee whose client code appears in the CCM data. The Revenue is required to establish the necessary factual link between the general investigation and the particular transactions of the assessee.

12.6 As regards the assessee's grievance regarding non-furnishing of the investigation report and statements of brokers, we do not



consider it necessary to adjudicate the same as an independent ground for deleting the addition, since our conclusion is based upon the insufficiency of assessee-specific corroborative material. The Assessing Officer has referred to the investigation material, but the addition cannot be sustained merely because such general investigation material exists unless the material on record establishes its application to the assessee's transactions.

12.7 The learned CIT(A) has placed reliance upon the principles of **McDowell & Co. Ltd., Durga Prasad More (supra)** and **Sumati Dayal (supra)**. Those principles undoubtedly permit the Revenue to examine the substance of a transaction and the surrounding circumstances. They do not, however, dispense with the requirement of establishing, on the basis of relevant material, that the particular transaction under consideration was in fact a colourable device. Suspicion, however strong, cannot take the place of evidence.

12.8 In the totality of the circumstances, we are of the considered view that the Revenue has not brought sufficient corroborative material on record to establish that the assessee deliberately participated in an arrangement for shifting taxable losses or that the loss of **Rs.1,06,40,281/-** was fictitious. The addition, therefore, cannot be sustained merely on the basis of the general findings regarding misuse of CCM and the pattern of modifications.



12.9 We accordingly set aside the finding of the learned CIT(A) on this issue and direct the Assessing Officer to delete the addition of **Rs.1,06,40,281/-**. The grounds raised by the assessee on merits are accordingly **allowed**.

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

Order pronounced in the open Court on 18/08/2026.

**Sd/-
(PAWAN SINGH)
JUDICIAL MEMBER**

**Sd/-
(OM PRAKASH KANT)
ACCOUNTANT MEMBER**

Mumbai; Dated: 18/08/2026
Kunal Kr. P.S.

Copy of the Order forwarded to :

1. The Appellant
2. The Respondent.
3. CIT
4. DR, ITAT, Mumbai
5. Guard file.

//True Copy//

BY ORDER,
(Assistant Registrar)
ITAT, Mumbai