

**IN THE INCOME TAX APPELLATE TRIBUNAL
AHMEDABAD “SMC” BENCH, AHMEDABAD**

BEFORE Ms. SUCHITRA KAMBLE, JUDICIAL MEMBER

**ITA No.520/Ahd/2023
Assessment Year: 2015-16**

Atmiben Aliptkumar Doshi, 18, Mahavirnagar Society, Mahavirnagar, Himatnagar, Sabarkantha, Gujarat – 383 001. [PAN – AOEPD 5072 P]	Vs.	The Income Tax Officer, S.K. Ward- 3, Himatnagar.
(Appellant)		(Respondent)
Assessee by	Shri Vipul Khandhar, AR	
Revenue by	Shri Yogesh Mishra, Sr. DR	
Date of Hearing	12.12.2023	
Date of Pronouncement	17.01.2024	

ORDER

This appeal is filed by the assessee against order dated 26.04.2023 passed by the CIT(A), National Faceless Appeal Centre (NFAC), Delhi for the Assessment Year 2015-16.

2. The assessee has raised the following grounds of appeal :-

- “1. The learned CIT(A) erred in law and on facts in confirming the addition of u/s.68 of IT Act, 1961 which is requested to be quashed.
2. The learned CIT(A) erred in passing the order u/s.250 r.w.s. 254 of the IT Act, 1961 which is requested to be quashed.

Prayer:

- (i) To set-aside the order u/s.250 r.w.s. 254 of IT Act, 1961 which is requested to be quashed.
- (ii) To drop the addition of Rs.7,54,948/- being accommodation entry u/s.68 of the IT Act, 1961.”

3. The return of income was filed on 07.09.2015 declaring total income of Rs.3,56,370/-. The return was duly processed under Section 143(1) of the Income Tax Act, 1961 and notice under Section 143(2) of the Act was issued on 28.07.2016 which was served upon the assessee. Thereafter, notice under Section 142(1) of the Act along with questionnaire was issued on 16.01.2017. The Assessing Officer observed that the assessee is carrying on business of share trading and deriving income from salary, capital gain and other sources. From the statement of income, the Assessing Officer observed that the assessee claimed LTCG of Rs.7,54,948/- being exempt under Section 10(38) of the Act on sale of shares of Kappac Pharma Limited. The assessee was called for details of production of sale of the said shares as well as mode of payment of demat account etc. From the details, the Assessing Officer observed that the assessee purchased 5000 shares of Kappac Pharma Limited for amount of Rs.1,00,000/- from Corporate Stick Broking Pvt. Ltd. on 02.04.2012. Out of which, 3000 shares were sold by the assessee on 25.11.2014 for an amount of Rs.7,60,948/- and shown Long Term Capital Gain (LTCG) of Rs.7,54,948/- and claimed the said gain as exempt under Section 10(38) of the act. The Assessing Officer observed that the assessee's transaction with the said scrip was analysed and the assessee is also one of the beneficiary of accommodation entry provider Kanha Stock Broking Pvt. Ltd. and showing income under the head LTCG which is exempt under Section 10(38) of the Act. The Assessing Officer issued show cause notice under Section 142(1) of the Act dated 31.07.2017 thereby calling upon the assessee to explain as to why the profit on sale of the said shares should not be treated as unexplained income. In response to the said request notice, the assessee filed letter dated 08.08.2017 thereby stating that the statements of brokers on the basis of which the Assessing Officer made observation in assessee's case and more particularly the statements in which they have mentioned assessee's claim as one of the beneficiaries of their alleged activities as well as their cross-examination should be given to the assessee. The assessee further submitted that the statement showing purchase and sale of shares on which Short Term Capital Gain & Long Term Capital Gain has been claimed. The assessee also furnished requisite format in contract note for sale of shares and ledger account from broker ASE Capital Markets Limited. After taking cognisance of the assessee's reply, the Assessing Officer observed that the assessee is maintaining Demat Account and

the shares are purchased and sold through Demat account with KIFS Financial Services Limited except the script of Kappac Pharma Limited. The assessee admitted to have purchased 1000 shares of Websol Energy System Limited in Demat Account with KIFS Financial Services Limited on 07.12.2011. The assessee also found to have purchased various shares from 2011 in the Demat form with KIFS Financial Services Limited. However, in respect of 5000 shares of Kappac Pharma Limited was purchased on 02.04.2012 in physical form against Rs.1,00,000/- from Corporate Stock Broking Pvt. Ltd. The payment for such purchase is also stated to have paid in cash on 04.04.2012. The purchase of this particular share dated 02.04.2012 was not proved. The assessee has given explanation but the same was not supported by details. The conduct of the assessee to purchase the shares of Kappac Pharma Limited in cash and chose a broker who have a dubious credentials to dematerialise the same only point to the fact that the assessee wanted to avail the benefit accommodation entry by the assessee. Further, the Assessing Officer observed that the said shares were demated only on 04.10.2013. The said shares were sold on 25.11.2014 just to cover the period of 12 months as contemplated in Section 10(38) of the Act. The assessee has sold 5000 shares of Kappac Pharma Limited for Rs.11,43,000/- which is not genuine transaction and is unaccounted income as the same was routed through the brokers and paper companies. The Assessing Officer further observed that the BSE had suspended trading in security of Kappac Pharma Limited on 07.01.2015 vide Circular dated 01.01.2015 but the assessee has sold the said scrip prior to the said suspension. The Assessing Officer further observed that the assessee has chosen a dubious broker for sale of such shares which indicate the assessee's intention to avail the accommodation entry. The Assessing Officer made addition of Rs.7,54,948/- under Section 68 of the Act.

4. Being aggrieved by the Assessment Order, the assessee filed appeal before the CIT(A). The CIT(A) dismissed the appeal of the assessee.

5. The Ld. AR filed written submission before the CIT(A) and submitted that no cross enquiry has been carried out by the Assessing Officer before treating the said LTCG. In fact, the assessee was not given opportunity of cross examining the statements made by the respective parties. The Ld. AR further submitted that there was no mention in the Assessment Order regarding LTCG as share

transaction and the Assessing Officer has not related any specific information/ material evidence pertaining to the assessee from the report of the Investigation Wing of the Kolkata and as to what documents were in the possession of the Assessing Officer to establish the allegation of bogus LTCG claim. The Ld. AR further submitted that the assessee has rightly purchased the scrip of M/s. Kappac Pharma Limited and the purchase itself was not doubted. The Ld. AR relied upon the following decisions

- 1) *Prakash Jhanvi (ITA No.464/Ind/2019 - Indore Bench)*
- 2) *Ayushi Jain (ITA No.2551/Kol/2018)*
- 3) *Indravadan Jain (IT No.454/2018 - Bombay High Court)*
- 4) *Indravadan Jain (ITA No.4861/Mum/2014)*
- 5) *Parasben K. Kochar (Tax Appeal No.204/2020 - Gujarat High Court)*
- 6) *Parasben K. Kochar (SCA Appeal 6782/2021 - Supreme Court)*

6. The Ld. AR further submitted that the decision in the case of A.Y. 2014-15 will not be applicable as cross-examination was not asked in that A.Y. and in the present A.Y. the same was asked. The Ld. AR further submitted that the decision of Hon'ble Gujarat High Court in the case of Parasben K. Kochar and other decisions cited by the assessee will be squarely applicable in assessee's case.

7. The Ld. DR submitted that the assessee has not relied on any statement as such in respect of Investigation Wing's report but has given categorical and independent finding about the assessee's purchase as the sale of the said scrip was through its broker and the impact on the said scrips gain. The Ld. DR filed the written submission which is as under:-

- “1. *The AO has carried out an independent enquiry as detailed in para no.3.10 to 3.15 in the assessment order dated 29.09.2017. The enquiry has been carried out independent of Investigation Report on Penny Stocks. The AO after going through the facts of the case and information provided for in the ITR of the assessee for A.Y. 2015-16, concluded that the scrip of Kappac Pharma Ltd. was a penny stock and that assessee indulged in sham transactions by transacting in the shares of Kappac Pharma Ltd. to bring her unaccounted income in the guise of exempted long term capital gain. Further, many opportunities were given to the assessee to establish its case even*

in para no.3.11 of assessment order, AO has mentioned that conclusions cannot be drawn on surmises and accordingly a through enquiry was conducted to establish that Kappac Pharma Ltd. was indeed a penny stock.

2. *It is an undisputed fact that shares of Kappac Pharma Ltd. were bought off market and consideration was paid in cash by the assessee as detailed in para no.3.10 of assessment order. As mentioned in aforesaid para no. 3.10 of the assessment order, **it is quite surprising to note that despite having an active demat account which was being used for buying and selling of shares on bourses since 2006, assessee bought the shares of Kappac Pharma Ltd. off market that to in cash.** Thus, on the one hand assessee was transacting in shares through its demat account and paying for the same through banking channels while on the other hand, simultaneously assessee bought shares of Kappac Pharma Ltd. off market that to in cash. This factum of purchase of shares of Kappac Pharma Ltd. in physical form in cash, itself indicates a pre-arranged set-up whereby assessee would buy the shares of Kappac Pharma Ltd. at quite cheap price in cash thereby introducing her unaccounted income/ black money and once the price of the shares are rigged and inflated exponentially, the same would be sold through market transaction to camouflage the entire chain of transaction as genuine and book exempt long term capital gain u/s. 10(38) of the Income Tax Act, 1961.*
3. *The perusal of Share Transfer Form also indicates dubious nature of purchase of shares of Kappac Pharma Ltd. The shares were bought by assessee on 02.04.2012 in cash and shares were transferred in the name of the assessee on 09.10.2012 though the Share Transfer Form is dated 04.01.2013 and signature on the said form is dated 01.10.2012. How come the physical shares were transferred in the name of assessee on 09.10.2012 when the Share Transfer Form itself is dated 04.01.2013. The aforesaid factual matrix amply establishes that entire affair of share purchase by the assessee is a make believe affair, orchestrated as one of the stages in the larger scheme of availing benefit of penny stock shares to bring her unaccounted income/ black money into books of account that to without paying single paisa of tax.*
4. *The reference to the Investigation Report on Penny Stock in the assessment order was made to bring all materials available with the AO on record and it was not relied upon by the AO blindly neither any statement recorded by the Investigation Wing was relied upon by the AO. AO has conducted his independent enquiry by giving assessee ample opportunities of being heard in accordance with the cardinal principles of Natural Justice and Evidence Act in the sense that no material was relied upon without confronting it to the assessee.*

5. *Assessee cannot be allowed selective appropriation of facts to the effect that since sale of the shares were effected through market bourse, the entire transaction was genuine and purchase of shares that to in cash would have no bearing on the nature of entire transaction which was in reality a sham transaction designed to defraud the revenue. The facts ought to be looked into their totality and assessee must not be allowed to cherry pick the facts to paint as genuine her transactions in penny stock to launder unaccounted income/ black money.*
6. *In support of assessment order, respectful reliance is being placed on the following judgments:*
 - i) *Order of Hon'ble ITAT Ahmedabad in the case of the assessee itself for A.Y.2014-15 in ITA No.940/Ahd/2018 dated 30.01.2023.*
 - ii) *Decision of Hon'ble Delhi High Court in the case of Udit Kalra, 2019(4)TM/834.*
 - iii) *Decision of Hon'ble Kolkata High Court in the case of PCIT-5 Kolkata vs. Swati Bajaj (IA No.GA/2/2022 in ITAT /6/2022)."*

8. Heard both the parties and perused all the relevant material available on record. In A.Y. 2014-15, as contemplated by the assessee/AR, the cross-examination is asked in the present A.Y. but from the perusal of the Assessment Order and the observation independently given by the Assessing Officer in respect of purchase and sale of the scrip of Kappac Pharma Limited, the statements or in respect of cross-examination or examination will not come in purchase in the present scenario and, therefore, not commenting on the request without cross-examination was properly done by the Assessing Officer. The contention of the Ld. AR is hence rejected. The assessee has purchased this scrip on 02.04.2012 and this fact was undisputed. There was exorbitant scrip increase in the period from 20.04.2012 to 27.12.2014 and prior to the suspension to the BSE Stock of the said scrip assessee has sold these shares on exorbitant market price. The Assessing Officer has doubted the genuineness of the purchase as well, therefore, the impact on market price while selling the said shares was doubted throughout by the Revenue. In fact, the purchase of said scrip appears to be bogus in nature as the scrip when having share price of Rs.17.45 was purchased by the assessee at Rs.20 per share. The reliance of the

decision of Hon'ble Delhi High Court in the case of Udit Kalra, 2019(4) TM/834 categorically treated the said scrip as non-genuine and bogus. The assessee's claim for LTCG cannot be simply proved on the Demat statement but the very effect of the price purchased and price sold of the said scrip determined the same. In fact, the brokers' credibility was also doubted by the Assessing Officer and for which the assessee has not given any explanation before any of the Authorities. Thus, the Assessing Officer and the CIT(A) has rightly denied the LTCG exemption under Section 10(38) of the Act to the assessee. The Ld. AR relied upon the decisions quoted in paragraph no.5 hereinabove as submissions during hearing, but all these case laws after going through differs on factual basis as set out by the Assessing Officer in present assessee's case. Therefore, these case laws will not be applicable in the present assessee's case. Appeal of the assessee is, therefore, dismissed.

9. In the result, appeal filed by the assessee is dismissed.

Order pronounced in the open Court on this 17th January, 2024.

Sd/-
(SUCHITRA KAMBLE)
Judicial Member

Ahmedabad, the 17th January, 2024

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Copies to: (1) *The appellant*
(2) *The respondent*
(3) *CIT*
(4) *CIT(A)*
(5) *Departmental Representative*
(6) *Guard File*

By order

Assistant Registrar
Income Tax Appellate Tribunal
Ahmedabad benches, Ahmedabad