

आयकर अपीलीय अधिकरण, डी / एस एम सी न्यायपीठ, चेन्नई

IN THE INCOME TAX APPELLATE TRIBUNAL  
'D' SMC BENCH, CHENNAI

श्री एन.आर.एस. गणेशन, न्यायिक सदस्य के समक्ष

BEFORE SHRI N.R.S. GANESAN, JUDICIAL MEMBER

आयकर अपील सं./ITA No.1333/Chny/2018

निर्धारण वर्ष / Assessment Year : 2014-15

Smt. Vandana Sankhala,  
9/5, VP Colony, Angadi Street,  
Aynavaram,  
Chennai - 600 023.

v.

The Assistant Commissioner  
of Income Tax,  
Non-Corporate Circle – 10(1),  
Chennai.

PAN : AARPG 3278 M

(अपीलार्थी/Appellant)

(प्रत्यर्थी/Respondent)

आयकर अपील सं./ITA No.1334/Chny/2018

निर्धारण वर्ष / Assessment Year : 2014-15

Shri Sanjay Jain,  
9/5, VP Colony, Angadi Street,  
Aynavaram,  
Chennai - 600 023.

v.

The Assistant Commissioner  
of Income Tax,  
Non-Corporate Circle – 10(1),  
Chennai.

PAN : AAFPJ 2749 E

(अपीलार्थी/Appellant)

(प्रत्यर्थी/Respondent)

अपीलार्थी की ओर से/Appellants by : Shri N. Vijay Kumar, CA

प्रत्यर्थी की ओर से/Respondent by : Shri B. Sagadevan, JCIT

सुनवाई की तारीख/Date of Hearing : 17.10.2018

घोषणा की तारीख/Date of Pronouncement : 24.10.2018

**आदेश / O R D E R**

Both the appeals of two independent assessees are directed against the respective orders of the Commissioner of Income Tax (Appeals)-12, Chennai, dated 16.02.2018 and 19.02.2018 respectively, for the assessment year 2014-15. Since common issue arises for consideration in both the appeals, I heard both the appeals together and disposing of the same by this common order.

2. Shri N. Vijay Kumar, the Ld. representative for the assessees, submitted that each assessee purchased 2000 shares of Kappac Pharma Ltd. through off market transaction for ₹30,000/-. According to the Ld. representative, each share costs about ₹15/-. In fact, the shares were purchased from a stock broker known as M/s Sannidhya Tradelink Pvt. Ltd. The shares were purchased physically on 19.07.2012. According to the Ld. representative, out of 2000 shares, the assessee-Smt. Vandhana Sankhala sold 1200 shares on 05.02.2014 at a price of ₹683.95 per share and 500 shares on 10.02.2014 at a price of ₹683.95 per share. The balance of 300 shares were sold on 13.02.2014 at a price of ₹678/- per share, whereas, the assessee-Shri Sanjay Jain sold 1500 shares at a price of ₹727.80 per share on 24.02.2014 and 500 shares at a

price of 707/- per share on 25.02.2014. When the former assessee claimed exemption under Section 10(38) of the Income-tax Act, 1961 (in short 'the Act') to the extent of ₹13,31,521/-, the later claimed exemption under Section 10(38) of the Act to the extent of ₹14,05,695/-. The Assessing Officer, however, disallowed the claim of the assessee on the ground that Kappac Pharma Ltd. is a penny stock company, therefore, the profit on sale of shares of Kappac Pharma Ltd. cannot be allowed as exemption under Section 10(38) of the Act.

3. Referring to the assessment order, Shri N. Vijay Kumar, the Ld. representative submitted that the Assessing Officer referred to various investigations said to be carried out by the Investigation Wing of the Department at Kolkata and found that several companies are providing accommodation entry in order to make bogus claim of exemption under Section 10(38) of the Act. The copies of investigation report said to be received by the Assessing Officer were not furnished to the assessee. Moreover, according to the Ld. representative, the assessee has no role either in the promotion of the company Kappac Pharma Ltd. or its functioning. The assessee, according to the Ld. representative, are investors in

a public limited company, therefore, the CIT(Appeals) is not justified in confirming the order of the Assessing Officer.

4. On the contrary, Shri B. Sagadevan, the Ld. Departmental Representative, submitted that Kappac Pharma Ltd. is a paper company and it is a penny company. According to the Ld. D.R., Kappac Pharma Ltd. is not engaged in any business. The share price of Kappac Pharma Ltd. was inflated abnormally. According to the Ld. D.R., the Investigation Wing of the Department at Kolkata made thorough investigation and found that Kappac Pharma Ltd. is one of the paper companies for the purpose of enrouting unaccounted black money. One Shri Anil Kumar Khemka, the Director of Apex commotrade Private Ltd. was examined. According to the Ld. D.R., the assessees earned huge capital gain within a short period by investing money in penny stock company. Therefore, according to the Ld. D.R., the Assessing Officer found that the assessees invested in the shares of loss making company at an abnormally high rate as identified by jamakharchi companies which have no net worth. Therefore, according to the Ld. D.R., the CIT(Appeals) has rightly confirmed the order of the Assessing Officer.

5. I have considered the rival submissions on either side and perused the relevant material available on record. It is not in dispute that both the assesseees invested in the shares of Kappac Pharma Ltd. through independent stock broker and claimed exemption in respect of the sale of said shares under Section 10(38) of the Act. The Department appears to have made thorough investigation at Kolkata and found that Kappac Pharma Ltd. is a penny stock company and the net worth of the said company was artificially inflated to increase the share price. However, a copy of the investigation report was not furnished to the assesseees. Moreover, the Assessing Officer has not brought on record the role of the assesseees in promoting Kappac Pharma Ltd. or inflating the shares of Kappac Pharma Ltd. in the market. If the assesseees are innocent investors, then they cannot be found fault merely because the investments were made in a penny stock company.

6. It is not known how a penny stock company was allowed to continue as a registered company by the office of Registrar of Company? and it is also not known how it was allowed to issue public shares? The action taken by the Income-tax Department or the Ministry of Company Affairs was not brought on record by the Assessing Officer. It is also not known whether Kappac Pharma

Ltd. was allowed to continue to be public limited company by the Registrar of Company or it was deregistered? It is also not known who are responsible for promoting such companies and officers who are responsible to register this kind of companies as public limited companies. Since facts are not available on record, this Tribunal is of the considered opinion that the facts need to be verified by the Assessing Officer. Accordingly, orders of both the authorities below are set aside and the entire issue is remitted back to the file of the Assessing Officer. The Assessing Officer shall furnish a copy of so-called investigation report said to be received from Investigation Wing of the Department at Kolkata to both the assesseees and also bring on record whether Kappac Pharma Ltd. continues to be a registered company as on today and who are the promoters of the penny stock company, and whether the finding of Income-tax Department was brought to the notice of Ministry of Company Affairs and the action taken on such reports by the Ministry of Company Affairs and thereafter decide the issue afresh in accordance with law, after giving a reasonable opportunity to the assesseees.

7. In the result, both the appeals of the assesseees are allowed for statistical purposes.

Order pronounced in the court on 24<sup>th</sup> October, 2018 at  
Chennai.

sd/-  
(एन.आर.एस. गणेशन)  
(N.R.S. Ganesan)  
न्यायिक सदस्य/Judicial Member

चेन्नई/Chennai,  
दिनांक/Dated, the 24<sup>th</sup> October, 2018

Kri.

आदेश की प्रतिलिपि अग्रेषित/Copy to:

1. अपीलार्थी/Appellant
2. प्रत्यर्थी/Respondent
3. आयकर आयुक्त (अपील)/CIT(A)-12, Chennai
4. Principal CIT-3, Chennai
5. विभागीय प्रतिनिधि/DR
6. गार्ड फाईल/GF.