

**IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH "SMC" NEW DELHI**

BEFORE SHRI AMIT SHUKLA, JUDICIAL MEMBER

I.T.A. No.4459/DEL/2017
Assessment Year: 2014-15

Sidhartha Jain, E-4/4, Model Town, Delhi.	v.	ITO, Ward-23(1), New Delhi.
TAN/PAN: ADIPJ 7114M		
(Appellant)		(Respondent)

Appellant by:	Shri Sanjay Gupta, CA.		
Respondent by:	Shri S.L. Anuragi, Sr.D.R.		
Date of hearing:	14	11	2018
Date of pronouncement:	28	01	2019

ORDER

The aforesaid appeal has been filed by the Assessee against the impugned order dated 19.05.2017 passed by the Commissioner of Income Tax (Appeals)-XXVIII, New Delhi for the quantum of assessment passed u/s.143(3) of the IT Act, for the Assessment Year 2014-15. In the grounds of appeal, the assessee has challenged the addition of Rs.6,80,000/- made u/s.68 by disallowing claim of exemption u/s.10(38) in respect of Long-Term Capital Gain earned at listed equity shares sold through Bombay Stock Exchange after payment by Security Transaction Tax, on the ground that it is a case of penny stock.

2. The facts in brief are that the assessee had purchased 1,000 shares of M/s. Kappac Pharma Ltd. at the face value of Rs.13 per share on 13.09.2012. These shares were purchased through broker, M/s. Shah Tradwing Gujarat Pvt. Ltd. in off

market transaction. After the purchase of shares, the share certificate along with share transfer deed duly signed by the transferee was given to the assessee. These shares after the transfer were shown as investment in the statement of affairs as on 31.03.2013. Later on, these shares were dematerialized in assessee's Demat account maintained with M/s. Choice Equity Broking Pvt. Ltd. On 25.03.2014, these shares were sold for Rs.6,93,000/- through BSE at the market rate of Rs. 693 per share.

3. Ld. Assessing Officer observed that assessee has earned return of more than 53 times over a very short period of 18 months in the scrip of M/s. Kappac Pharma Ltd. and such a movement of scrip was beyond human probabilities. The assessee had not carried out any share purchase and sale activity since last two year. Assessee had not shown any Long-Term Capital Gain or Short-Term Capital Gain on sale of shares. The assessee had only opened Demat account on 1st February, 2014. He issued notice u/s.133(6) to M/s. Choice Equity Broking Pvt. Ltd. to obtain copies of ITR, Annual Report, copy of audited accounts and details of the brokers. However, the said notice remained unserved. In response, a letter was received from M/s. Choice Equity Broking Pvt. Ltd. giving details of M/s. Kappac Pharma Ltd. At pages 3 to 5 of the assessment order from the details provided, AO has noted that this company had only authorized and paid share capital of Rs.0.77 crore in financial years 2009-10 and in the financial year 2010-11, its equity capital had arisen to Rs.23.77 crore for which no particular reason could be deduced and such increase only raises a suspicion that this

was purely for different intention. There was no fixed asset or tangible asset to support any business activity and there were no earning/operating profit in the company. Thereafter, he discussed the general *modus operandi* of Long-Term Capital Gain Schemes which was unearthed by the Directorate of Investigation, Kolkata. Thereafter, he referred to many judgments and finally held that amount of Rs.6,80,000/- credited in the bank account of the assessee is an unexplained cash credit to be added u/s.68 which should be taxed under the rate of 30% as provided in Section 115BBE.

4. Ld. CIT(A) too has confirmed the said addition on the ground that the purchase of the share was off market transaction in physical form for which the assessee has shown to have made payment by cash and such a payment of purchase of share in cash is not in conformity with the regulatory guidelines of the SEBI. He further held that assessee was not regular investor in shares and the nature of transaction itself looks suspicious because there was abnormal appreciation in the value of share within short period without any proper financial prudential of the said company.

5. After hearing both the parties and on perusal of the relevant finding given in the impugned order as well as material referred to before us, I find that the addition of Rs.6,80,000/- has been made on the premise that the credit appearing in the bank account shown from transaction of sale of share for which assessee has treated that Long-Term Capital Gain is an unexplained credit which is to be added

u/s.68. Learned counsel before us has stated that in order to prove the genuineness of the purchase and sale of transaction, the assessee had filed following documents;

1. Copy of share certificate for M/s. Kappac Pharma Pvt. Ltd. showing the shares were transferred in the name of the assessee.
2. Copy of share transfer deed duly signed by the assessee and transferee of share.
3. Copy of debit noted dated 10.09.2012 issued by Broker M/s. Shah Tradwing Gujarat Pvt. Ltd. along with copy of cash receipts and the payment of purchase consideration of share.
4. Copy ledger account of the assessee as appearing in the books of M/s. Shah Tradwing Gujarat Pvt. Ltd.
5. Copy of Demat account and entire transaction as appearing in the Demat account.
6. Copy of sale contract note shown the sale transaction of the share.
7. Copy of STT certificate showing deduction of STT on sale transaction.

6. Apart from that, he has also given the price history of stock of M/s. Kappac Pharma Ltd. from 28.05.2012 to 25.03.2014 showing that in BSE, this scrip was traded regularly and how the price has risen gradually and were always quoted in the BSE. At the time of sale, the stock price of M/s. Kappac Pharma Pvt. Ltd. was Rs.693. He also drew

our attention to the trading of shares as appearing in the contract note that these shares were traded in stock exchange in two lots and after the sale, the amount was directly credited to the bank account of the assessee. Thus, the credit appearing in the bank account was on account of sale of shares for which assessee has duly shown the possession of the said shares with him which is evident from the share certificate, and therefore, it cannot be held that it is an unexplained cash credit appearing in the books of account of the assessee or bank account. He further submitted that there is no iota of evidence or information that the assessee has been found to be beneficiary of some accommodation entry nor any inquiry has been conducted by the Assessing Officer from where it has been unearthed that assessee was involved in any such kind of bogus transaction. The entire addition has been made on presumption and general practice as to how various entry operators are involved in bogus Long Term Capital Gain. Such general observation or practice cannot be the basis for addition unless there is some material or inquiry to show that the transactions undertaken by the assessee are not genuine and all the documents for purchase and sale have been manipulated. Thus, such an addition could not have been made u/s.68.

7. On the other hand, learned Department Representative strongly relied upon the order of the authorities below and reiterated that the very fact that the price of this company has risen from Rs.13 to Rs.700 per share in the span of 18 months which itself goes to show that these price were rigged only to provide accommodation entry to various beneficiaries

and since assessee has also dealt in the same scrip goes to prove that assessee too was involved in taking a benefit of bogus Long Term Capital Gain.

8. From the perusal of the entire assessment and appellate order, it is seen nowhere there is any evidence or information gathered during the course of any investigation or inquiry either from the broker or from the company M/s. Kappac Pharma Ltd. that assessee is beneficiary of any accommodation entry or has routed his own unaccounted money in the garb of fictitious Long-Term Capital Gain. The entire addition has been made on hypothesis from general *modus operandi* adopted by various entry operators for providing accommodation entry in Long Term Capital Gain. Here, in this case, there is no reference of any entry provider or any information that the assessee has paid any unaccounted money for getting such kind of an accommodation entry. In the absence of such material, it is very difficult to discard the evidences filed by the assessee which conclusively goes to show that:

- Firstly, there is a purchase of shares for which assessee has physical form of shares and share certificates in his name, which has been duly transferred by a transfer deed duly signed by the assessee and transferee of the shares. The said shares have been duly dematerialized in the Demat account of the assessee. Thus, the factum of shares in possession of the assessee cannot be doubted.
- Secondly, the shares have been sold in recognized

stock exchange BSE and the contract note for the sale reveals the details of order number, transaction time, trade number, trade time and the amount received on account of sales along with broker commission.

- Thirdly, assessee has paid STT on such transaction.
- Lastly, the amount after sale of shares has been duly credited in the bank account of the assessee.

9. Once the nature of transaction is dealing in shares and source of the credit appearing in the bank account is from sale of shares, then without any contrary material to show that such credit in the bank account is bogus or non-genuine, then said credit cannot be deemed to be income of the assessee. Though such a phenomenal rise of the shares in a span of 18 months do raises lot of suspicion, but howsoever strong suspicion may be, there has to be some kind of an evidence or information that assessee was involved in some kind of bogus or sham transaction, either by himself or through some entry provider. There is no whisper in the assessment order or appellate order that any action has been taken by SEBI against M/s. Kappac Pharma or they have been found to be rigging the price in the stock exchange. Once a listed share which is regularly traded in the recognized stock exchange at quoted price and the sale of share is recorded in the stock exchange and sale proceeds of the said share has been credited in the bank account, then source of credit stands proved. Simply because the price of the scrip has risen manifold cannot *per se* be the ground to hold that credit in bank account of the assessee is

unexplained. If there is some undisclosed or unexplained money which has been routed through some suspicious channel then that has to be some evidence or trail brought on record so as to nail the assessee. General *modus operandi* of the entry providers cannot be the basis for making the addition in each and every case in absence of any specific information or material that such person is beneficiary of accommodation entry or any kind of scam or is part of that *modus operandi*. Her no such material or information has been found against the assessee. Accordingly, in absence of any contrary material on record, I do not find any reason to sustain the addition and the same is directed to be deleted.

10. In the result, the appeal of the assessee is allowed.

Order pronounced in the open Court on 28th January, 2019.

Sd/-
[AMIT SHUKLA]
JUDICIAL MEMBER

DATED: 28th January, 2019

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