

**IN THE INCOME TAX APPELLATE TRIBUNAL,
DELHI 'SMC' BENCH, NEW DELHI**

BEFORE SHRI H.S. SIDHU, JUDICIAL MEMBER

ITA No. 2451/DEL/2018
[Assessment Year: 2014-15]

SMT. SHIPRA AGGARWAL,
R/O 2421-23, TILAK STREET
CHUNA MANDI, PAHARGANJ,
NEW DELHI - 110 055
(PAN: AVJPS2681K)
[Appellant]

Vs. ITO, WARD-62(5),
NEW DELHI

[RESPONDENT]

Assessee by: Sh. M.P. Gupta, Adv.
Revenue by : Sh. Sanjay Kapoor, Sr. DR.

ORDER

This appeal by the assessee is preferred against the order of the Ld. Commissioner of Income Tax [Appeals]-20, New Delhi dated 31.01.2018 pertaining to assessment year 2014-15. The assessee has raised as many as 05 grounds of appeal. The main ground in this appeal is relating to the addition of Rs. 28,28,498/- made by the AO u/s. 68 of the Income Tax Act, 1961 (in short "act") on account of deposit in the bank account out of STT paid on sale proceeds of 4000 equity shares of M/s Kappac Pharma Ltd. and claiming the exemption u/s. 10(38) of the Act.

2. At the time of hearing, Ld. DR stated that the issue regarding the shares of M/s Kappac Pharma Ltd. has been adjudicated and decided by the ITAT, Delhi Benches in the case of Udit Kalra vs. ITO decided in ITA No. 6717/Del/2017 on 08.1.2019 in favour of the Revenue. He further stated that the order of the ITAT, Delhi Benches in the case of Udit Kalra vs. ITO (Supra) has been upheld by the Hon'ble Delhi High Court in ITA No. 220/2019 & CM No. 10774/2019 vide order dated 08.3.2019. He has also filed the copy of the order dated 8.3.2019 passed by the Hon'ble Delhi High Court and requested that the appeal of the assessee may be dismissed.

3. Ld. Counsel for the assessee stated assessee has filed the Paper Book containing pages 1-90 in which he has attached the various documentary evidences to support the claim in dispute of the assessee alongwith the case laws relied upon. Ld. Counsel for the assessee also stated that assessee has also filed the written submissions before the Ld. CIT(A) which is also a part of record and he relied upon the same.

4. I have heard both the parties and perused the orders passed by the revenue authorities including the ITAT order dated 8.1.2019 passed in the case of Udit Kalra vs. ITO decided in ITA No. 6717/Del/2017 in favour of the Revenue, which has been upheld by the Hon'ble Delhi High Court in the case of Udit Kalra vs. ITO in ITA No. 220/2019 & CM No. 10774/2019 vide order dated 08.3.2019. After going through the documentary evidences filed by both the parties, I am of the considered view that the shares of M/s Kappac Pharma Ltd. as held by the assessee in the present case, the genuineness of the same has already been examined by the ITAT Delhi Benches in the case of Udit Kalra (Supra) and find that M/s Kappac Pharma Ltd. has been de-listed from the Stock Exchange and is suspicious and was denied the exemption u/s. 10(38) of the I.T. Act, 1961. For the sake of convenience, the relevant portion of the judgment of the Hon'ble High Court of Delhi decided in the case of Udit Kalra vs. ITO (Supra) is reproduced as under:-

"The assessee is aggrieved by the concurrent findings of the tax authorities - including the lower appellate authorities rejecting its claim for a long term capital gain reported by it, to the tune of Rs.13,33,956/- and RS.14,34,501/- in respect of 4,000 shares of M/s Kappac Pharma Ltd. The assessee held those shares for approximately 19 months; the acquisition price was RS.12/- per share whereas the market price of the shares at the time of their sale, was Rs.720/-. It is contended that the assessee was not granted fair

opportunity. Mr. Rajesh Mahna, learned counsel appearing for the assessee relied upon the orders of the co-ordinate Bench of the tribunal, in respect of the same company i.e. M/s Kappac Pharma Ltd., and pointed out that the tax authority's approach in this case was entirely erroneous and inconsistent. The main thrust of the assessee's argument is that he was denied the right to cross-examination of the individuals whose statements led to the inquiries and ultimate disallowance of the long term capital gain claim in the returns which are the subject matter of the present appeal. This court has considered the submissions of the parties. Aside from the fact that the findings in this case are entirely concurrent - AO., CIT(A) and the ITAT have all consistently rendered adverse findings - what is intriguing is that the company (Mis Kappac Pharma Ltd.) had meagre resources and in fact reported consistent losses. In these circumstances, the astronomical growth of the value of company's shares naturally excited the suspicions of the Revenue. The company was even directed to be delisted from the stock exchange. Having regard to these circumstances and principally on the ground that the findings are entirely of fact, this court is of the opinion that no substantial question of law arises in the present appeal. This appeal is accordingly dismissed."

4.1 After going through the facts and circumstances of the present case and the judgment of the Hon'ble Delhi High Court in the case of Udit Kalra vs. ITO (Supra), I have no other option except to follow the decision of the Hon'ble Delhi High Court, because no other contrary judgment has been produced by the Ld. Counsel for the assessee. Accordingly, following

the aforesaid precedent, I uphold the order of the Ld. CIT(A) and decide the issue in dispute against the Assessee.

5. In the result, the Appeal of the Assessee is dismissed.

The order pronounced on 03.01.2020.

Sd/-

[H.S. SIDHU]
JUDICIAL MEMBER

Dated: 03-01-2020

SRB

Copy forwarded to:

1. Appellant
2. Respondent
3. CIT
4. CIT(A)
5. DR

Asst. Registrar,
ITAT, New Delhi