

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

BEFORE SHRI H.S. SIDHU, JUDICIAL MEMBER

ITA No. 1508/DEL/2019
[Assessment Year: 2014-15]

<p>NARENDER AGGARWAL (HUF), 212, STARLITE APARTMENT, SECTOR-14 EXTN., ROHINI, DELHI - 110085 (PAN: AABHN6245F) [Appellant]</p>	Vs.	<p>ITO, WARD-39(4), NEW DELHI [RESPONDENT]</p>
--	-----	---

ITA No. 1509/DEL/2019
[Assessment Year: 2014-15]

<p>NARENDRA KUMAR AGGARWAL 212, STARLITE APARTMENT, SECTOR-14 EXTN., ROHINI, DELHI - 110085 (PAN: AAJPA5922G) [Appellant]</p>	Vs.	<p>ITO, WARD-39(4), NEW DELHI [RESPONDENT]</p>
---	-----	---

Assessee by: Sh. R.K. Kapoor, Adv
Revenue by : Sh. Sanjog Kapoor, Sr. DR.

ORDER

These 02 appeals have been filed by the assessee in the capacity of HUF as well as Individual against the respective orders of the Ld. Commissioner of Income Tax [Appeals]-13, New Delhi dated 17.12.2018 & 14.12.2018 respectively. Since the issues involved in these appeals are common and identical, hence, both the appeals were heard together and are being disposed of by this common order by first dealing with ITA No. 1508/Del/2019 (AY 2014-15) and the decision thereof will apply *mutatis mutandis* to other ITA No. 1509/Del/2019 (AY 2014-15).

2. The grounds raised in ITA No. 1508/Del/2019 (AY 2014-15) – Narender Aggarwal (HUF) vs. ITO read as under:-

"1. That the order of CIT(A) U/S 250 of the Act is bad in law and on facts of the assessee's case.

2. That Ld. CIT(A) has grossly erred in law in confirming the addition made by the AO on account of long term capital gain of Rs. 21,05,853/- earned by the assessee on sale of shares of Mis. KappacPharma Ltd. and treated the same as bogus and is taxable as unexplained cash credit U/S 68 r.w.s. 115 BBE of the Income Tax Act.

3. That the Ld. CIT(A)/Assessing Officer has grossly erred in law and on facts of the appellant case in holding that assessee manipulated the transactions to earn long term capital gain. Such findings are contrary to evidences filed by the assessee and there is no evidence of assessee's involvement in any way in the alleged manipulations.

4. That the findings and allegations made by the Ld. CIT(A)/ AO by relying on the outcome of alleged investigations made by the Investigation Wing of Income Tax Department in Kolkata and observation of NSE/SEBI/SIT are based on surmises conjectures and imagination without any live link or involvement of the assessee with the alleged investigations.

5. That the Ld. CIT(A)/AO grossly erred in law in holding that the assessee's name appeared in the list of beneficiaries investigated by the Kolkata Investigation Wing of the Income Tax Department and inferences drawn against the assessee are based on surmises, conjectures and unsubstantiated allegations. Thus, the additions made based on no evidence against the assessee and are prayed to be deleted.

6. That the findings and allegations made by the Ld. AO further upheld by Ld. CIT(A) in his order are based on no evidence against the assessee and are totally unsubstantiated and has no evidentiary value against the assessee.

7. That the Ld. CIT(A)/Assessing Officer failed to consider the evidences filed by the assessee in connection with earning of exempt long term capital gain and proceeded with a pre-conceived mind to make the addition U/S 68 r.w.s. 115 BBE of the Income Tax Act.

8. That the Ld. AO has passed the order and further confirmed by the Ld. CIT(A) by collecting the evidences at the back of the assessee without confronting such evidences to the assessee which is against the principles of fair play and natural justice. The Order passed ignoring these' vital principles is prayed to be quashed.

9. That additions made by AO and upheld by Ld. CIT(A) based on certain statements of persons etc. which has no connection or live link with the statement of affairs of the assessee and collected at the back of the assessee is prayed to be expunged from order.

10. That the Ld. CIT(A)/ Assessing Officer grossly erred in law in holding that assessee was not regular ordinary investor although it was holding shares in many other companies, apart from M/s. Kappac Pharma Ltd.

11. That no evidence has been brought on record of the Hon'ble CIT(A)/Assessing Officer which conveys that assessee was involved in converting its unaccounted money through the route of exempt capital gains. The Order is prayed to be declared as null and void.

12. That the references made by the Ld. AO in his order to the modus operandi adopted by the certain unrelated concerns/persons and further upheld by the Ld. CIT(A) has no connection or relevance to the facts of the assessee's case and the same are prayed to be expunged.

13. That the findings and observations of the Ld. CIT(A)/Assessing Officer in their Orders regarding penny stock is based on conjectures, surmises and imagination and are prayed to be held as legally untenable.

14. That the Ld. CIT(A) grossly erred in law by not appreciating the judgements on which the assessee relied upon and not distinguished the facts of the assessee's case with these judgements. Thus, prayed to be applied on the assessee's case.

15. That the reliance of the Ld. CIT(A)/AO on certain judgments in the CIT(A) Order as well as Assessment Order are misplaced and prayed not to be applied on the assessee's facts.

16. That the Ld. CIT/AO grossly erred in law in treating the transaction of sale of shares of Kappac Pharrna Ltd. as ingenuine although the transaction of purchase of such shares was already accepted by the Ld. AO in earlier years.

17. The addition made by the AO and further confirmed by the CIT(A) of Rs.1,43,210/- on the alleged commission paid to one Sh. Davesh Upadhaya is bad in law and is without evidence.

18. That the assessee had no link or connection with the said Upadhaya and the additions has been made on conjectures, surmises and imagination and is prayed to be deleted.

19. That the charging of interest U/S 234B and 234C of the Income Tax Act is bad in law and is prayed to be deleted.

20. That the penalty proceedings initiated U/S See 271(1)(c) are on wholly illegal and untenable grounds since there was submission of inaccurate particulars of income, by the assessee.

21. That the aforesaid grounds are without prejudice to the one another raised herein.

Prayer

The appellant-assessee prays that the relief as per grounds of appeal above may kindly be allowed to it and the appellant may also be allowed to add, delete, amend or substitute any ground(s) of appeal either at or before the date of hearing."

3. The grounds raised in ITA No. 1509/Del/2019 (AY 2014-15) – Narendra Kumar Aggarwal vs. ITO read as under:-

"1. That the order of CIT(A) U/S 250 of the Act is bad in law and on facts of the assessee's case.

2. That Ld. CIT(A) has grossly erred in law in confirming the addition made by the AO on account of long term capital gain of Rs. 24,22,448/- u/s. 68 r.w.s. 115 BBE of the Income Tax Act made by the AO by treating the long term capital exempt income u/s. 10(38) of the Income Tax Act as a taxable income.

3. That the Ld. CIT(A)/Assessing Officer has grossly erred in law and on facts of the appellant case in concluding that assessee had converted his unaccounted income into tax free income through the mechanism of sale purchase of shares of M/s. Kappac Pharma Ltd. Such findings are contrary to evidences filed by the assessee.

4. That the findings and allegations made by the Ld. CIT(A)/AO by relying on the outcome of alleged investigations made by the Investigation Wing of Income Tax Department in Kolkata and observation of NSE/SEBI/SIT are based on surmises conjectures and imagination without any live link with the transactions of the assessee.

5. That additions made by AD and upheld by Ld. CIT(A) based on certain facts within the knowledge of the AO, without any involvement of the assessee are bad in law and are prayed to be deleted.

6. That the findings and allegations made by the Ld. AO further upheld by Ld. CIT(A) in his order are based

on no evidence against the assessee and are totally unsubstantiated and has no evidentiary value against the assessee.

7. That the Ld. CIT(A)/Assessing Officer failed to consider the evidences filed by the assessee in connection with earning of exempt long term capital gain and proceeded with a pre-conceived mind to make the addition U/S 68 r.w.s. 115 BBE of the Income Tax Act.

8. That the Ld. AO has passed the order and further confirmed by the Ld. CIT(A) by collecting the evidences at the back of the assessee without confronting such evidences to the assessee which is against the principles of fair play and natural justice. The Order passed ignoring these vital principles is prayed to be quashed.

9. That the Ld. CIT(A)/Assessing Officer grossly erred in law in holding that assessee was not regular ordinary investor although it was holding shares in many other companies, apart from M/s. Kappac Pharma Ltd.

10. That no evidence has been brought on record of the Hon'ble CIT(A)/Assessing Officer which conveys that assessee was involved in converting its unaccounted money through the route of exempt capital gains. The Order is prayed to be declared as null and void.

11. That the references made by the Ld. AO in his order pertaining to the financials of M/s. Kappac Pharma Ltd. or Kailash Auto Finance Ltd. or modus operandi adopted by the certain unrelated concerns/persons and further upheld by the Ld. CIT(A) has no connection or relevance to the facts of the assessee's case and the same are prayed to be expunged.

12. That the findings and observations of the Ld. CIT(A)/Assessing Officer in their Orders regarding penny stock is based on conjectures, surmises and imagination and are prayed to be held as legally untenable.

13. That the Ld. CIT(A) grossly erred in law by not appreciating the judgements on which the assessee relied upon and not distinguished the facts of the assessee's case with these judgements. Thus, prayed to be applied on the assessee's facts.

14. That the reliance of the Ld. CIT(A)/AO on certain judgments in the CIT(A) Order as well as Assessment Order are misplaced and prayed not to be applied on the assessee's facts.

15. That the Ld. CIT(A)/AO failed to appreciate that neither the assessee, nor the broker through whom the

assessee carried out the transactions of sales and purchase were named in the alleged investigation and inferences drawn against the assessee are based on surmises, conjectures and unsubstantiated allegations.

Thus, the additions made based on no evidence against the assessee and are prayed to be deleted.

16. That the Ld. CIT/AO grossly erred in law in treating the transaction of sale of shares of Kappac Pharma Ltd. as in genuine although the transaction of purchase of such shares was already accepted by the Ld. AO in earlier years.

17. That the charging of interest U/S 234 Band 234C of the Income Tax Act is bad in law and is prayed to be deleted.

18. That the penalty proceedings initiated U/S 271(1)(c) are on wholly illegal and untenable grounds since there was submission of inaccurate particulars of income, by the assessee.

19. That the aforesaid grounds are without prejudice to the one another raised herein.

Prayer

The appellant-assessee prays that the relief as per grounds of appeal above may kindly be allowed to it and the appellant may also be allowed to add, delete, amend or substitute any ground(s) of appeal either at or before the date of hearing."

2. At the time of hearing, Ld. Sr. 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, wherein the shares of M/s Kappac Pharma Ltd. has been declared bogus and M/s Kappac Pharma has been delisted by the Stock Exchange. 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 by following the aforesaid precedents the appeal of the assessee may be dismissed.

3. However, Ld. Counsel for the assessee reiterated the grounds of appeal and has not produced any contrary order which controverts the contention of the Ld. DR, as aforesaid. He draw my attention towards Paper Book containing pages 1-70 in which he has attached the Memorandum of Appeal in Form no. 36; Grounds of Appeal; Certified true copy of assessment order dated 29.12.2016 u/s 143(3) of the Act passed by the ITO; certified copy of CIT(A) order u/s. 250 of the Act dated 17.12.2018 passed by the Ld. CIT(A)-13, New Delhi; Form No. 35, Grounds of appeal and Statement of Facts before CIT(A), New Delhi, Tribunal Fee Challan for Rs. 10,000/- and Power of Attorney in our favour. He has draw my attention towards another Paper Book containing pages 1-175 in which he has attached the various copies of the decisions of the Tribunal, Hon'ble High Courts and the Hon'ble Supreme Court of India to support the case of the assessee and also stated that the case laws relied by the Ld. Sr. DR is distinguished on the facts of the present case as mentioned in the Written Submissions as well as in the Paper Book filed by the Ld. Counsel for the assessee.

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 which the undersigned was the Author, which was decided in favour of the Revenue and the same 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 by treating the accommodation entries as bogus. As regards the other legal issues raised in the grounds of appeal, I am of the considered view

that Hon'ble Delhi High Court in the case of Udit Kalra vs. ITO (Supra) has not given weightage to these legal grounds because when M/s Kappac Pharma has already been declared as bogus and it made to provide the accommodation entries in which the present assessee is a beneficiary, then the assessee is not entitled for getting benefit in such technical/legal grounds. 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 am of the view that the Hon'ble High Court in the aforesaid case has declared M/s Kappac Pharma as bogus company who made only accommodation entries in which the assessee is a beneficiary. Therefore, 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 well reasoned order of the Ld. CIT(A) and decide the issue in dispute against the Assessee by dismissing the appeal of the assessee.

5. Following the consistent view as taken in ITA No. 1508/Del/2019 as aforesaid, the ITA No. 1509/Del/2019 also stands dismissed.

6. In the result, both the Appeals of the Assessee are dismissed.

The order pronounced on 08.01.2020.

Sd/-

[H.S. SIDHU]
JUDICIAL MEMBER

Dated: 08-01-2020

SRB

Copy forwarded to:

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

Asst. Registrar,
ITAT, New Delhi