

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

**BEFORE SHRI H.S. SIDHU, JUDICIAL MEMBER**

ITA No. 5183/DEL/2018

[Assessment Year: 2014-15]

<p>ANIL KUMAR GOYAL, POT NO. 54-55, PKT G-30, SECTOR-3, ROHINI DELHI – 110085 (PAN: AAIPG7129E) [Appellant]</p>	Vs.	<p>ITO, WARD-16(1), NEW DELHI       [RESPONDENT]</p>
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Assessee by: Sh. Gautam Jain, Adv. & Sh. Piyush  
Kumar Kamal, Adv.

Revenue by : Sh. Manoj Kumar Chopra, Sr. DR.

ITA No. 7910/DEL/2018

[Assessment Year: 2015-16]

<p>YOGESH GUPTA &amp; SONS (HUF) D-14, 1<sup>ST</sup> FLOOR, PREET VIHAR, NEW DELHI – 110 092 (PAN: AAAHY5308P) [Appellant]</p>	Vs.	<p>ITO, WARD-59(3), NEW DELHI       [RESPONDENT]</p>
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AND

ITA No. 7911/DEL/2018

[Assessment Year: 2015-16]

<p>LALITA GUPTA, D-14, 1<sup>ST</sup> FLOOR, PREET VIHAR, NEW DELHI – 110 092 (PAN: ACWPG577E) [Appellant]</p>	Vs.	<p>ITO, WARD-59(3), NEW DELHI       [RESPONDENT]</p>
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Assessee by: Sh. Vivek Shukla, CA

Revenue by : Sh. Manoj Kumar Chopra, Sr. DR.

AND

ITA No. 7317/DEL/2018

[Assessment Year: 2014-15]

<p>RAJESH BOHRA (HUF), G-233, BLOCK-G, SARITA VIHAR, NEW DELHI – 110 044 (PAN: AALHR8797L) [Appellant]</p>	Vs.	<p>ITO, WARD-28(5), NEW DELHI       [RESPONDENT]</p>
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Assessee by: Sh. Abhijeet Singh, AR  
Revenue by : Sh. Manoj Kumar Chopra, Sr. DR.

### **ORDER**

These 04 appeals have been filed by the different assessees against the respective orders of the Ld. Commissioner of Income Tax [Appeals], New Delhi. Since the issue involved in these appeals is one and common which is relating to disallowance of exemption claimed by the Assessee u/s. 10(38) of the Income Tax Act, 1961 (in short "Act") for the purchase and sale of the shares of M/s Kappac Pharma Ltd on account of Long Term Capital Gain. Hence, all the 04 appeals were heard together and are being disposed of by this common order by first dealing with ITA No. 5183/Del/2018 (AY 2014-15) and the decision of the same will apply *mutatis mutandis* to other ITA Nos. 7910, 7911 (AY 2015-16) & ITA No. 7317/Del/2018 (AY 2014-15) filed by the different assesses.

2. At the time of hearing, Ld. Sr. DR stated that the issue involved in the present appeal is only one i.e. denial of exemption claimed by the assessee u/s. 10(38) of the Act on the sale of shares of M/s Kappac Pharma on account of Long Term Capital Gain (LTCG). He further stated that the business of M/s Kappac Pharma has been thoroughly examined by the AO, Ld. CIT(A), ITAT and finally by the Hon'ble Delhi High Court by declaring that M/s Kappac Pharma is a bogus company and made only accommodation entries for making black and white money in the business. He has also filed the copy of the ITAT Delhi Benches decision dated 08.01.2019 in the case of Udit Kalra vs. ITO decided in ITA No. 6717/Del/2017. He further stated that the Hon'ble Judicial Member of this SMC Bench was the Author of the order dated 08.1.2019, as aforesaid and aggrieved with this order of the Tribunal, assessee appealed before the Hon'ble Delhi High Court and the Hon'ble High Court has also dismissed the appeal filed by the assessee and confirmed the order dated 08.1.2019 of the Tribunal in ITA No. 220/2019 & CM No. 10774/2019 vide order dated 08.3.2019, a copy thereof is also filed before the Bench

by the assessee. Accordingly, he requested that by following the aforesaid precedent all the 04 appeals of different assesseees may be dismissed.

3. On the contrary, Ld. Counsel for the assessee stated that the assessee has discharged its onus by filing all the documentary evidences before the AO as well as the Ld. CIT(A) and before the Tribunal which has not been properly considered. He also draw my attention towards the documentary evidences filed by the assessee alongwith case laws relied upon by the Assessee before the revenue authorities. He further stated that keeping in view the facts and circumstances of the case and evidences filed by the assessee before the Revenue authorities and before the Tribunal, the addition in dispute may be deleted.

4. I have heard both the parties and perused the orders passed by the revenue authorities including the documentary evidences filed by the assessee in the shape of paper Book alongwith the case laws relied upon by the assessee as well as the order of the Tribunal dated 08.1.2019 passed in the case of Udit Kalra vs. ITO in ITA No. 6717/Del/2017 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. For the sake of convenience, the relevant portion of the Tribunal's decision dated 8.1.2019 as well as the Judgment dated 08.03.2019 of the Hon'ble High Court of Delhi decided in the case of Udit Kalra vs. ITO (Supra) is reproduced as under:-

#### **TRIBUNAL'S FINDING**

"5. *I have heard both the parties and perused the records especially the impugned order. I find that the assessee is an individual and the amount of cash credit Rs. 27,68,457/-. However, on perusing the assessment order, I find that there was a specific information that assessee has indulged in non-genuine and bogus capital gain obtained from the transactions of purchase and*

*sale of shares of M/s Kappac Pharma Ltd., a Mumbai based company. It is noticed that the purchase transaction has been done off market in physical form by paying cash. The assessee has purchased the share M/s Kappac Pharma Ltd. in physical form and thereafter, the same have been converted into electronic mode. The purchase payments were made in cash and not through the normal banking channel therefore the same were non-verifiable from the authentic supporting details such as bank account/ documents. Assessee is not a regular investor in shares. The assessee has failed to furnish the proof of source for the purchase transactions. Thus, the entire transactions are against human probability. Also considering the findings of the Investigation Wing, inquiries conducted in the case of assessee, brokers, operators and the entry providers and the nature of transaction entered into by the assessee the LTCG of Rs. 27,20,457/- claimed exempt u/s. 10(38) of the Act by the assessee cannot be allowed and the amount of Rs. 27,68,457/- received back as sales proceeds on sale of shares was required to be added back towards his taxable income under section 68 of the Act. The above amount of Rs. 27,68,457/- was deemed as income of the assessee u/s. 68 of the Act, over and above, the income already declared in ITR during AY 2014-15. In view of above discussions, the landmark decision of the Hon'ble Supreme Court in the case of McDowell and Company Limited, 154 ITR 148 is squarely*

*applicable in this case wherein it has been held that tax planning may be legitimate provided it is within the framework of the law and any colourable devices cannot be part of tax planning and it is wrong to encourage or entertain the belief that it is honourable to avoid the payment of tax by dubious methods. However, the case laws cited by the Ld. counsel for the assessee are on distinguished facts, hence, not applicable in the instant case. The assessee has not raised any legal ground and argued only on merit for which assessee has failed to substantiate his claim before the lower revenue authorities as well as before this Bench. In view of above discussions, I am of the considered opinion that Ld. CIT(A) has rightly confirmed the addition in dispute, which does not need any interference on my part, therefore, I uphold the action of the Ld. CIT(A) on the issue in dispute and reject the grounds raised by the Assessee.*

6. *In the result, the Appeal of the Assessee is dismissed."*

**HON'BLE DELHI HIGH COURT'S FINDING**

*"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 perusing the aforesaid decision, I find that no contrary decision has been given by the Ld. Counsel for the assessee to the decision of the Hon'ble Delhi High Court in the case of Udit Kalra vs. ITO (Sura) in which the shares of M/s Kappac Pharma has been declared bogus and the Hon'ble High Court has passed a detailed order, which I have reproduced as aforesaid. Therefore, I have no other option except to respectfully follow the decision of the Hon'ble Delhi High Court in the case of Udit Kalra vs. ITO (Supra), hence, I respectfully follow the same by upholding 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. 5183/Del/2018 (AT 2014-15) as aforesaid, the other ITA Nos. ITA Nos. 7910, 7911 (AY

2015-16) & ITA No. 7317/Del/2018 (AY 2014-15) filed by the different assesses also stand dismissed.

6. In the result, all the 04 Appeals of the Assessee are dismissed.

The order pronounced on 10.01.2020.

Sd/-  
**[H.S. SIDHU]**  
**JUDICIAL MEMBER**

Dated: 10-01-2020

SRB

Copy forwarded to:

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

Asst. Registrar,  
ITAT, New Delhi