

**INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH "B-[SMC]": NEW DELHI**

**BEFORE SHRI SUDHANSHU SRIVASTAVA, JUDICIAL MEMBER
AND
SHRI PRASHANT MAHARISHI, ACCOUNTANT MEMBER**

ITA No. 1227/Del/2019
(Assessment Year: 2015-16)

Shri Manoj Kumar Gupta, A-387/2, Shastri Nagar, Delhi – 110 052. PAN : AHZPG7895F	Vs.	Commissioner of Income Tax (Appeals)-12, New Delhi.
(Appellant)		(Respondent)

Revenue by :	Shri Umesh Takyar, Sr. D. R.;
Assessee by:	N O N E.
Date of Hearing	31/10/2019
Date of pronouncement	27/01/2020

ORDER

PER PRASHANT MAHARISHI, A. M. :

This appeal is filed by the assessee against the order of the Commissioner of Income Tax (Appeals)-12, New Delhi, dated 13.07.2018 wherein the order of the Id. Assessing Officer dated 18.12.2017 passed under Section 143(3) of the Income Tax Act, 1961 (the Act) for assessment year 2015-16 making an addition of Rs.9,41,843/- on account of alleged long term capital gain u/s 10(38) of the Act amounting to Rs.9,41,843/- in the scrip Kappac Pharma Ltd. Which was held to be taxable u/s 68 of the Act r.w.s. 115BBE of the Act was upheld. Therefore, assessee is in appeal raising several grounds of appeal as under:

"1. On the facts and circumstances of the case, the order passed by the Learned CIT(A) is bad both in the eyes of law and on the facts.

2. On the facts and circumstances of the case, the Learned CIT(A) has erred both on facts and in law in confirming the addition u/s 68 of the Act amounting to Rs. 941843/- made by AO holding the sale proceeds of the shares, to be not genuine.

3. (i) That the addition has been confirmed despite the same having been made grossly indulging in conjecture and surmises without there being any direct adverse material against the assessee, based only on suspicion.

(ii) That the addition has been confirmed despite the assessee bringing on record all evidences and material to prove the genuineness of the transaction.

(iii) That the Learned CIT(A) has erred in confirming the addition despite the transaction having been done through proper banking channels and as per the rules and regulations of the Stock Exchange / SEBI.

(iv) That the addition was made misinterpreting the financials of the company whose shares were sold by the assessee.

4. On the facts and circumstances of the case, the Learned CIT(A) has erred both on facts and in law in confirming the addition which was made on the basis of material collected at the back of the assessee without giving an opportunity to rebut the same, is violation of the principle of natural justice.

5. On the facts and circumstances of the case, the Learned CIT(A) has erred both on facts and in law in confirming the addition despite the same having been made by the AO on the basis of Statements of certain persons at the back of the assessee without giving him an opportunity to cross examine, is clear violation of the principle of natural justice.

6. On the facts and circumstances of the case, the Learned CIT(A) has erred both on facts and in law in confirming the addition u/s 69C of the Act amounting to Rs. 20000/- made by AO on account of commission @ 2% of Rs. 1000000/- without there being any basis for the same.

7. That the appellant craves leave to add, amend or alter any of the grounds of appeal.”

2. The brief facts of the case shows that assessee is an Individual, who filed his return of income at Rs.14,87,380/- on 21.11.2015. The above case was fixed up for scrutiny. The assessee is a Director in M/s. Vansh Electromechanical Devices Pvt. Ltd., drawing salary as well as partner in two different partnership firms. It was found that assessee has earned a long term capital gain and claimed the same as exempt u/s 10(38) of the Act amounting to Rs.9,41,843/-. The learned Assessing Officer asked the assessee to prove the genuineness of the transaction. The Assessing Officer also noted that it is a bogus transaction and

name of the scrap is identified as penny stock by the SEBI. He also noted the finances of that company, stock movement of that company, share price movement of that company. He came to the conclusion that the finance of that company are unrealistic in view of the movement of the share price. The purchases are also claimed to be through of market appeal and they were dematerialized only a few days before their sale. The assessee is unable to furnish any proof for purchase of such shares except the bill issued by the seller. The assessee also could not show the genuineness of the transaction. He noted the fact that Kappac Pharma Pvt. Ltd. allotted 4000 equity shares @ face value of Rs.10/- each on 18.10.2012 and paid Rs.40,000/- to M/s. Vansh Reality Pvt. Ltd. After 19 months i.e. on 15.07.2014 assessee sold 3,500 shares @ Rs.250/- per share and also sold 500 shares @ Rs.250/- per share to two different parties and has earned sale consideration of those shares. Assessee did not show the contract notes for purchase of the shares. The assessee could not explain the genuineness of the above transaction and has merely shown the paper work. Thus, Assessing Officer made an addition of Rs.9,41,843/- u/s 68 of the Act and applied the provisions of Section 115BBE of the Act. He further made an addition of Rs.20,000/- u/s 69C of the Act for expenditure incurred for obtaining such accommodation entry. Assessment under section 143(3) of the Act was passed on 18.12.2017 determining total income of the assessee at Rs.24,49,220/-.

3. Assessee preferred an appeal before the learned CIT (Appeals) who dismissed the appeal of the assessee confirming the action of the learned Assessing Officer. Therefore, assessee is in appeal before us.

4. Despite notice none appeared on behalf of the assessee on the date of hearing on 31.10.2019. On earlier occasion on 17.07.2019 none appeared on behalf of the assessee and, therefore, direction was issued for issue of notice by RPAD. Both the notices have been sent at the address mentioned in the appeal memo. The address mentioned at para No. 10 of Form No. 36 was not supported by any fact or evidence. The learned CIT (Appeals) also had the same address and the Assessing Officer also had the same address. The two notices fixing date of hearing on 17.07.2019 dated 11.06.2019 and notice dated 17.07.2019 fixing date on 31.10.2019 are also on record. The assessee also did not appear before the learned CIT (Appeals), but has merely submitted the written submission. In view

of this we do not have any other option, but to decide the issue on the merits of the case.

5. The learned Departmental Representative vehemently submitted that this issue is squarely covered in favour of the Revenue by the decision of Hon'ble Delhi High Court in Mr. Udit Kalra Vs. Income Tax Officer in IT 220 of 2019 dated 8.03.2019. He further submitted that the facts of the case are also identical with respect to the share, with respect to the number of shares, with respect to the holding party etc.

6. We have carefully considered the rival contentions and perused the orders of the lower authorities. On bear reading of the facts of the case it is clear that assessee has failed to show the genuineness of the long term capital gain earned on the sale of penny stock which can be exempt u/s 10(38) of the Act. The Hon'ble Delhi High Court, has decided an identical issue in the case of Mr. Udit Kalra Vs. Income Tax Officer (supra) where the concurrent finding of the Assessing Officer and CIT (Appeals) were upheld. The Hon'ble High Court also noted that the company whose shares are traded have meager resources, reported consistent losses, but has resulted into astronomical growth in its prices. The shares of the company were also delisted. Therefore, the addition was upheld. The facts in the present case are not different. Therefore, respectfully following the decision of the Hon'ble Delhi High Court in Mr. Udit Kalra Vs. Income Tax Officer (supra) we confirm the orders of the lower authorities. Accordingly all the grounds of appeal are dismissed.

7. The appeal of the assessee is dismissed.

Order pronounced in the open court on : 27/01//2020.

Sd/-
(SUDHANSHU SRIVASTAVA)
JUDICIAL MEMBER

Sd/-
(PRASHANT MAHARISHI)
ACCOUNTANT MEMBER

Dated : 27/01/2020.

MEHTA

Copy forwarded to :

1. Appellant
2. Respondent
3. CIT
4. CIT (Appeals)
5. DR:ITAT

ASSISTANT REGISTRAR
ITAT, New Delhi

Date of dictation	27.01.2020
Date on which the typed draft is placed before the dictating member	27.01.2020
Date on which the typed draft is placed before the other member	27.01.2020
Date on which the approved draft comes to the Sr. PS / PS	27.01.2020
Date on which the fair order is placed before the dictating member for pronouncement.	27.01.2020
Date on which the fair order comes back to the Sr. PS / PS	27.01.2020
Date on which the final order is uploaded on the website of ITAT	27.01.2020
Date on which the file goes to the Bench Clerk	27.01.2020
Date on which the file goes to the Head Clerk	
The date on which the file goes to the Assistant Registrar for signature on the order	
Date of dispatch of the order	