

**IN THE INCOME TAX APPELLATE TRIBUNAL
LUCKNOW BENCH 'A', LUCKNOW**

**BEFORE SHRI A. D. JAIN, VICE PRESIDENT AND
SHRI T. S. KAPOOR, ACCOUNTANT MEMBER**

I.T.A. No.501/Lkw/2019
Assessment Year:2015-16

S.A.No.25/Lkw/2020
(in I.T.A. No.501/Lkw/2019)
Assessment Year:2015-16

Shri Achal Gupta, K-168, Gopal Nagar, Kidwai nagar, Kanpur. PAN:AHHPG2124P (Appellant)	Vs.	Income Tax Officer-3(1), Kanpur. (Respondent)
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I.T.A. No.502/Lkw/2019
Assessment Year:2015-16

S.A.No.26/Lkw/2020
(in I.T.A. No.502/Lkw/2019)
Assessment Year:2015-16

Shri Udit Gupta, K-168, Gopal Nagar, Kidwai nagar, Kanpur. PAN:AMGPG0960P (Appellant)	Vs.	Income Tax Officer-3(1), Kanpur. (Respondent)
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I.T.A. No.504/Lkw/2019
Assessment Year:2015-16

S.A.No.27/Lkw/2020
(in I.T.A. No.504/Lkw/2019)
Assessment Year:2015-16

Rakesh Narain Gupta HUF K-168, Gopal Nagar, Kidwai nagar, Kanpur. PAN:AAIHR2355H	Vs.	Income Tax Officer-3(1), Kanpur.
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(Appellant)		(Respondent)
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I.T.A. No.505/Lkw/2019
Assessment Year:2015-16

S.A.No.28/Lkw/2020
(in I.T.A. No.505/Lkw/2019)
Assessment Year:2015-16

Shri Rakesh Narain Gupta, K-168, Gopal Nagar, Kidwai nagar, Kanpur. PAN:AASPG6237B	Vs.	Income Tax Officer-3(1), Kanpur.
(Appellant)		(Respondent)

Appellant by	Shri Rakesh Garg, Advocate
Respondent by	Shri S. K. Madhuk, CIT (D.R.)
Date of hearing	11/11/2020
Date of pronouncement	16/12/2020

ORDER

PER BENCH:

This is a group of four appeals filed by different assesseees against separate orders of learned CIT(A) all dated 26/06/2019. In all these appeals similar grounds have been taken and therefore, these were heard together and for the sake of convenience, a common and consolidated order is being passed.

2. At the outset, Learned counsel for the assessee submitted that in these appeals there is a delay of four days in filing the appeals and which had occurred as the assessee counted the prescribed period from the date of physical delivery of order instead of counting it from the day when it was delivered electronically. Learned counsel for the assessee submitted

that if the date of service is considered as having received through e-mail then there is delay of four days and if the physical receipt of order of learned CIT(A) is to be considered then there is no delay. Therefore, it was submitted that little delay if any had occurred due to confusion and it was prayed that the delay in filing the appeal be condoned. Learned D. R. did not have objection for condoning the delay in filing the appeals. Finding the reason for delay in filing the appeals reasonable, the delay was condoned and the Learned counsel for the assessee was asked to proceed with his arguments.

3. Learned counsel for the assessee submitted that he will be arguing the appeal in I.T.A. No. 501/Lkw/2019 in the case of Shri Achal Gupta and arguments in respect of all other appeals will be same as the same issue is there in all other appeals. Learned counsel for the assessee submitted that the assessee had purchased shares of CCL International Ltd. and had made the payment for purchase of such shares through cheques and these were purchased from Suktara Trade Links Pvt. Ltd. Learned counsel for the assessee submitted that the shares were held in demat account and after holding for a period of about 1½ years, the same were sold through registered broker M/s Edelweiss Broking Limited through screen based trading and the proceeds were credited to the bank account of the assessee. It was submitted that the Assessing Officer, on the basis of some report of Investigation Wing, Kolkata, which did not relate to the assessee, held that the shares of CCL International Ltd. was a penny stock and assessee had managed Long Term Capital Gain through managed transactions and therefore, he held the capital gain to be bogus and made the addition u/s 68 of the Act. Learned counsel for the assessee submitted that Hon'ble Delhi Tribunal in the case of Reeshu Goel vs. Income Tax Officer in I.T.A. No.1691/Del/2019, vide order dated 07/10/2019, has

examined the same share of CCL International Ltd. and after recording detailed findings has held the same to be a genuine company and has further held that the company was not a mere paper entity. In this respect, Learned counsel for the assessee invited our attention to para 16 of the order wherein the detailed findings have been recorded. Learned counsel for the assessee further submitted that while recording the findings the Hon'ble Tribunal has considered various other cases decided by various other Benches wherein the same script has been held to be genuine. Therefore, it was prayed that the appeals of the assessee may be allowed by following the above Tribunal order. It was submitted that other than the objection of the company being a penny stock, there was no other objection by the authorities below and therefore, the appeals of the assessee may be allowed. As regards the facts of the present appeal, Learned counsel for the assessee invited our attention to pages 1 to 46 where all the details relating to purchase, sale and fact of having made payments and receiving payment through bank account were placed. Learned counsel for the assessee further submitted that the broker of the assessee was not investigated and neither the broker examined by the Investigation Wing made available to the assessee for cross examination and therefore, also the addition sustained by learned CIT(A) is not sustainable.

4. Learned D. R., on the other hand, vehemently argued that there was a racket of bogus capital gain which was unearthed by the Investigation Wing of the Revenue and after recording statement of various brokers, some scripts including the script traded by the assessee was held to be a penny stock and paper entity and therefore, the Assessing Officer has rightly disallowed the claim of the assessee. It was submitted Hon'ble Delhi High Court in the case of Udit Kalra vs. Income

Tax Officer, I.T.A. No.220/2019, vide order dated 08/03/2019 has dismissed the appeal of the assessee under similar facts and circumstances. Learned D. R. further submitted that facts regarding this script being a penny stock and paper entity was already there in the possession of the Revenue and therefore, the authorities below have rightly made and sustained the addition. Learned DR further stated that before learned. CIT(A) no body appeared and therefore the case may be set aside to him and assessee can make his submissions regarding non confrontation of statements of brokers.

5. Learned counsel for the assessee, in his rejoinder, submitted that Hon'ble Tribunal in the case of Reeshu Goel has considered the case law of Udit Kalra and moreover it was submitted that the decision of Hon'ble High Court do not have precedential value as the Hon'ble High Court has dismissed the appeal of the assessee by holding that no substantial question of law arises. It was further submitted that I.T.A.T. Delhi in the case of Smt. Karuna Garg in I.T.A No. 1069 and in the case of Swati Luthra has distinguished the judgment in the case of Udit Kalra. As regards the non appearance of assessee before learned. CIT(A), the Learned A. R. submitted that assessee had nothing to say before learned. CIT(A) as all details have already been filed with Assessing Officer. It was submitted that learned CIT(A) has passed the order on merits and now after the passing of order by Delhi Tribunal in the case of Reeshu Goel, the case of assessee has become fully covered in his favour and therefore it was prayed that on merits the case of the assessee may be allowed.

6. We have heard the rival parties and have gone through the material placed on record. We find that Ground Nos. 1 to 4 were not passed by Learned A. R. as he requested to pass the order on merits and therefore,

same are dismissed as not pressed. Ground Nos. 5 to 8 relates to the addition under dispute regarding denial of exemption of long term capital gain. Ground No. 9 and 10 are regarding addition u/s 69 of the Act which the Assessing Officer had made on the basis that assessee must have paid some commission for arrangement of bogus capital gain. The facts in brief are that assessee sold shares of CCL International Ltd. and earned long term capital gain. In support of long term capital gain the assessee filed before Assessing Officer the following documents (which is part of the paper book):

S.No.	Nature of documents	Paper Book Page
1.	Copy of Bank Account of Federal Bank.	15-16
2.	Copy of Bill Suktara Trade Link Filed	17
3.	Copy of Contract note issued by Broker Edlwise Financial Adnsons Ltd.	18-24
4.	Copy of Bank Account of Achal Gupta	25-31
5.	Copy of Transaction statement issued From National Securities Depository Ltd.	32-46

6.1 The above documents clearly demonstrates that assessee had purchased shares through Brokers for which the payment was made through banking channels. The assessee had sold shares through authorized stock broker and payment was received through banking channels after deduction of STT. On Page 16 which is a copy of Bank account of assessee there is evidence of payments to Suktara Trade link amounting to Rs.8,25,000/- for purchase of 25000 equity shares of CCL

Ltd. The bill of broker of Suktara Trade Link is at Page 17. The evidence of sale of such shares through Edelwise financial Advisors Ltd showing deduction of service tax and securities transaction tax is placed at P.B. 18 to 23. Paper book pages 32 shows that shares of CCL International Ltd. were in the demat account of assessee and the fact of these shares having been transferred to the account of brokers M/s Edelwise Financial Advisors on account of sale is also apparent from this paper. The transaction statement placed in paper book also proves that assessee was holding a number of scrips. All the documents clearly demonstrate that assessee did earn long term capital gain and moreover the Assessing Officer has not doubted any of the above documents. The only objection raised by the authorities below is that the scrip from which the assessee had earned Long Term Capital Gain has been held by the Investigation Wing of the Revenue to be a paper entity and which has further held that this scrip was being used for creating artificial capital gain. We find that Hon'ble Tribunal in the case of Reeshu Goel has examined this aspect and after recording detailed findings has held this scrip to be a genuine scrip and has held that the scrip is not a paper entity. The detailed findings of the Tribunal, as contained from para 16 are reproduced below:

"16. We have heard the rival submissions and also perused the relevant finding given in the impugned orders as well as material referred to before us. As stated above, the assessee has applied for 50,000 shares of M/s. AAR Infrastructure Ltd. for face value of Rs.10 and paid consideration of Rs.5 lacs vide cheque no.169799 dated 13.01.2011. The said purchase has been recorded in the accounts of the earlier year and is also reflected from the copy of bank statement place at paper book at pages 25. The purchases made in the earlier years have been accepted as only net LTCG has been taxed by the Assessing Officer. The assessee was allotted shares of M/s. AAR Infrastructure Ltd. and immediately thereafter, the assessee had dematerialised the shares on 26.02.2011 which

is evident from the copy of Demat account enclosed at pages 27 to 28 of the paper book. Later, M/s. AAR Infrastructure got amalgamated with M/s. CCL International Ltd. and according to amalgamation scheme, the assessee received 1,25,000 shares of M/s. CCL International Ltd. in the proportion of 250 equity shares Rs.2 per share and Rs.100 equity share of Rs.10 per share. The shares which were allotted on 17.02.2011 have been sold after period of more than 18 to 20 months, i.e., on 29.08.2012 to 10.10.2012. The said shares have been sold through stock broker M/s. Indianivesh Securities Pvt. Ltd.

17. Before us the ld. counsel has in his brief note has stated that following documents and statements were filed before the authorities below:

(a) All the transactions were supported by proper Contracts Notes and delivery of shares was made through De-mat Account with stock broker, M/s Indianivesh Securities Pvt. Ltd. (who is the member of BSE and registered with SEBI). The shares were sold in the open market. The appellant has fulfilled all the condition u/s 10(38) of the Income Tax Act, 1961. The appellant has already filed National Security Depository Limited generated Demat Account and the broker statement relating to the sale of share in our paper book, also relevant demat statement highlighting the shares purchased has already been submitted before the Ld. AO.

(b) The appellant has earned long term capital gain through genuine purchase and sale of shares of the listed companies in normal course. There was no default on the part of the appellant. Moreover, the appellant has earned the income strictly following the norms and guidelines of SEBI. If M/s CCL International has been identified as BSE Listed penny stock, the appellant is not even remotely connected with these companies. She was not at all in a position to influence the purchase and sale prices of their shares. Hardship cannot be brought on the appellant, if default is made by company which is listed in the BSE.

c) In support of the genuineness of the transaction the appellant produced the following at the time of assessment proceeding:

- a) *Copy of allotment letter issued by M/s AAR Infrastructures Limited. (Page 25)*
- b) *Copy of bank statement reflecting the payment made for the purchase of 50000 equity shares. (Page 26)*
- c) *Copy of Demat Account of the appellant. (Page 27)*
- d) *Copy of statement of broker reflecting the credit of 50000 equity share through preferential allotment. (Page 28)*
- e) *Copy of order of Delhi High Court, dated 08.10.2011 in the matter of amalgamation of M/s AAR Infrastructure Limited into M/s CCL International Limited. (Page 29-44)*
- f) *Copy of Contacts notes reflecting the sale proceeds. (Page 45-50)*
- g) *Copy of Transaction statement reflecting the increase in the number of shares. (Page 51)*
- h) *Copy of Bank Statement of the appellant reflecting the amount received on sale of shares. (Page 54).*

18. The entire premise of the Assessing Officer for treating the entire transaction to be a bogus Long Term Capital Gain and making addition u/s. 68 is that, firstly, M/s. CCL International Ltd. did not have much financial worth to justify such a price rise; secondly, the SEBI had suspended the trade of the share for a brief period; thirdly, he has pointed out the history of price rise between 06.02.2010 to 25.11.2014 and then has drawn adverse inference that price of these shares were manipulated and rigged in the stock exchange which was solely to provide accommodation entries to the various parties; and lastly, he has also referred to certain inquiry report of Investigation Wing Kolkata during the course of which certain brokers have admitted that they had provided accommodation entries in the scrip of M/s. CCL International. But nowhere in the entire assessment order, there is any reference to any material or evidence that assessee or assessee's broker have been found to be indulged in any kind of accommodation entry in this scrip. No inquiry whatsoever has been made from the broker of the assessee. Further, during the period in which assessee had purchased the shares and had sold them whether the SEBI had suspended the trading has not been mentioned, in fact, Assessing Officer himself mentions that there was brief suspension in the year 2010, whereas the assessee has purchased shares in the year

2011 and sold them in the year 2012. Coming to the financials, as culled out from the records, the revenue from the operation of M/s. CCL International Ltd. from March, 2010 to March, 2012 was between Rs. 55.25 crore to Rs. 79 crore. Thus, it cannot be held that it was mere a paper entity. From a bare perusal of the history of listing and trading of shares and the quote of Bombay Stock Exchange as quoted in the assessment order, it clearly reflects that as on 06.02.2010, the closing price was Rs. 50 and there was a steady increase and within the period of 4 years the price had reached up to Rs.609 on 25.11.2014. Nowhere, it has been pointed out that the rise was beyond the cap laid down by the SEBI, because the price of the scrip cannot rise beyond the cap prescribed by the SEBI. If the shares have been purchased and sold from the stock exchange on a quoted price with proper contract number, trade time and after paying STT, then it is very difficult to assume that the sale proceeds received from sale of such shares is bogus, especially when purchase of shares are not in dispute. This inter alia means assessee was in possession of shares which were also dematerialised. To prove that such a transaction was in the nature of bogus or colourable transaction, there has to be some inquiry or material to nail the assessee that she was some kind of a beneficiary in some accommodation entry operation. No defect has been pointed out in the documents submitted by the assessee nor has the broker of the assessee been inquired upon. Simply relying upon the general modus operandi and statement of some brokers recorded by the Kolkata Investigation Wing does not mean that all the transactions undertaken of the scrip M/s. CCL International Ltd. through the country by millions of subscribers are bogus. Thus, in absence of any material or evidence against the assessee, we do not find any reason as to why the claim of Long Term Capital Gain from sale of such share should be denied. Consequently, the addition on account of commission is also deleted. Accordingly, we delete the addition made by the Assessing Officer."

6.2 The above findings of the Tribunal clearly demonstrate that the Tribunal has held the script of CCL International Ltd. to be a genuine script and has therefore, allowed the appeal of the assessee.

6.3 As regards the reliance placed by Learned D. R. on the order of Udit Kalra (supra), we find that the above case law has been held to be distinguishable by Hon'ble Delhi Tribunal in the case of Karuna Garg in I.T.A. No.1069/Lkw/2019 and further in the case of Swati Luthra vs. Income Tax Officer in I.T.A. No.6480/Lkw/2019, dated 28/06/2019. In these two cases the Hon'ble Tribunal has again allowed relief to the assessee though from a different script but in the decisions they have held that the judgment of Hon'ble Delhi High Court in Udit Kalra was distinguishable as in that case the Hon'ble High Court has only dismissed the appeal as the Hon'ble High Court found that the issue involved was only a question of fact. In this respect, para 28 of the Tribunal order in the case of Karuna Garg is relevant which is reproduced below:

"28. The DR heavily relied upon the judgment of Hon'ble High Court of Delhi in the case of Udit Kalra Vs. ITO in ITA No.220/2019. We have carefully perused the order of the Hon'ble High Court and on going through the said judgment we find that no question of law was formulated by the Hon'ble High Court of Delhi in the said case and there is only dismissal of appeal in limine as the Hon'ble High Court found that the issue involved is a question of fact."

6.4 Similarly in the case of Swati Luthra (supra), the Hon'ble Tribunal while dealing with the case law of Udit Kalra vide para 14 has held as under:

"14. That the Id DR during the course of hearing placed heavy reliance on judgment of Hon'ble High Court of Delhi in

the case of Udit Kalra vs ITO in ITA No. 220/2019. Relevant extracts of said judgment are extracted as below:

"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 two individuals whose statements led to the inquiry 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 - A.O., CIT(A) and the ITAT have all consistently rendered adverse findings - what is intriguing is that the company (M/s 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."

15. On going through the aforesaid judgment, we find that no question of law was formulated by Hon'ble High Court of Delhi in the said case and there is only dismissal of appeal in limine and the Hon'ble High Court found that the issue involved is a question of fact as held by Hon'ble Apex Court in Kunhayyammed vs State of Kerala reported in 245 ITR 360 and also in CIT vs. Rashtradoot (HUF) reported in 412 ITR 17. Even on merits and facts, the said judgment in the case of Udit Kalra vs ITO (supra) is distinguishable as in that case the scrips of the company were delisted on stock exchange, whereas, in the instant case, the interim order of SEBI in the cases of M/s Esteem Bio and M/s Turbotech have been cooled down by subsequent order of SEBI placed by assesseees in its paper book. Thus, the case of Udit Kalra vs ITO relied by Id. DR is clearly distinguishable on facts and is not applicable to the facts of assessee. Thus, we hold that the case of assessee is factually and materially distinguishable from the facts of the case of Udit Kalra vs ITO so relied by Id DR."

Therefore, the case law relied upon by Learned D. R. is not applicable to the facts and circumstances of the present case as that case was decided by Hon'ble High Court on the basis of facts and circumstances of that case. Therefore, the present case is fully covered by the decision of Hon'ble Delhi Tribunal in Reeshu Goel (supra) wherein the same scrip from which the assessee had obtained Long Term Capital Gain has been held to be genuine. Therefore, following the same, we hold that the scrip of CCL International Ltd. is genuine and not a penny stock and paper entity.

7. In view of the above judicial precedents and keeping in view the facts and circumstances of the case, Ground No. 5 to 8, the appeal of the assessee in I.T.A. No. 501 is allowed. Ground Nos. 9 and 10, are also allowed in view of our findings that the transaction was not bogus.

8. In nutshell, the appeal of the assessee in ITA No. 501 is partly allowed.

9. Now coming to appeals in ITA Nos. 502, 504 and 505. The facts and circumstances in all these appeals are similar and there is also the same scrip of CCL International Ltd. and in these cases also the only objections of the Assessing Officer is that the scrip was a penny stock. In these cases also the assessee had filed complete details before the Assessing Officer which is apparent from the paper books. For the sake of completeness, we reproduce the relevant documents in these appeals filed before Assessing Officer:

ITA No.502

<u>S.No.</u>	<u>Particulars</u>	<u>P.B. Page</u>
1.	Copy of Bank statement of Federal Bank from where the payment of Rs.8,25,000/- shares was made.	4 to 5
2.	Copy of bill of Suktara Trade Link (P) Ltd. from whom shares were purchased.	6
3.	Copy of transaction statement issued from NSDL.	7 to 14
4.	Copy of contract notes issued by Edelwise Financial Advisors	15 to 21
5.	Copy of Transaction statement from NSDL	30 to 47

ITA No. 504

1.	Copy of Account with State Bank of India from where	31 & 32
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Payment of Rs.82,500/- for
Purchase of 25000 equity
Shares was made.

- | | | |
|----|---|----------|
| 2. | Copy of Bill of Suktara Trade Link (P) Ltd. for purchase of Shares. | 15 |
| 3. | Copy of transaction statement issued from NSDL | 33 to 45 |
| 4. | Copy of contract note issued By Edelwise Financial Advisors Ltd. | 16 to 21 |

ITA No. 505

- | | | |
|----|---|----------|
| 1. | Copy of account with IDBI Bank from where payment of Rs.825000/- for purchase of 25000 equity shares was made | 17 to 18 |
| 2. | Copy of Bills of Suktara Trade Link (P) Ltd. for purchase of Shares. | 11 |
| 3. | Copy of Transaction statement issued from NSDL | 29 to 44 |
| 4. | Copy of contract note issued by Edelwise Financial Advisors Ltd. | 19 to 23 |

10. Since under similar facts and circumstances, we have partly allowed appeal in ITA No. 501, therefore, following the above the appeal in ITA No. 502, are also partly allowed wherein grounds no. 1 to 4 are dismissed as not pressed and Ground No. 5 to 9 are allowed.

11. In ITA No. 504 and 505, Ground Nos. 1 to 4 are dismissed as not pressed whereas Ground Nos. 5 to 10 are allowed.

12. Since we have allowed all the appeals of the assessee, on merits the Stay Applications filed by all the assessees have become infructuous and need no adjudication.

13. In the result, all the appeals are partly allowed and all the Stay Applications are dismissed as infructuous.

(Order pronounced in the open court on 16/12/2020 in accordance with Rule 34(4) of the I.T.A.T. Rules)

Sd/.
(A. D. JAIN)
Vice President

Sd/.
(T. S. KAPOOR)
Accountant Member

Dated:16/12/2020
*Singh

Copy of the order forwarded to :

1. The Appellant
2. The Respondent.
3. Concerned CIT
4. The CIT(A)
5. D.R., I.T.A.T., Lucknow

Assistant Registrar