

**IN THE INCOME TAX APPELLATE TRIBUNAL  
DELHI “SMC” BENCH: NEW DELHI  
BEFORE SHRI KUL BHARAT, JUDICIAL MEMBER**

**ITA No.8680/Del/2019  
[Assessment Year : 2015-16]**

Laxmi Devi Khare, C/o-N.K.Baheti, 32/1A, Ram Krishna Samadhi Road, Flat No.4B, Kolkata <b>PAN-CHXPK1260J</b>	vs	ITO, Ward-50(5), New Delhi
<b>APPELLANT</b>		<b>RESPONDENT</b>
<b>Appellant by</b>	None	
<b>Respondent by</b>	Shri Om Parkash, Sr.DR	
<b>Date of Hearing</b>	17.08.2022	
<b>Date of Pronouncement</b>	31.08.2022	

**ORDER**

**PER KUL BHARAT, JM :**

The present appeal filed by the assessee for the assessment year 2015-16 is directed against the order of Ld. CIT(A)-17, New Delhi dated 22.10.2019.

2. The assessee has raised following grounds of appeal:-

*“That on the fact and circumstances of the case the Learned CIT*

*(A) erred in confirming the addition of*

1. *Long Term Capital Gain of Life Line Drugs limited for Rs.4,95,258/- (purchase cost was Rs.4,00,000/- Dt.25/07/2013 and net sale of Rs.4,95,258 on 17/10/2014 and net LTCG profit was Rs.95,258/-) and*
2. *LTCG of kappac pharma ltd for Rs.7,22,847/- ( purchase cost was Rs.90,000/- on 28/04/2010 and gross sale proceed has come Rs.7,22,847 on 02/07/2014 net LTCG profit was Rs.6,32,847/-)*
3. *STCG from Mishka Finance Ltd Rs.9,80,288/-(purchase cost was Rs.2,00,000/- on 17/09/2013 and gross sale was Rs.9,80,288 on 02/07/2014 net STCG is Rs7,80,288/-)as unexplained cash credit without appreciating that delivery was through demat account and sale proceed was realized by account payee cheque through BSE*

*broker after payment of STT. All the shares was purchased and sales by A/C payee cheque also.*

4. *CIT has taxed double to Rs.9,80,288/- in which STCG was Rs.7,80,288/- as because it was already incorporated in original return.*

*CIT(A) has rejected the Assessee claim of long Term Capital Gain and loss and short term capital Gain also Assessee has only share income except of Rs46,957/- As income from other sources like emboidery and she had incorporated Rs7,80,288/-as STCG in his return filed on 22/08/2015 for Rs6,87,890/- after deduction of 80C.*

*It is very clearly in computation that assessee have total income of Rs6,87,890/- in which she had account for of short term capital gain of Rs7,80,288. After STCG of Rs7,80,288/- assessee has only LTCG of Rs 7,28,105/-*

*b). That on the fact and circumstances of the case the Learned CIT (A) erred without appreciating the entire fact and without proper appreciation of the evidence brought on record and arguments put before the Assessee Officer. That on the facts and circumstances of the case the CIT(A) erred in making addition of Rs22,39,220/-on account of unexplained cash credit for capital Gain on the basis of statement of third party without mentioning the names and without giving opportunity of cross examination of person concerned.*

5. *That the appellat craves leave to amend alter, modify substitute, add and/or rescind any or all of the above grounds.”*

3. At the time of hearing, no one attended the proceedings on behalf of the assessee. It is seen from the records that various opportunities were given to the assessee vide order sheet entries dated 22.03.2021, 09.06.2021, 25.08.2021, 12.10.2021, 17.01.2022, 13.04.2022 and lastly on 20.06.2022. Thereafter, the appeal of the assessee was fixed for hearing on 17.08.2022. Neither anyone appeared on behalf of the assessee nor any adjournment

application has been filed on behalf of the assessee. Therefore, the appeal of the assessee is taken up for hearing in the absence of the assessee and is being disposed off on the basis of material available on records.

**FACTS OF THE CASE**

5. Facts giving rise to the present appeal are that the assessee filed return of income on 22.08.2015 through e-mode, declaring an income of Rs.6,87,890/-. The case of the assessee was selected for scrutiny under CASS. Accordingly, a notice u/s 143(2) of the Income Tax Act, 1961 [“the Act”] dated 29.07.2016 was issued to the assessee and duly served upon the assessee. In response to the statutory notices, Ld. Counsel for the assessee attended the assessment proceedings and filed details as called for from time to time. The Assessing Officer [“AO”] during the course of assessment proceedings observed that the assessee during the year under consideration claimed a sum of Rs.21,62,193/- as an exempt income u/s 10(38) of the Act. Therefore, the AO called upon the assessee to explain the genuineness of the capital gain. In response thereto, the assessee filed her response. However, the reply of the assessee was rejected by the AO and treated the transaction in question as sham transaction. The basis of treating the transaction as sham transaction, the AO found that the assessee had acquired 1800 equity shares at a nominal price of Rs.6/- per share of M/s. Mishka Finance & Trading Ltd. of Rs.10,800/- and same were sold on 25.06.2014 for a sum of Rs.,9,80,288/-. Similarly, the assessee had also acquired 1400 shares of M/s. Kappac Pharma Ltd. of Rs.15,400/- and sold them at Rs.7,22,787/-. Further, the assessee purchased 200 shares of M/s LifeLine Drug Pvt.Ltd. and sold them on 01.10.2014 at Rs.4,95,258 and claimed exemption of Rs.21,62,193/- u/s 10(38) of the Act. Further, the AO also made an addition of sum of Rs.1,19,839/- being the

commission paid on such accommodation entry. Thus, the AO assessed the income at Rs.30,69,920/- against the declared income of Rs.6,87,790/-.

4. Aggrieved against this, the assessee preferred appeal before Ld.CIT(A), who after considering the submissions, dismissed the appeal of the assessee and sustained the addition in respect of the capital gain and partly allowed the claim of the assessee regarding payment of commission. The Ld.CIT(A) restricted the addition to the extent of Rs.21,983/- in respect of commission paid by the assessee.

5. Aggrieved against the order of Ld.CIT(A), the assessee is in appeal before this Tribunal.

6. Ld. Sr. DR opposed the submissions and contentions raised by the assessee through grounds of appeal and supported the orders of the authorities below and submitted that the transaction in question is *ex-facie* a sham transaction. Looking to the abnormal rise in value of the shares without having any basis of such rise which proves that the value was jacked up by the parties and unexplained money was routed through such transaction. Therefore, the authorities below were justified in rejecting the claim of the capital gain and also adding the undisclosed payment of commission on such accommodation entry.

8. I have heard Ld. Sr. DR and perused the material available on record and gone through the orders of the authorities below. The Ld.CIT(A) has given a categorical finding on fact that the transactions were off market transactions. Although, companies were listed with Stock Exchange but the sale and purchase was not carried out through the stock exchange platform. Coupled

with the fact that the valuation of shares of the companies was astronomically very high without being supported by any basis. This categoric finding of Ld.CIT(A) is not rebutted by the assessee by placing any other material available on record to suggest that the transactions were genuine transactions and the rise in valuation was not manipulated and occurred in an ordinary course. In the absence of such material, I do not see any reason to disturb the finding of authorities below, the same is hereby affirmed. Thus, grounds raised by the assessee are rejected.

9. In the result, the appeal of the assessee is dismissed.

Order pronounced in the open Court on 31<sup>st</sup> August, 2022.

**Sd/-**

**(KUL BHARAT)  
JUDICIAL MEMBER**

*\* Amit Kumar \**

Copy forwarded to:

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

ASSISTANT REGISTRAR  
ITAT, NEW DELHI