

IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH: SMC: NEW DELHI

BEFORE SHRI CHANDRA MOHAN GARG, JUDICIAL MEMBER

ITA No.2839/Del/2019
Assessment Year: 2015-16

Gurpreet Singh (HUF), B-17/11, Shop No. 1, Opp. Metro Pillar No. 377, Ramesh Nagar, Near Raja Garden, New Delhi 110063 PAN AAFHG 0651 N	vs.	ITO, Ward -41(3), New Delhi 110002
(Appellant)		(Respondent)

For Assessee :	Shri Gurpreet Singh, AR
For Revenue :	Shri Om Prakash, Sr. DR

Date of Hearing :	16.03.2023
Date of Pronouncement :	26.05.2023

ORDER

PER CHANDRA MOHAN GARG, J.M.

This appeal has been filed against the order of CIT(A)-14 New Delhi dated 22.11.2018 for AY 2015-16.

2. The sole grievance of assessee raised in the grounds is that the Assessing Officer as well as Id. CIT(A) has wrongly denied exemption u/s. 10(38) of the Income Tax Act, 1961 (for short 'the Act') and made addition of Rs. 6,27,821/- u/s. 68 & 69 of the Act, on wrong exemption that there is a capital gain receipt is bogus.

3. The learned counsel submitted that the authorities below has not taken into account that investment made by the assessee in KAPPAC PHARMA Ltd as a genuine transaction of the assessee who purchased Equity Shares, which were transferred in his name and after proper transfer of shares into his demand account maintained with M/s SMC Global Securities Ltd. he has sold shares through his broker at Bombay Stock Exchange. All the requirements of section 10(38) are fulfilled in the Long term capital gain & assessee must be given relief of. The Id. counsel also placed reliance various judgments and submitted that the assessee is a small share holder investor and has no link with Anand Rathi Group of companies or any broker or any entity linked with

investigation report of investigation wing of Kolkata and also does not have any linked with company KAPPAC PHARMA therefore addition may kindly be deleted and assessee may kindly be allowed exemption u/s. 10(38) of the Act. The learned counsel also submitted that the Assessing Officer has concluded that the tax will be levied u/s. 115BBE of the Act which is not applicable to the present AY 2015-16 as the same is effective from 01.04.2017 i.e. AY 2016-17 onwards.

4. Replying to the above the Id. Senior DR vehemently supported the orders of the authorities below and submitted that the issue is no more *res integra* and has been settled by Hon'ble jurisdictional High Court of Delhi in the case of Udit Kalra vs. ITO [ITA No. 22/2019 & CM No. 10774/2019] dated of order 08.03.2019.

5. On careful consideration of above submissions, first of all, I take respectful cognizance of judgment of Hon'ble High Court of Delhi in the case of Udit Kalra vs. ITO (supra) wherein their Lordship speaking for jurisdictional High Court, under identical facts and circumstances, held as follows:-

"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. Ms 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."

6. In view of above, under identical facts and circumstances I am inclined to hold that, the astronomical growth of the price shares naturally raise suspicion which lead to the revenue to pick up the matter for close scrutiny. The Hon'ble High Court has noted that the company was even directed to be de-listed from stock exchange. Therefore unambiguous conclusion is that the Id. CIT(A) has rightly confirmed the addition in

dispute, which does not require any interference from this bench. Thus, I uphold the action of the Assessing Officer as well as first appellate authority denying benefit of section 10(38) of the Act and making addition u/s 68 of the Act, treating the same as bogus long term capital gain. Therefore grounds of assessee are dismissed.

7. So far as, action of the Assessing Officer in charging tax u/s. 115BBE of the Act, is concerned, the said provision was inserted in the Act with effect from 01.04.2017 therefore the same cannot be applied to present AY 2015-16 and Assessing Officer is directed to recalculate the demand accordingly.

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

Order pronounced in the open court on 26.05.2023.

Sd/-
(CHANDRA MOHAN GARG)
JUDICIAL MEMBER

Dated: 26th May, 2023.

NV/-

Copy forwarded to:

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

// By Order //

Asstt. Registrar, ITAT, New Delhi