

**आयकर अपीलीय अधिकरण, इंदौर न्यायपीठ, इंदौर**  
**IN THE INCOME TAX APPELLATE TRIBUNAL**  
**INDORE BENCH, INDORE**  
**BEFORE SHRI VIJAY PAL RAO, JUDICIAL MEMBER**  
**AND**  
**SHRI B.M. BIYANI, ACCOUNTANT MEMBER**

**ITA No.287/Ind/2019**  
**Assessment Year: 2015-16**

Smt. Sarla Jain, C/o Nakoda Marketing, Bhavani Mata Road, Khandwa (Assessee / Appellant)	<b><u>बनाम/</u></b> Vs.	ITO, Ward-1, Khandwa (Revenue / Respondent)
<b>PAN: ABVPJ1316J</b>		
Assessee by	Shri Pawan Ved, Advocate	
Revenue by	Shri Ashish Porwal, Sr. DR	
Date of Hearing	31.05.2023	
Date of Pronouncement	24.08.2023	

**आदेश / O R D E R**

**Per B.M. Biyani, A.M.:**

Feeling aggrieved by appeal-order dated 14.01.2019 passed by learned Commissioner of Income-Tax (Appeals)-II, Indore ["Ld. CIT(A)"], which in turn arise out of assessment-order dated 13.10.2017 passed by learned ITO-1, Khandwa ["Ld. AO"] u/s 143(3) of Income-tax Act, 1961 ["the Act"] for assessment-year ["AY"] 2015-16, the assessee has filed this appeal.

2. Heard the learned Representatives of both sides at length and case records perused.

3. The facts leading to this appeal are such that in the return of income filed for relevant AY 2015-16, the assessee declared exempted long-term capital gain u/s 10(38) from sale of shares of M/s Kappac Pharma Ltd. ["Kappac"]. The AO made scrutiny-assessment u/s 143(3) wherein he treated the shares of Kappac as what is called "penny stock" and capital gain declared by assessee therefrom as managed or non-genuine. Accordingly, the AO made addition u/s 68 amounting to Rs. 8,46,732/-. Aggrieved by action of AO, the assessee carried matter in first-appeal but could not succeed. Now, the assessee has come in next appeal before us.

4. At the outset, we may briefly take note of the data of transactions resulting into the impugned capital gain. The assessee claims to have purchased 3,000 shares of Kappac through broker M/s Arihant Capital Markets Ltd. on 09.10.2012 @ Rs. 10/- per share and out of those shares, 1,700 shares were sold during current year on different dates and the assessee computed capital gain as under:

Name of the Scrips	Quantity	Date of sale	Sale Rate	Amount Rs. (excluding charges)	Indexed purchase cost	Net LTCCG
KAPPAC Pharma	1000	13.05.2014	564.02	5,64,024	12,019/-	8,46,732
KAPPAC Pharma	250	20.05.2014	602.27	1,50,698	3,005/-	
KAPPAC Pharma	450	09.06.2014	338.76	1,52,442	5,408/-	

5. Now, the assessee has raised following grounds:

- "1. The assessment is null and void as assessment should have been made u/s 153C as the proceedings abates on receipt of search information; which the LAO has not done.
2. The Ld. CIT(A) erred on facts ad in law in confirming addition u/s 68 by treating LTCG on shares as bogus gain."

6. We would adjudicate these grounds in seriatim.

**Ground No. 1:**

7. This is a legal ground in which the assessee claims that the assessment is null and void since it has been made u/s 143(3) though it must have been made u/s 153C on the basis of search-material.

8. To address this issue, Ld. AR firstly carried us to Para No. 7 to 10 of assessment-order; these are re-produced below for immediate reference:

7. In addition to the above this office is in receipt of a report F.No.JDIT(Inv.)/Ind/LTCG/2016-17/113 dated 13-04-2016 from the Jt. DIT (Inv.) Indore. It has been informed vide the said report that a search and seizure operation was carried out by the Indore unit of Investigation Directorate on Moira Group of Indore on 17/06/2015. In connection to the same the Indore unit of Anand Rathi Share & Stock Brokers Ltd. was also covered. In fact the Indore unit of Anand Rathi Share & Stock Brokers Ltd, 11<sup>th</sup> Floor, Times Tower, Senapati Bapat Marg, Lower Parel, Mumbai is a franchisee being run by M/s Suyog Securities Pvt Ltd from the premise 101, 30-B, Apollo Avenue, Old Palasia, Indore. The Director and Main person of M/s Suyog Securities Pvt Ltd is Shri Nishant Nyati. The premises of Shri Nishant Nyati and some of his employees were also covered. During the course of search operation it was found that Shri Nishant Nyati, along with others, is engaged in providing managed and synchronized share transactions for numbers of beneficiaries all over the country by way of bogus long term capital gain. For executing these managed and synchronized share transactions Shri Nishant Nyati has created 95 dummy concerns comprising of companies, firms as well as individuals.

8. It was found that Shri Nishant Nyati with the help of his employees have managed the name-lending/account-lending from some of the individuals, who are persons of no means and who had allowed such usage of name-lending/account-lending for a very nominal amount. Some of the employees have also lent their names which were being used by Nishant Nyati for managing and synchronizing share



● transactions. All these individuals were getting Rs. 5000-6000/- per year for such name and account lending. Further, with the permutations and combinations of these individuals, numbers of companies were incorporated with these individuals being directors in those companies. The list of those 95 dummy concerns, managed and controlled by Nishant Nyati, was enclosed as **Annexure-A** to his report. Evidences with regard to the fact that all the 95 entities, listed at Annexure-A, were managed and controlled by Nishant Nyati was also been found. The details of the evidence found during the course of search establishing these facts is noted hereunder:-

- i) Statements of several individuals in whose account dubious share transactions were made were recorded wherein they have admitted that they are merely name and account lenders. Some of those were employees of Nishant Nyati getting salary form him and some of them were third persons. All of them accepted that their names and accounts are being used by Nishant Nyati. They also accepted that the companies formed in their name are actually being managed and controlled by Nishant Nyati.
- ii) Around 250 cheque books of different dummy entities were found. Several of those cheque books were blank and signed cheque books.
- iii) Several RTGS forms blank but found to be signed by dummy individuals, were found.
- iv) PAN cards, seals of the companies, records of statutory compliance, etc. of these companies have been found.



*(Handwritten signature)*

●v) Through bank trail cash deposits of several crores have been identified.

9. In his statement, Nishant Nyati revealed the modus-operandi of availing bogus LTCG by way of managed and synchronized share transactions through his dummy concerns. He also provided the names of other important persons who are part of this network. It was gathered that there is systematic chain of persons, each of whom have different role to perform but still connected to each other. Shri Nishant Nyati has revealed that he has used his dummy concerns for managed and synchronized share transaction for generating bogus LTCG in mainly two scrips, namely, TURBOTECH and KAPPAC PHARMA. From such details large numbers of beneficiaries have been identified wherein they have availed bogus LTCG of more than 300 crores from these two scrips. The beneficiaries are spread all over the country. List of the beneficiaries (for the scrip Kappac Pharma) was forwarded as per annexure-C to his report. The name of the assessee also figures in the said list of beneficiary of bogus long term capital gain in the scrip of Kappac Pharma. Thus according to the report transactions in scrip Kappac Pharma are made by you for claiming bogus long term capital gains to bring your undisclosed income into books of account under the garb of these transactions.

10. This investigation proves that the LTCG shown by the assessee exempt u/s 10(38) of the I.T. Act on purchase/sale of Kappac Pharma shares is not genuine and the transactions have been managed to launder



her own unaccounted money in the form of exempt long terms capital gain. This fact also finds support from order of SEBI suspending the license of Kappac Pharma Pvt. Ltd. for trading of share in recognized stock exchange. The relevant portion of SEBI order is reproduced hereunder:-

Notice No	20150101-24	Notice Date	01 Jan 2015																																																																					
Category	Trading	Segment	Equity																																																																					
Subject	Suspension in trading of securities																																																																							
Content	<p><b>To</b></p> <p><b>All Trading Members of the Exchange</b></p> <p><b>Sub: Suspension in trading of securities</b></p> <p>Trading members are hereby informed that pursuant to directions received from SEBI, as a surveillance measure trading in the securities of the following companies will be suspended with effect from Wednesday January 7, 2015 until further notice.</p> <table border="1"> <thead> <tr> <th>Sr. No.</th> <th>Scrip Code</th> <th>Scrip Name</th> </tr> </thead> <tbody> <tr><td>1</td><td>531517</td><td>Alang Industrial Gases Ltd</td></tr> <tr><td>2</td><td>512355</td><td>Anukaran Commercial Enterprises Ltd</td></tr> <tr><td>3</td><td>530479</td><td>Atlanta Infrastructure and Finance Ltd</td></tr> <tr><td>4</td><td>531570</td><td>Blazon Marbles Ltd</td></tr> <tr><td>5</td><td>526141</td><td>Compact Disc India Ltd</td></tr> <tr><td>6</td><td>512361</td><td>Cupid Trades &amp; Finance Ltd</td></tr> <tr><td>7</td><td>512207</td><td>Effingo Textile &amp; Trading Ltd</td></tr> <tr><td>8</td><td>530657</td><td>Global Securities Ltd</td></tr> <tr><td>9</td><td>507958</td><td>Jolly Plastic Industries Ltd</td></tr> <tr><td>10</td><td>506938</td><td>Kappac Pharma Ltd</td></tr> <tr><td>11</td><td>531689</td><td>Mahavir Advanced Remedies Ltd</td></tr> <tr><td>12</td><td>530557</td><td>NCL Research &amp; Financial Services Ltd</td></tr> <tr><td>13</td><td>505525</td><td>Perichay Investments Ltd</td></tr> <tr><td>14</td><td>532031</td><td>Sarang Chemicals Ltd (*)</td></tr> <tr><td>15</td><td>531925</td><td>Shantanu Sheorey Aquakult Ltd</td></tr> <tr><td>16</td><td>531800</td><td>Sheetal Bio Agro Tech Ltd (*)</td></tr> <tr><td>17</td><td>505513</td><td>Shree Shaleen Textiles Ltd</td></tr> <tr><td>18</td><td>512075</td><td>Suchak Trading Ltd</td></tr> <tr><td>19</td><td>508969</td><td>Sulabh Engineers &amp; Services Ltd</td></tr> <tr><td>20</td><td>512311</td><td>Surabhi Chemicals &amp; Investments Ltd</td></tr> <tr><td>21</td><td>504358</td><td>Turbotech Engineering Ltd</td></tr> <tr><td>22</td><td>512067</td><td>Vishvijyoti Trading Ltd</td></tr> </tbody> </table> <p>(*) Scrips already under suspension</p> <p>In case of any clarifications, members may contact Shri Ravindra Shetty (22728792) / Shri Rajesh Gandhi (22728281)</p> <p><b>Soundararajan V.</b>  <b>Sr. General Manager</b>  <b>Surveillance &amp; Supervision</b></p> <p>January 1, 2015</p>			Sr. No.	Scrip Code	Scrip Name	1	531517	Alang Industrial Gases Ltd	2	512355	Anukaran Commercial Enterprises Ltd	3	530479	Atlanta Infrastructure and Finance Ltd	4	531570	Blazon Marbles Ltd	5	526141	Compact Disc India Ltd	6	512361	Cupid Trades & Finance Ltd	7	512207	Effingo Textile & Trading Ltd	8	530657	Global Securities Ltd	9	507958	Jolly Plastic Industries Ltd	10	506938	Kappac Pharma Ltd	11	531689	Mahavir Advanced Remedies Ltd	12	530557	NCL Research & Financial Services Ltd	13	505525	Perichay Investments Ltd	14	532031	Sarang Chemicals Ltd (*)	15	531925	Shantanu Sheorey Aquakult Ltd	16	531800	Sheetal Bio Agro Tech Ltd (*)	17	505513	Shree Shaleen Textiles Ltd	18	512075	Suchak Trading Ltd	19	508969	Sulabh Engineers & Services Ltd	20	512311	Surabhi Chemicals & Investments Ltd	21	504358	Turbotech Engineering Ltd	22	512067	Vishvijyoti Trading Ltd
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9. Then, he carried us to a Table containing date-wise chronology of proceedings of present case, compiled by him and filed on Page No. 2 of Paper-Book, as under:

**List of dates:**

1/6/15	Sec. 153C was amended providing for invoking of this section on the basis of information found in course of search relating to other person and it became no longer necessary that seized material should belong to other person.
17-06-15	Morya group and Nishant Nyati group of Indore were searched. Information relating to assessee was found and was, in due course, communicated to LAO when the assessment for this was going on.
16-10-15	Original Return of Income filed.
13-04-16	Report of this date was received by LAO that the LTCG of the assessee was bogus as revealed from search. This is possibly the basis for selection of case for scrutiny.
<b>25-07-16</b>	143(2) was issued
<b>12-05-17</b>	142(1) was issued
<b>22-08-17</b>	131 issued to assessee and statement recorded.
<b>22-09-17</b>	142(1) issued enclosing therewith report based on search. SCN issued for making addition on the basis of finding in search case of Nyati. Hence the AO should have abated the proceedings and issued notice u/s 153C.
<b>29-09-17</b>	Reply filed.
<b>13-10-17</b>	143(3) passed
<b>20/11/20</b> <b>11/6/21</b>	Applications made to LAO twice to supply copy of material found in course of search for making addition, but no reply.

**SYNOPSIS**

10. Referring to Para No. 7 to 10 of assessment-order and the chronological events of proceedings, narrated in foregoing paragraphs, Ld. AR submitted the case-history as follows:

- (i) A search was conducted by Indore Unit of Investigation Directorate of Income-tax Department upon one "Moirra / Nyati Group" on 17.06.2015. Based on material/information found during search, the Joint Director of Investigation, Indore forwarded a report dated 13.04.2016 to assessee's AO. From this report, the assessee's AO found that Shri Nishant Nyati of Nyati Group was engaged in providing managed and synchronized shares transactions for number of beneficiaries for arranging long term capital gain. The AO also noted the details relating of modus operandi adopted by Shri Nishant Nyati in Para No. 8 and 9 of assessment-order. Then, the AO observed thus in concluding portion of Para No. 9:

"List of beneficiaries (for the scrip Kappac Pharma) was forwarded as per annexure-C to this report. **The name of the assessee also figures in the said list of beneficiary of bogus long term capital gain in the scrip of Kappac Pharma.** Thus, according to the report, transactions in scrip Kappac Pharma are made by you for claiming bogus long-term capital gains to bring your undisclosed income into books of account under the garb of these transactions."

[Emphasis supplied]

(ii) The AO issued scrutiny notice u/s 143(2) to assessee on 25.07.2016. Thereafter, a notice dated 12.05.2017 u/s 142(1) and summon dated 22.08.2017 u/s 131 were issued to assessee. Ultimately, the AO issued notice dated 22.09.2017 u/s 142(1) in which he show-caused assessee for making addition on the basis of finding in search of "Nyati Group".

11. With this factual matrix, Ld. AR contended that the AO received investigation report on 13.04.2016 and issued scrutiny notice on 25.07.2016 u/s 143(2) to make assessment u/s 143(3), on the basis of material found during search of "Moirra / Nyati Group". Ld. AR submitted that the scheme of Income-tax Act prescribes for making assessment u/s 153C and not u/s 143(3) in a case where material belonging to or pertaining to other person is found in search of someone. Therefore, in the present case, the AO had valid jurisdiction u/s 153C which he did not assume. According to Ld. AR, the AO framed assessment u/s 143(3) which is ex facie not allowed under the scheme of the act; therefore the assessment made by AO falls short of jurisdiction and hence null and void. Relying upon **Arun Kumar Vs. UOI (2006) 155 Taxman 659 (SC)**, Ld. AR argued that by erroneously assuming jurisdiction, no authority can confer upon itself the jurisdiction which it does not possess. Ld. AR contended that the assumption of jurisdiction by AO u/s 143(2)/143(3) is clearly illegal and deserves to be quashed.

12. To buttress assessee's understanding, Ld. AR also referred to FAQ No. 70 clarified by CBDT in Circular No. 21/2020 dated 04.12.2020 issued under Vivad Se Vishwas Scheme:

“Q.No. 70: If the assessment order has been framed in the case of a taxpayer u/s 143(3)/144 of the Act based on the search executed in some other taxpayer’s case, whether it is to be considered as a search case or non-search case under Vivad se Vishwas?

Answer : Such case is to be considered as a search case.”

Ld. AR submitted that the Govt./CBDT has also understood that if the assessment-order had been framed in the case of an assessee u/s 143(3)/144 on the basis of search executed in other’s case, it would be considered as a “search case”. This, according to Ld. AR, fortifies assessee’s stand that the present case must have been treated by AO as a “search-case” and the assessment must have been made u/s 153C.

13. Per contra, Ld. DR strongly opposed the submission of Ld. AR on following premises:

(i) Firstly, he referred to the very same Table of chronological event of proceeding, re-produced earlier, and submitted that against date marked as 13.04.2016, the Ld. AR/assessee has himself mentioned:

“Report of this date was received by LAO that the LTCCG of the assessee was bogus as revealed from search. This is possibly the basis for selection of case for scrutiny.”

Ld. DR submitted that the assessee is just speculating that the selection of case for scrutiny was “possibly” on the basis of search.

- (ii) Secondly, Ld. DR drew our attention to the opening paragraph of assessment-order passed by AO, which clearly states thus:

“Return of income in this case was filed on 16.10.2015 showing total income of Rs. 10,26,920/-. The assessee has shown income from LIC commission & income from house property and also long term capital gain & same has been claimed as exempt u/s 10(38) of the I.T. Act. **The case was selected for scrutiny under CASS** and notice u/s 143(2) of the I. T. Act was issued on 25.07.2016 and the same was served upon the assessee on 29.07.2016. A copy of the same is placed on record. Thereafter notice u/s 142(1) alongwith questionnaire was issued on 12.05.2017, which is also placed on record.”

[Emphasis supplied]

Referring to this Para of assessment-order, Ld. DR submitted that the case of assessee was selected for scrutiny under “CASS” mechanism i.e. “Computed Aided Scrutiny Selection” and the notices u/s 143(2) and 142(1) were issued.

- (iii) Lastly, Ld. DR carried us to the opening sentence of Para No. 7 of assessment-order (already re-produced in foregoing paragraph) which reads thus:

“**In addition to above**, this office is in receipt of a report F.No. JDIT(Inv.)/Ind/LTCG/2016-17/113 dated 13.04.2016 from Jt.DIT(Inv), Indore.”

[Emphasis supplied]

From this Para, Ld. DR submitted, it is very clearly visible that the AO simply made additional or ancillary use of the report of search received from Jt. DIT(Inv), Indore.

14. With aforesaid submissions, Ld. DR strongly contended, that it is not a case at all where the situation and condition triggering section 153C is satisfied. Ld. DR submitted that the assessee is unnecessarily stretching the case to tag it with section 153C while it is not the case of section 153C at all. Ld. DR, therefore, prayed to uphold the assessment made by AO u/s 143(3) as legal.

15. We have considered rival submissions of both sides and perused the material held on record to which our attention is drawn including the orders of lower-authorities. After a careful consideration of the pleadings of both sides, we find much weightage in the submission of Ld. DR for revenue (i) that the assessee is just speculating that the case was taken for scrutiny u/s 143(2) on the basis of search-material; (ii) that the first para of assessment-order clearly exhibits that the case had been selected for scrutiny under CASS (Computer Aided Scrutiny Selection); and (iii) that Para No. 7 of assessment-order also speaks clearly that the AO made just additional or ancillary use of the report of search received from Jt. DIT(Inv), Indore. Therefore, it is a case where normal scrutiny has been conducted by AO and there is nothing to suggest that the situation and condition of section 153C is satisfied. Regarding the reliance placed by Ld. AR on FAQ No. 70 of **CBDT Circular No. 21/2020 (supra)**, we firstly observe that the said clarification

was given by CBDT for a different objective i.e. the eligibility for Vivad Se Vishwas Scheme, Computation of tax liability, Procedures for scheme, etc. That clarification is nothing to do with applicability or non-applicability of section 153C or 143(2)/143(3). Furthermore, the first sentence of FAQ clearly states *"If the assessment order has been framed in the case of a taxpayer under section 143(3)/144 of the Act based on the search executed in some other taxpayer's case..."* The situation mentioned in this sentence itself admits that the assessment of "X" person can validly be made u/s 143(3)/144 on the basis of search executed in "Y". When it is so, the reliance on FAQ sought to be placed by Ld. AR in favour of assessee is rather against assessee. In present case, the AO has made assessment upon assessee u/s 143(3) based on the search executed in "Maira / Nyati Group".

16. We would like to add here that there may be a case where situation and condition of section 153C is satisfied, in that case the AO has to proceed only u/s 153C. But in the present case, the AO has conducted scrutiny under CASS and the search-information has been made use as additional or ancillary information, we do not feel that the present case has the situation or condition which warrants application of section 153C. In that view of matter, we are of the considered view that the AO is very much justified in framing assessment u/s 143(3). Therefore, there is no worth in the ground of assessee. The same is hereby dismissed.

**Ground No. 2:**

17. This ground is on merit. The assessee claims that that the CIT(A) has erred in confirming the addition made by AO treating the long-term capital gain as bogus.

18. Ld. AR for assessee submitted that the lower-authorities have wrongly treated the capital gain declared by assessee as non-genuine. He submitted that the assessee purchased 3,000 shares @ Rs. 10 per share for a total consideration of Rs. 30,000 in September, 2012 off-market in physical form and after purchase, the shares were transferred in the name of assessee on 09.10.2012 itself which is evident from back of share-certificate. He submitted that there is no prohibition or restriction in law over off-market purchase of shares. He submitted that the shares were subsequently got converted into De-mat Form and credited to De-mat A/c held with Philip Capital (India) Private Limited on 21.02.2014, copy of De-mat A/c is submitted. He submitted that out of 3,000 shares, the assessee sold 1,700 shares on 13.05.2014 to 09.06.2014 and earned the impugned capital gain of Rs. 8,46,732/-. The shares were sold on-line on the floor of stock exchange through broker Philip Capital (India) Private Limited and the sale consideration was received through banking channel. He submitted that the assessee is a regular investor of small amounts in shares which is evident from a copy of Transaction-Statement of shares done through ICICI Bank during the period 01.04.2014 to 31.03.2015 filed in Paper-Book. He submitted that the AO is not having any evidence to discredit the assessee's

documents or even to prove that the assessee was involved in price manipulation and thereby generate bogus gain. He also argued that the AO has mentioned that the transaction was bogus and made with an intention to convert black money into white. If this is so, the AO's conclusion must be that black money was available with the assessee in the year of purchase itself and in that case, the addition could not have been made in current year. He submitted that the issue is also covered by numerous decisions of ITAT benches in favour of assessee. A brief of several decisions is filed on Page No. 8 to 20 and Page No. 24 to 57 of Written-Submission. Reliance is also placed on **CIT Vs. Odeon Builders (P) Ltd. 418 ITR 315 (SC)** where it was held that if the assessee has submitted purchase bills, transportation bills, copy of accounts, VAT and income-tax returns of dealers and payments were also made through cheque, the purchase transactions cannot be treated as bogus. Lastly, Ld. AR also made a strong contention that the assessee has also applied to AO on multiple occasions, vide application dated 06.05.2019, 20.11.2020 and 11.06.2021, to supply the material found in search of "Moirra/Nyati Group" but the AO has not supplied till date. Copy of assessee's application dated 20.11.2020 is also filed at Page No. 34 of Paper-Book which is scanned and re-produced below:

(34)

Indore  
Dated 20-11-20  
To,  
ITO  
Khandwa by name and by email)

Respected sir,

**Sub:** appeal in the case of Ms. Sarla Jain for AY 14-15 and AY 15-16:  
requirement of information from your file for preparing appeal  
**Ref:** assessment made by Your Honour for both years u/s 148/143(3)  
**PAN:ABVPJ1316J**

Pl. refer to above.

The assessee had sought information from you as per letter dated 6/5/19.  
(copy enclosed). The desired information has still not been supplied. You are  
requested to supply the same so that the assessee can prepare for appeal  
and argue the matter. The matter has come up for hearing before Hon'ble  
ITAT and assessee had to take adjournment simply on this ground.  
If the information is still not supplied, Hon'ble ITAT would be requested to take  
an adverse view against you and decide the matter accordingly.

Copy of this letter will be submitted before Hon'ble ITAT in course of hearing.

Yours faithfully

(Pavan Ved)  
advocate for assessee.  
Encl: as above.

K.

Referring to contents of this application, Ld. AR submitted that the assessee has intimated to AO that if the information is not supplied, the ITAT would be requested to take an adverse view against the department. As the AO has not supplied material till date, Ld. AR made a strong request on behalf of assessee to take a view against the department.

19. Per contra, Ld. DR for revenue submitted that the assessee purchased impugned shares for Rs. 10/- per share but sold at astronomical price of Rs. 564/602/339 per share. He submitted that the assessee has shown off-market purchase of shares and not on-market through stock-exchange. He emphasized that the assessee has not even submitted purchase bill (Para No. 5 of assessment-order). Therefore, the AO has heavily doubted the first stage of transaction itself i.e. the purchase of shares. He submitted that the material gathered during search on "Moirra / Nyati Group" corroborates the fact that the assessee has obtained bogus capital gain with the connivance of brokers and other persons. He submitted that the AO has not only taken into account the modus operandi adopted by Shri Nishant Nyati but also the fact that the assessee's name is included in the list of beneficiaries to whom the bogus accommodation was provided. He submitted that the SEBI has also suspended the licence of Kappac Pharma for trading of share in recognized stock exchange. He relied upon decisions in Suman Poddar Vs. ITO (2019) 112 taxmann.com 330 (SC); Pooja Ajmani (2019) 106 taxmann.com 65 (Delhi ITAT); Atmiben Alpitkumar Doshi Vs. ITO; ITA No. 940 (Ahd) 2018 order dated 30.01.2023 (ITAT Ahmedabad) and Udit Kalra Vs. ITO, ITA No.

220/2019 (Delhi HC). Regarding non-supply of search-material to assessee, as claimed by Ld. AR, the Ld. DR drew our attention to Q.No. 36 put by AO to assessee in the statement recorded in pursuance to summon dated 22.08.2017 u/s 131, which is reproduced below :-

✓ 5.36. मैं आपको Capax Pharma से संबंधित डॉक्यूमेंट, डाफ्टर+रट

सबसे धूमिल पर विचार द्वारा द्वारा 132 एवं 133 ए

के तहत भी गई कार्रवाई की शिफ्ट आपको दिखा रहा

हैं। जिसमें उनके द्वारा स्वीकार किया गया है कि निम्न  
Share Scripts में उनके द्वारा पहले Manual रोज से  
Share Certificates जारी करके बाद में इन Scripts  
का कृत्रिम आच्छाद पर एक-दो साल बाद ~~आज~~  
आज बढ़ाया जाता है उस समय उन शेयरों को बंद  
रखा जाता है यह सब Providing Entries रहती है जिस  
आपके अधिनियम में धारा 10(38) में करमुक्त भाग होने  
के कारण दिखाया जाता है। चूंकि मैं Capax Pharma  
कार्रवाई की शामिल है जिसकी Trading शेयर बाजार,  
NSC एवं BSE में Sebi द्वारा Suspend कर दिए गए  
हैं। कृपया बताएं कि आपने द्वारा दिए गए लेन-देन को  
Penny Stock में ही क्यों त माने जाएँ ?

उ. यह संबंध में मैं कुछ नहीं जानती हूँ!

Ld. DR submitted that it is quite manifest from above part of statement that the AO has shown the report of search to assessee. Therefore,

there is no strength in the claim of Ld. AR that search-material was not provided to assessee.

20. We have considered rival submissions of both sides and perused the record. On a careful consideration, we find several loose ends. Firstly, we find that the AO has raised a strong doubt on the first stage of transaction i.e. purchase of shares on the premise that the assessee has not submitted purchase-bill. The Ld. DR for the revenue has also emphasized this very point in very strong terms. In this regard, when we read carefully the assessment-order, we find that the AO has made two contradictory findings in Para No. 4 and 5 of assessment order as under:

Para No. 4 of assessment-order:

“During the course of scrutiny proceedings statement of the assessee was recorded u/s 131 of the I.T. Act and she was requested to furnish copy of purchase bill of the shares of Kappac Pharma. The assessee submitted the copies of purchase bill.”

Para No. 5 of assessment-order:

“On verification records it is seen that purchase bills are not produced by the assessee. The assessee only produced copies of share certificate transferred in her name. Therefore, the purchase is not verifiable. During the course of assessment proceedings statement of assessee was recorded u/s 131 of the I.T. Act on 28.08.2017. In reply to question no 19 of her statement, the assessee submitted that the shares of M/s Kappac Pharma were purchased by her in the year 2012 in the physical form. She also submitted that the shares were purchased from some unknown person who was known to her husband. No other details were divulged. Therefore, the genuineness of purchase transactions of the shares is not verifiable. When the assessee was confronted about the details of broker from whom the shares were purchased, it was submitted by her that the share were purchased from some unknown person who contracted her husband for this purpose. The explanation for purchase of shares given by the assessee is quite evasive and not believable. It is unlikely that some person will contact her husband for sales of shares from a distance destination. This proves that the transactions for purchase of sale of shares are stage managed to launder unaccounted income of the assessee through bogus long term capital gain.”

Thus, while in Para No. 4, the AO has mentioned that the assessee submitted purchase-bill but in immediate next Para No. 5, the AO has mentioned that the purchase-bill was not submitted but the assessee submitted photocopy of share-certificate. There is an apparent contradictory finding mentioned by

AO. It is worth noting here that even before us also, the assessee has submitted copy of share-certificate but not filed copy of purchase-bill or any evidence of purchase. Secondly, there is no finding at any place in the orders of lower-authorities as to what was source for payment of purchase-consideration i.e. whether it was from disclosed or undisclosed source and whether the mode of payment was cash or banking channel? Thirdly, we also find that the assessee has claimed to have purchased 3,000 shares but sold only quantity of 1,700 shares in current year. On scrutiny of De-mat A/c filed before us, we find that there is a debit entry of 1,300 shares on 08.03.2014 falling within immediately preceding previous year 2013-14, AY 2014-15. That means, the assessee must have sold 1,300 shares in AY 2014-15 and generated identical long-term capital gain in that year. Then, what happened to the capital gain in AY 2014-15 is not clear before us i.e. whether the AO accepted or the matter got disputed and travelled to any appellate forum? These vital aspects are not coming to us. Last but most important point, we also observe, is that the assessee is strongly contending that the department has not provided search-material to him despite multiple applications by assessee. In fact, in one of the application date 20.11.2020 (re-produced earlier), the assessee has also intimated to AO that if the information is not supplied, he will request the ITAT to take an adverse view. For this point, we take note that the AO has himself mentioned in Para No. 9 of assessment-order that the assessee's name figured in the list of beneficiaries of bogus gain. Therefore, when the assessee's name is included in such list, the AO ought to have supplied the search-material to assessee at least when the assessee is repeatedly demanding. Though the Ld. DR had defended AR's submission by taking support of Q.NO. 36 of the statement of assessee u/s 131 (re-produced earlier) but a careful reading of the same reveals that though the AO might have shown report of search to assessee but the AO has ultimately raised general question on the working of share broker and in reply the assessee has denied of having any knowledge. The question raised by AO nowhere suggests that the assessee's name figured in search material was shown to assessee. Moreover, mere showing of material

to a lady-assessee does not serve effective purpose. Therefore, the AO must supply the material or information required by assessee. Taking into account these aspects, we are of the considered view that there is a need on the part of assessee to submit purchase-bill or other evidence of purchase and the AO has to rectify his contradictory finding after taking into account assessee's submission. Further, there has to be a finding on source and mode of investment. There is also a necessity to verify the status of 1,300 shares sold in AY 2014-15. Furthermore, there is a strong necessity on the part of AO to supply search-material to assessee. Thereafter, the AO would take a fresh call on the issue. Therefore, this ground is fit for remitting back to the file of AO and we do so.

**21. Resultantly, this appeal of assessee is partly allowed for statistical purpose.**

Order pronounced in Open Court on 24.08.2023.

sd/-  
(VIJAY PAL RAO)  
JUDICIAL MEMBER

sd/-  
(B.M. BIYANI)  
ACCOUNTANT MEMBER

Indore

दिनांक /Dated :

CPU/Sr. PS

Copies to: (1) The appellant  
(2) The respondent  
(3) CIT  
(4) CIT(A)  
(5) Departmental Representative  
(6) Guard File

By order

Sr. Private Secretary  
Income Tax Appellate Tribunal Indore Bench, Indore