

**IN THE INCOME TAX APPELLATE TRIBUNAL  
AMRITSAR BENCH, AMRITSAR.**

**BEFORE DR. M. L. MEENA, ACCOUNTANT MEMBER  
AND SH. ANIKESH BANERJEE, JUDICIAL MEMBER**

**I.T.A. No. 32 & 33/Asr/2019  
Assessment Years:2014-15 & 2015-16**

M/s Raman Kumar Aggarwal 181, Adarsh Nagar, Gurdaspur. [PAN: -ABEPA1443Q]	Vs.	Dy. Commissioner of IncomeTax, Central Circle, Amritsar.
<b>(Appellant)</b>		<b>(Respondent)</b>

**I.T.A. No. 34/Asr/2019  
Assessment Years:2014-15**

Deepti Aggarwal 181, Adarsh Nagar, Gurdaspur. [PAN: -AJLPA5745L]	Vs.	Dy. Commissioner of Income Tax, Central Circle, Amritsar.
<b>(Appellant)</b>		<b>(Respondent)</b>

**I.T.A. No. 35/Asr/2019  
Assessment Years:2014-15**

Sh. Gaurav Aggarwal 181, Adarsh Nagar, Gurdaspur. [PAN: -AJAPA8758L]	Vs.	Dy. Commissioner of Income Tax, Central Circle, Amritsar.
<b>(Appellant)</b>		<b>(Respondent)</b>

<b>Appellant by</b>	Sh. Ashwani Kalia, CA
<b>Respondent by</b>	Sh. Amit Jain, CIT.DR.

<b>Date of Hearing</b>	23.08.2023
<b>Date of Pronouncement</b>	13.09.2023

## **ORDER**

### **Per: Bench:**

A batch of 4 appeals of the different assesseees were filed against the order of the Id. Commissioner of Income-tax (Appeals)-5Ludhiana, (in brevity 'the CIT(A)') order passed u/s 250 (6) of the Income-tax Act, 1961 (in brevity the Act) for assessment years 2014-15 & 2015-16. The impugned order was emanated from the order of the DCIT, Central Circle, Amritsar, (in brevity the Id. AO) order passed u/s 153A r.w.s. 143(3)of the Act.

2. At the outset, all the appeals are similar in nature and have common factual ground related to disallowance of long-term capital gain u/s 10(38) claimed by the assessee. All the cases are taken together, heard together and disposed of together. For the sake of convenience **ITA No. 34/Asr/2019** is taken as lead case.

3. The Id. Counsel for the assessee filed an adjournment petition for all 4 appeals. But after the discussion with the bench the counsel withdrew the adjournment petition and we proceed to hearing with the consent of both the parties.

### **ITA No. 34/Asr/2019**

4. The assessee has taken the following grounds:

*“1 That the ld.CIT(A)-5, Ludhiana has erred in law and on facts in upholding the addition of Rs. 1,18,79,150 made by the AO by treating the long term capital gain on sale of shares as assessee’s own unaccounted funds and denying the exemption u/s 10(38) of the Act.*

*2 That the ld.CIT(A)-5, Ludhiana has erred in law and on facts in confirming the findings of the AO that the transactions of purchase and sale of shares by appellant are not genuine but bogus, stage managed and manipulated.*

*3 That the ld.CIT(A)-5, Ludhiana has erred in law and on facts while confirming the findings of the AO conveniently ignoring that the findings are contrary to the documentary evidence on record and are purely based on mere suspicion, surmises and conjectures, without any supporting evidence.*

*4 That the ld.CIT(A)-5, Ludhiana has erred in law while confirming the above addition in spite of the fact that the appellant was not confronted with the evidence / statement and other evidences on the basis of which the AO formed his belief that the transactions of purchase and sale of shares were bogus without affording any opportunity to the appellant to cross examine the third parties which is against the principal of natural justice.*

*5 That the order is bad in law and on facts.*

*6 That the appellant craves leave to add or amend the grounds of appeal before the appeal is heard and disposed off.”*

5. Brief fact of the case is that in the impugned assessment years, the assessee claimed exemption u/s 10(38) Long Term Capital Gain (in short 'LTCG') amount to Rs.1,18,79,150/-. The search was conducted in the firm M/s R. D. Enterprise and M/s Agrotech Pvt. Ltd, Company, where the assessee is a partner. The notice u/s 153A was issued and assessment was completed u/s 153A r.w.s. 143(3) of the Act. As per the revenue, the assessee sold the share of M/s Kappac Pharma Ltd. during impugned assessment year amount to Rs. 1,18,79,150/-. The revenue has declared the entire transaction as the sham transaction and bogus during search. The revenue identified various company stock i.e. a stock having very low price, which provide through route of preferential allotment after some time the large scale manipulation in price of this shares is done to artificially inflated through market price in order to provide entry of tax exempt bogus LTCG. The shares of Kappac Pharma Ltd. resemble the character of penny stock which was identified and discussed by the investigation wing Kolkata and the entire share of the said company was listed in BSE Kolkata was taken as bogus and sham transaction. Aggrieved assessee filed an appeal before the Id. CIT(A). The Id. CIT(A) upheld the order of the Id. AO. Being aggrieved assessee filed an appeal before us.

6. The Id. AR for the assessee vehemently argued and first invited our attention in appeal order page 3 where the assessee submitted their submission before the Id. CIT(A). The relevant para of this submission is reproduced as below:

3. During the course of appellate proceedings, the AR of the appellant submitted his arguments as under:

**"Sub:- WRITTEN SUBMISSIONS IN THE APPEAL OF SMT DEEPTI AGGARWAL FOR AY 2014-15 AGAINST ORDER U/s 153A r.w.s 143(3) OF THE INCOME TAX ACT 1961. DATED 28.12.2017, ITA NO 114/IT/CIT(A)-5/LDH/2017-18**

With reference to the above, it is most respectfully submitted as under:

The appeal has been filed against the order of DCIT, Central Circle Amritsar passed u/s 153 r.w.s 143(3) of the income tax act dated 28.12.2017 for the sake of convenience, the appellant seeks liberty to put forth the written submissions in the following manner:

1. Return declaring net taxable income of Rs 8,63,990/- for A.Y 2014-15 was e-filed 08.02.2015 and a search and seizure operation u/s 132(1) of the income tax act was conducted on 09.09.2015 on JR Agrotech Pvt Ltd group of cases and Smt Deepti Aggarwal is one of the family member of the directors. Later on notice u/s 153A of the income tax act was received on 28.09.2016 and a return declaring net taxable income of Rs 8,63,990/- in response to notice u/s 153A of the income tax was filed on 23.11.2016 and thereafter statutory notice 143(2) and 142(1) along with questionnaire were received and same were duly complied with all the desired information being furnished from time to time.

2. In this case during the year the assessee has earned long term capital gain on sale of 17000 equity shares of M/s Kappa Pharma Ltd amounting to Rs 1,18,70,150/- detailed as under:



Appeal No. 117/2019  
Assessment Year 2014-15, u/s 153A r.w. 143(3)

Net sales Proceeds:	Rs 1,18,11,874/-
Less Indexed cost:	
Cost price (17000*12)	Rs 2,04,000/-
Indexed cost (2,04,000*939/852)	Rs 2,24,830/-
Long term capital gain	Rs 1,15,87,044/-

3. The investment made for purchase of these shares stands debited in the books of the assessee as well as in the personal statement of affairs of the assessee for the relevant year. The detail of said investment in the books is as under:

Sr. No.	Date of investment	Name of company	No of shares	Rate per share	Amount	Name of seller
1	25.06.2012	M/s Kappac Pharma Ltd	19000	12	192000	Onkar Terry Towers Pvt Ltd
2	25.06.2012	M/s Kappac Pharma Ltd	9000	12	96000	Onkar Terry Towers Pvt Ltd

4. The said long term capital gain of Rs 1,15,87,044/- was claimed exempt u/s 10(38) of the income tax act 1961.  
a) Out of the above said investment of 24000 shares of Kappac Pharma Ltd, 17000 no of equity shares were sold on Bombay Stock Exchange through a BSE stock broker duly registered with SEBI vide registration no INB010643634 M/s Master Capital Services Ltd, Mumbai On different dates during the FY 2013-14 detailed as under:

Sr. No.	Contract note cum bill no	Date of sale	Number of shares sold	Sales Proceeds	Securities transaction tax paid
1	B/C/212/139230	30/01/2014	1500	10,91,700/-	1051/-
2	B/C/215/141267	04/02/2014	3000	20,85,000/-	2085/-
3	B/C/217/142787	06/02/2014	3000	20,59,500/-	2059/-
4	B/C/227/149609	20/02/2014	3500	24,24,800/-	2424/-
5	B/C/247/164016	22/03/2014	3000	20,91,150/-	2091/-
6	B/C/205/133974	21/01/2014	3000	21,27,000/-	2127/-
<b>Total</b>			<b>17000</b>	<b>1,18,79,150/-</b>	<b>11877/-</b>

5. In this regard it is submitted that the said shares were purchased by the assessee on 25.06.2012 and were duly transferred in the assessee's name and which was further got Demat, and later on sold after a gap of more than one year, through a recognized stock broker on BSE and securities transaction tax was duly paid on sale of said shares and assessee fully satisfies all the conditions to claim exemption u/s 10(38) of the income tax act which says as under:



Income arising from the transfer of a long-term capital asset has

Appeal No. 114/IT/CIT(A)-5, LDH/2017-18  
Assessment Year 2014-15, u/s 153, r.w.s. 143(3)

an equity share in a company or a unit of an equity oriented fund or a unit of a business trust where—

(a) the transaction of sale of such equity share or unit is entered into on or after the date on which Chapter VII of the Finance (No. 2) Act, 2004 comes into force; and

(b) such transaction is chargeable to securities transaction tax under that Chapter.

5. During the course of assessment proceedings all the relevant documents i.e. copies of debit notes of said purchase of shares, demat account statement, copy of bank statement of assessee in which sale proceeds of said shares was credited, copy of contract notes cum bills issued by Master Capital Services Ltd giving complete details regarding the contract note no, trade date, settlement no, settlement period of BSE along with the no of shares sold, rate at which sold, brokerage charged, service tax and STT paid were duly furnished to the learned assessing officer. (Copies of all these papers are enclosed herewith.)
7. During the course of assessment proceedings, notice u/s 142(1) of the income tax act dated 28.06.2017 along with the questionnaire was issued and as per para 10 of the said questionnaire a detailed information as under was asked for,
  - i. Name of company in which you have invested during the FY 2013-14.
  - ii. Whether the payments against the purchase of shares were made through cheque?
  - iii. Whether such type of investments in the shares were done in earlier years also?
  - iv. Do you have Demat Account?
  - v. Had you invested in the shares of the companies through some broker or directly?
  - vi. Copy of bank account statement.and all the above said desired information along with the supporting documents was duly furnished letter dated 03.11.2017.
8. There after a show cause notice was issued in which it was alleged that during the course of search proceeding u/s 132(1) of the income tax act 1961 as per page no 118-123 of Annexure A-1 seized from business premises of M/s JR Agro Tech Pvt Ltd, documents regarding purchase bills for purchase of shares of Kappac Pharma Ltd were found which were sold later on during the FY 2013-14 and Directorate of Income Tax Investigation (Kolkata) as per their detailed investigation on accommodation entries of LTCG vide their report dated 27.04.2015 has identified various penny stocks i.e a stock having very low price, closely held but a privately placed and through the route of preferential allotment and after some time the large scale manipulation in price of these shares is done to artificially inflate their market price in order to provide entry of tax exempt bogus LTCG.



Assessment  
These shares of Kappac Pharma Ltd resemble character of penny stocks, which has been discussed and investigated at length by the Investigation Wing, Kolkata.

9. It was further alleged that Kappac Pharma Ltd is a penny stock company and has weak financial position, suspicious pattern of rigging of share price and very low credit worthiness and as per the report of investigation wing Kolkata mentioning M/s Kappac Pharma as penny stock shows the connivance of beneficiary, broker and entry operator in rigging its share price and as further mentioned as para 10 of show cause notice that as per the facts mentioned and discussed in the above paras of this show cause, it is clear that M/s Kappac Pharma Ltd is a penny stock and identity and credentials of this concern are suspicious in nature. As you had voluntarily surrendered an income in your statement recorded during the course of search operation u/s 132(4) of the income tax act on account of bogus LTCG claimed for M/s Kappac Pharma Ltd, however you have not disclosed it in your return on income for the AY 2014-15 and 2015-16. Considering the above facts and investigations conducted by DIT (INV) Kolkata regarding concern M/s Kappac Pharma Ltd, which proved to be a penny stock company, this is to show cause that why the LTCG claimed by you of Rs 118.79 lakhs for AY 2014-15 should not be treated as Bogus and added u/s 68 of the income tax act 1961.
10. In this regard it is submitted that an enquiry conducted in cases of other assesseees where the assessee has not been named for indulging in taking accommodation entries, such evidence can not be read in evidence against the assessee as per the decision of Honourable Supreme Court in the case of Kishan Chand Chela Ram 125 ITR 713(SC) and it is submitted that for claiming u/s 10(38) of the act the assessee have to prove twin conditions i.e. the income arise from the transfer of long term capital asset and being equity share in a company where the transfer of sale of such equity share is entered into on or after the date of which Chapter VII of the Finance Act 2004 comes into force and such transaction is chargeable to security transaction tax under that chapter. In the case of the assessee, both the twin conditions are satisfied.
11. The assessee has duly filed copy of Debit notes in purchase of shares, Demat account statement, contract notes issued by SEBI registered stock broker for sale of shares on BSE as an evidence for payment of securities transaction tax for transaction entered in a recognised stock exchange, bank statement in which sale proceeds of these shares were credited.
12. Thus the assessee has produced all the relevant evidence to show purchase of shares, payment of consideration for purchase of shares, dematerialization of shares and thereafter sale of shares from D-mat account. Hence the transaction of purchase and sale of shares is genuine one as the assessee has proved the genuineness by producing the relevant record whereas the assessing officer has not produced any material or record to controvert the evidence produce by the assessee.

However the learned assessing officer has not considered the aforesaid documents and rejected all claims made by the assessee by relying upon

the report of investigation wing and therefore made the additions which is not sustainable in law and learned assessing officer has given detailed explanation in order regarding the modus operandi of bogus LTCG scheme but failed to substantiate how the assessee fell in privy of the same without bringing any material on record and proving that the assessee was directly involved in the so called bogus transaction and made the addition u/s 68 as unexplained credit instead of long term capital gain as claimed by the assessee, while the source, identity and genuineness of transaction stands fully established by the documentary evidences and there is no case for making addition u/s 68 of the act.

14. In this regard it is further submitted that the as per the copies of debit notes for purchase of shares as found at page no 118-123 of annexure a-1 seized from the business premises of M/s JR Agrotech Pvt Ltd during the course of search proceedings u/s 132(1) of the act and having reflected the said investment in the statement of affairs of the assessee in the year of purchase is not in dispute and further even the holding of shares in Demat account of the assessee has not been disputed by the learned assessing officer. Thus once the holding of shares in Demat account is not in dispute, the transaction cannot be held as bogus. Further assessing officer has not disputed the sale of shares from Demat account of the assessee and the sale consideration was directly credited to the bank account of the assessee, therefore once the assessee produced all relevant evidence to substantiate the transaction of purchase, dematerialization and sale of shares thereafter in the absence of any contrary material brought on record the same cannot be held as bogus transaction merely on the basis of report of Investigation Wing, Kolkata, where in there is a general statement of providing bogus long term capital gain transactions to clients without stating about the transaction of allotment of shares by the company to the assessee.
15. Further as regards voluntary disclosure amounting to Rs 118.79 lacs made by the assessee u/s 132(4) of the income tax act 1961 during the course of search operation on account bogus LTCG on trading of shares of M/s Kappac Pharma Ltd the assessee has duly filed his retraction before the learned assessing officer vide his letter dated 21.11.2017 that the said disclosure was made under forced circumstances since a search was going on all the business and residential premises of the assessee and assessee and all his family members were under huge pressure though it was explained to them that the said LTCG transactions are genuine transactions but assessee and his family members were forced to make the said LTCG on sale of shares as a disclosure u/s 132(4) of the income tax act, which also stands proved from the fact that no incriminating material was found during search which would show that the LTCG is not genuine. It was also requested that the assessment u/s 153A of the income tax act should be made on the basis of documents found during search and the surrender made should be ignored as the same was made under pressure and harassment, while the assessee was able to provide all the documentary evidence in respect of LTCG to be claimed as exempt u/s 10(38) of the income tax act.

Assessment Year 2014-15

16. In this regard it is submitted that the issue in dispute is squarely covered by the various decisions of the ITAT and the Hon'ble High Courts including the recent decision dated 18.1.2018 of the Jurisdictional High Court i.e. Hon'ble High Court of Punjab & Haryana in the case of PCIT (Central), Ludhiana vs. Prem Pal Gandhi passed in ITA No. 95 of 2017 and Principal Commissioner of Income Tax (Central), Ludhiana Versus Hitesh Gandhi in ITA NO 18-2017.

In the above said cases the appeal was filed by revenue u/s 260 of the income tax dated against the orders passed by the Income Tax Appellate Tribunal, Amritsar Bench claiming following substantial questions of law:

- (i) *"Whether on the facts and in the circumstances of the case, the Hon'ble Income Tax Appellate Tribunal, has erred in law in upholding the order of the CIT(A), deleting the addition of Rs 2,78,26,685/-, made by the AO on account of sham share transactions, ignoring an important aspect that the transaction of shares showing their purchase price at Rs 11,00,000/- and sale consideration at Rs 2,91,32,850/- within a period of less than two years/purchase of shares made in cash not cheque that too before shares got dematerialized/worth of the company at the time of purchase/sale of shares not proved? All suggest non genuineness of the said transaction.*
- (ii) *Whether the Hon'ble ITAT has erred in ignoring an important aspect that in such cases of sham transactions of shares showing abnormal hike in their value, where the facts themselves speak loud and clear, the AO is justified to even draw an inference from the attendant circumstances?"*

The Honourable High Court has held as under:

*"It is seen that the impugned purchase of shares allegedly effected in the financial year 2006-07 for an amount of 11 lakhs and the said shares had been physically transferred in favour of the appellant in the books of the listed company namely GeeFCee Finance Limited. Further the said shares got dematerialized and were, credited in the assessee's account maintained with depository participant i.e. HDFC on 16.10.2006. The only logical conclusion that can be made from the sequential perusal of the above detailed facts is that the impugned shares were actually purchased by the assessee on given dates as these stand reflected in D'MAT account maintained with HDFC bank. As against this clear documentary evidence in favour of the appellant, the Assessing Officer has merely rejected the contention of purchase on the basis of suspicion arising out of reckless/casual replies given to various questions raised by the Assessing Officer in the assessment proceedings. It is important to appreciate here that the assessee had been subjected to search and seizure proceedings under Section 132 of the Income Tax Act, 1961 and the search proceedings did not lead to recovery of any incriminating evidence to show that the transaction of purchase of share was arranged as suspected by the Assessing Officer. It is also seen that no post search enquiries on the issue had been conducted in the form of recording the statement of broker so as to bring on record any evidence of the said transaction being an accommodation*

entry. This is to mean that just because assessee has been found to be earning huge amounts of long term capital gain on sale of shares, the same has been held to be sham transaction merely on the ground of same being unlikely in the given circumstances. The Assessing Officer, in the remand report has not been able to contradict any of the facts regarding purchase of shares highlighted above or regarding the sale of shares and has not progressed beyond the stage of suspicion. It is further seen that the shares had been sold for an amount of ₹ 2,91,32,850/- and has been debited to assessee's D'MAT account maintained with D/P, HDFC. It is also seen that STT has been paid on the sale of shares and said shares had been sold through National Stock Exchange. It is also seen that the Assessing Officer while working out the addition has allowed indexation on the cost of purchase of shares till the date of sale and has in fact worked out the capital gain only to make the impugned addition. I am of the view that there is no evidence on record, gathering during the course of search proceedings or during the course of post search investigation or assessment proceedings to hold the view that the entire transaction of purchase/sale of shares effected over a period of two years was a sham transaction. The addition being without any logical basis is directed to be deleted.

Further the Income Tax Appellate Tribunal, Amritsar Bench in the above said case has held as under:

We have heard the rival parties and have gone through the material placed on record. We find that the assessee had purchased shares in the month of April/May, 2006 as noted by the learned CIT(A) in his order at page-4. The shares were purchased in Assessment year 2006-07. Further the shares were got dematerialized and the same were created in the account of assessee maintained with HDFC bank. The learned CIT(A) has noted in his order that in the remand report Assessing Officer was not able to contradict any of the facts regarding purchase of shares and regarding sale of shares. It is further observed that assessee had paid STT on the sale of such shares and this fact has been noted by learned CIT(A) in his order. Further, we find that while making out the addition on account of capital gain the Assessing Officer himself gave credit to assessee for indexed cost of acquisition to the extent of Rs 11,67,821/- taking the purchase price at Rs 11,00,000/-. Further, we find that assessee had sold shares through MTL shares and Stock Brokers Limited as is noted by Assessing Officer in reply to question No.24 which is a SEBI registered Stock Broker. Furthermore the payment for sale of shares was received through Banking channels. All these documentary evidences in favour of the assessee were rejected by Assessing Officer merely on the basis of some casual replies given by assessee to the Assessing Officer. However, the fact remains that all the documentary evidences are in favour of assessee and learned CIT(A) has passed a very reasoned and speaking order and we do not find any infirmity in the same.

The findings recorded by the CIT (A) and the Tribunal are pure findings of fact which have not been shown to be illegal, erroneous or perverse by

Assessment Year 2014-15, u/s 145A, 145B, 145C, 145D, 145E, 145F, 145G, 145H, 145I, 145J, 145K, 145L, 145M, 145N, 145O, 145P, 145Q, 145R, 145S, 145T, 145U, 145V, 145W, 145X, 145Y, 145Z, 146, 147, 148, 149, 150, 151, 152, 153, 154, 155, 156, 157, 158, 159, 160, 161, 162, 163, 164, 165, 166, 167, 168, 169, 170, 171, 172, 173, 174, 175, 176, 177, 178, 179, 180, 181, 182, 183, 184, 185, 186, 187, 188, 189, 190, 191, 192, 193, 194, 195, 196, 197, 198, 199, 200, 201, 202, 203, 204, 205, 206, 207, 208, 209, 210, 211, 212, 213, 214, 215, 216, 217, 218, 219, 220, 221, 222, 223, 224, 225, 226, 227, 228, 229, 230, 231, 232, 233, 234, 235, 236, 237, 238, 239, 240, 241, 242, 243, 244, 245, 246, 247, 248, 249, 250, 251, 252, 253, 254, 255, 256, 257, 258, 259, 260, 261, 262, 263, 264, 265, 266, 267, 268, 269, 270, 271, 272, 273, 274, 275, 276, 277, 278, 279, 280, 281, 282, 283, 284, 285, 286, 287, 288, 289, 290, 291, 292, 293, 294, 295, 296, 297, 298, 299, 300, 301, 302, 303, 304, 305, 306, 307, 308, 309, 310, 311, 312, 313, 314, 315, 316, 317, 318, 319, 320, 321, 322, 323, 324, 325, 326, 327, 328, 329, 330, 331, 332, 333, 334, 335, 336, 337, 338, 339, 340, 341, 342, 343, 344, 345, 346, 347, 348, 349, 350, 351, 352, 353, 354, 355, 356, 357, 358, 359, 360, 361, 362, 363, 364, 365, 366, 367, 368, 369, 370, 371, 372, 373, 374, 375, 376, 377, 378, 379, 380, 381, 382, 383, 384, 385, 386, 387, 388, 389, 390, 391, 392, 393, 394, 395, 396, 397, 398, 399, 400, 401, 402, 403, 404, 405, 406, 407, 408, 409, 410, 411, 412, 413, 414, 415, 416, 417, 418, 419, 420, 421, 422, 423, 424, 425, 426, 427, 428, 429, 430, 431, 432, 433, 434, 435, 436, 437, 438, 439, 440, 441, 442, 443, 444, 445, 446, 447, 448, 449, 450, 451, 452, 453, 454, 455, 456, 457, 458, 459, 460, 461, 462, 463, 464, 465, 466, 467, 468, 469, 470, 471, 472, 473, 474, 475, 476, 477, 478, 479, 480, 481, 482, 483, 484, 485, 486, 487, 488, 489, 490, 491, 492, 493, 494, 495, 496, 497, 498, 499, 500, 501, 502, 503, 504, 505, 506, 507, 508, 509, 510, 511, 512, 513, 514, 515, 516, 517, 518, 519, 520, 521, 522, 523, 524, 525, 526, 527, 528, 529, 530, 531, 532, 533, 534, 535, 536, 537, 538, 539, 540, 541, 542, 543, 544, 545, 546, 547, 548, 549, 550, 551, 552, 553, 554, 555, 556, 557, 558, 559, 560, 561, 562, 563, 564, 565, 566, 567, 568, 569, 570, 571, 572, 573, 574, 575, 576, 577, 578, 579, 580, 581, 582, 583, 584, 585, 586, 587, 588, 589, 590, 591, 592, 593, 594, 595, 596, 597, 598, 599, 600, 601, 602, 603, 604, 605, 606, 607, 608, 609, 610, 611, 612, 613, 614, 615, 616, 617, 618, 619, 620, 621, 622, 623, 624, 625, 626, 627, 628, 629, 630, 631, 632, 633, 634, 635, 636, 637, 638, 639, 640, 641, 642, 643, 644, 645, 646, 647, 648, 649, 650, 651, 652, 653, 654, 655, 656, 657, 658, 659, 660, 661, 662, 663, 664, 665, 666, 667, 668, 669, 670, 671, 672, 673, 674, 675, 676, 677, 678, 679, 680, 681, 682, 683, 684, 685, 686, 687, 688, 689, 690, 691, 692, 693, 694, 695, 696, 697, 698, 699, 700, 701, 702, 703, 704, 705, 706, 707, 708, 709, 710, 711, 712, 713, 714, 715, 716, 717, 718, 719, 720, 721, 722, 723, 724, 725, 726, 727, 728, 729, 730, 731, 732, 733, 734, 735, 736, 737, 738, 739, 740, 741, 742, 743, 744, 745, 746, 747, 748, 749, 750, 751, 752, 753, 754, 755, 756, 757, 758, 759, 760, 761, 762, 763, 764, 765, 766, 767, 768, 769, 770, 771, 772, 773, 774, 775, 776, 777, 778, 779, 780, 781, 782, 783, 784, 785, 786, 787, 788, 789, 790, 791, 792, 793, 794, 795, 796, 797, 798, 799, 800, 801, 802, 803, 804, 805, 806, 807, 808, 809, 810, 811, 812, 813, 814, 815, 816, 817, 818, 819, 820, 821, 822, 823, 824, 825, 826, 827, 828, 829, 830, 831, 832, 833, 834, 835, 836, 837, 838, 839, 840, 841, 842, 843, 844, 845, 846, 847, 848, 849, 850, 851, 852, 853, 854, 855, 856, 857, 858, 859, 860, 861, 862, 863, 864, 865, 866, 867, 868, 869, 870, 871, 872, 873, 874, 875, 876, 877, 878, 879, 880, 881, 882, 883, 884, 885, 886, 887, 888, 889, 890, 891, 892, 893, 894, 895, 896, 897, 898, 899, 900, 901, 902, 903, 904, 905, 906, 907, 908, 909, 910, 911, 912, 913, 914, 915, 916, 917, 918, 919, 920, 921, 922, 923, 924, 925, 926, 927, 928, 929, 930, 931, 932, 933, 934, 935, 936, 937, 938, 939, 940, 941, 942, 943, 944, 945, 946, 947, 948, 949, 950, 951, 952, 953, 954, 955, 956, 957, 958, 959, 960, 961, 962, 963, 964, 965, 966, 967, 968, 969, 970, 971, 972, 973, 974, 975, 976, 977, 978, 979, 980, 981, 982, 983, 984, 985, 986, 987, 988, 989, 990, 991, 992, 993, 994, 995, 996, 997, 998, 999, 1000

- the learned counsel for the appellant. He has also not been able to produce any material on record to controvert the said findings. Thus, no substantial question of law arises. Consequently, finding no merit in the appeal, the same is hereby dismissed."
17. The various following judgements in this issue are also relevant:
- i. Meenu Goel - ITA No 6235/DEL/2017 - Date of decision -19.3.2018- All the shares are not sold at one go - The transaction cannot be treated to be bogus if the documents and evidences cannot be faulted, the nature of transaction does not change because there is an investigation.
  - ii. Pooja Agarwal - Rajasthan High Court - Income Tax Appeal No 385/2011 - Date of decision 11.9.2017 -  
Department contending bogus share transaction through one Mr P.K. Agarwal, alleged entry provider from Calcutta - The assessee in her deposition during survey denying having made any share transactions in last 5 years - Shares on which STCG earned are of Konark Commercial Limited and Lintux Investment Limited - Konark Commercial Limited was never listed on Calcutta Stock Exchange and the assessee was never its shareholder - Other share transactions also undertaken - Broker is P.K. Agarwal & Co., DP is with Alankrit Assignment Ltd.  
Per High Court - There is no evidence that cash has gone back -Prima facie the transaction is supported by documents appear to be genuine transactions - AO has failed to prove through any independent inquiry
  - iii. Meghraj Singh Shekhawat - ITA No 443 and 444/JP/2017 - Date of decision - 7.3.2018  
Purchase of shares by preferential allotment - The AO has not disputed the genuineness of the letter of allotment issued by the co. to the assessee - Purchase by banking channel - Locus standi of the alleged entry provider questioned - All details produced -  
Retraction by the alleged entry provider.
  - iv. Income Tax Appellate Tribunal, Delhi Bench in case of Shikha Dhawan, Gurgaon vs Ito Ward 4(2) Gurgaon in ITA No 3035/Del/2018.
18. Hence in the light of facts as stated above and legal judgements on this issue, the learned assessing officer has wrongly made addition amounting to Rs 118.79 lacs u/s on account of sale of listed shares and holding the same to unexplained money u/s 68 of the act instead of the long term capital gain as declared by the appellate.
19. The learned assessing officer has wrongly held the transaction of purchase and sale of shares entered into by the appellate as not genuine, bogus, managed and manipulated and finding is purely contrary to the documentary evidence furnished during the assessment proceedings and the addition purely based on mere suspicion, surmises and conjectures and without any supporting evidence.
20. The addition has been made by the assessing officer without having any relevant material to prove that the said transaction is an accommodation entry.
21. Assessing officer has grossly erred in relying on report of Investigation Wing, Kolkata without appreciating the fact that alleged admission about bogus transaction have been made there in by third parties which have no connection/ nexus to the transactions entered by the appellant.
22. That without prejudice to the above the assessing officer has erred in law in not confronting the appellate with the evidences/ statements educing the assessing officer to form a belief that said transactions are bogus nor an opportunity has been given to cross examine third parties. The order passed is against the principle of natural justice.
- Keeping in view the above submissions the appeal may kindly be allowed."

7. The Id. DR vehemently argued and relied on the order of the revenue authorities. The Id. DR invited our attention in AO's order pages 25 to 27, the relevant parts of the order are reproduced as below:

*“From the appreciation of the facts of the case, the material evidence on record and in light of discussion of the facts discussed in above paras, the following facts emerges regarding artificial gain claimed through LTCG:*

*A) NO GENUINE BUSINESS ACTIVITY CARRIED BY M/S KAPPAC PHARMA LTD. AND M/S PRESHA METALLURGICAL LTD.,: As already discussed in the show cause given to assessee reproduced in above paras both these concerns both these concerns have Nil/very less Gross Receipts for F.Y. 2012-13 i.e. Rs.Nil, Nil/Very less expenses for F.Y. 2012-13, loss of Rs.8 lacs for M/s Kappac Pharma Ltd. and loss of Rs.4 lacs for M/s Presha Metallurgical Ltd., and Nil stocks. The business concern does not become alive until any genuine activity is carried out.*

*B) PAYMENT FOR PURCHASE MADE IN CASH: The purchase payments were made in cash and not through the normal banking channel therefore the same were non-verifiable from the authentic supporting details such as bank accounts/documents. On one side, assessee is claiming that money is received through banking channel and so transaction is genuine, but what the assessee is not considering that, the starting point, i.e. payments for shares purchased 'is made through cash and any other mode which is not banking channel, even though assessee was having bank account why the purchases were not made by making payment through*

*bank. Hence when the starting point itself is not genuine, how the whole transactions can be considered as genuine.*

*C) ASSESSEE NOT A REGULAR INVESTOR IN SHARES: The assessee is not a regular investor in shares. Hence, it is quite surprising as to how he earned a phenomenal return of 140-150 times within a short span of period which is extremely unusual. The past records of the assessee for the preceding years show that the assessee has been hardly active in the stock market. This being the case, the assessee has entered into a sham transaction with the full knowledge of it, so as to convert unaccounted money into accounted money in the guise of capital gains.*

*D) NATURE OF TRANSACTION: The nature of transaction itself looks suspicious from the manner it has been conducted i.e. the abnormal appreciation in the value of shares, the mode of payment for purchase of shares not doing the transaction through the normal share dealing procedures. The assessee has shown to have received sale proceeds through cheque whereas purchases were consciously made in cash in the aforesaid manner to facilitate manipulation of the purchase for assessee's benefit.*

*E) PENNY STOCKS: The shares in which the assessee has claimed to have made a deal, can be termed as Penny Shares in the similar lines as identified by the Investigation Wing, Kolkata, because rates of these shares are not based on business results of the companies but same are fluctuated by insider's trading from zero value (negligible price) to very high price and vice versa without any reason or basis to accommodate or generate bogus capital gain or loss. These share of M/s Kappac Pharma Ltd. resembled*

*the character of Penny Stocks which has been discussed and investigated at length by Investigation Wing, Kolkata. The Kappac Pharma Ltd. even figures in the Appraisal report of the Investigation Wing, Kolkata giving detail of Bogus LTCG through BSE Listed Penny Stocks.*

**F) ROUTING OF UNACCOUNTED INCOME THROUGH BOGUS LTCG:**

*During the course of search and subsequent proceedings, assessee himself admitted to the fact that there is generation of unaccounted income on account of unaccounted sales which is evident of disclosure made in statement of Sh. Raman Kumar Aggarwal in his statement recorded u/s 132(4) of the I.T. Act, 1961 of Rs. 14 Cr. on account of discrepancy in stocks. This unaccounted income is ploughed back to regular books by claiming bogus LTCG. This tax evasion is not incidental but assessee has organized its affairs in such a way that unaccounted income is brought back to regular books without paying any taxes on it.*

*Hence, the reply of assessee is devoid of any merit w.r.t. his claim of LTCG in case of M/s Kappac Pharma Ltd. The assessee's claim of LTCG w.r.t. trading of shares in case of M/s Kappac Pharma Ltd amounting to Rs. 118.79 lakhs in A.Y. 2014-15 is bogus and added to total income of the assesses treating the same as unexplained cash credits u/s 68 of the Income Tax Act, 1961."*

8. We heard the rival submission and considered the documents available in the record. The transaction was made through the share of M/s Kappac Pharma

Ltd. The transaction and mode of operation are duly identified by the revenue and addition was made on basis of report of investigation department of revenue by treating the transaction as sham transaction. The ld. AR respectfully relied on the order of Hon'ble **Jurisdictional High Court** in the case of **PCIT (Central Ludhiana) vs Prem Lal Gandhi, 401 ITR 253 (P&H)**. The observation is reproduced as below.

*“4. The issue in short is this: The assessee purchased shares of a company during the assessment year 2006-2007 at Rs. 11/- and sold the same in the assessment year 2008-2009 at Rs. 400/- per share. In the above case, namely, Hitesh Gandhi (supra) also the assessee had purchased and sold the shares in the same assessment years. The Assessing Officer in both the cases added the appreciation to the assessee's income on the suspicion that these were fictitious transactions, and that the appreciation actually represented the assessee's income from undisclosed sources. In Hitesh Gandhi's case (supra) also the CIT (Appeals) and the Tribunal held that the Assessing Officer had not produced any evidence whatsoever in support of the suspicion. On the other hand, although the appreciation is very high, the shares were traded on the National Stock Exchange and the payments and receipts were routed through the bank. There was no evidence to indicate for instance that this was a closely held company and that the trading on the National Stock Exchange was manipulated in any manner.*

5. *In these circumstances, following the judgement in Hitesh Gandhi's case (supra), it must be held that there is no substantial question of law in the present appeal.*

6. *Question (iv) has been dealt with in detail by the CIT (Appeals) and the Tribunal. Firstly, the documents on which the Assessing Officer relied upon in the appeal were not put to the assessee during the assessment proceedings. The CIT (Appeals) nevertheless considered them in detail and found that there was no co-relation between the amounts sought to be added and the entries in those documents. This was on an appreciation of facts. There is nothing to indicate that the same was perverse or irrational. Accordingly, no question of law arises.*

7. *In the circumstances, the appeal is dismissed.”*

8.1 We respectfully consider the order of Hon'ble Jurisdictional High Court. The Id. AR agitated that the documents which are relied by the Id. AO was not served to assessee for cross-examination. In the order of **Prem Lal Gandhi**(supra) the Hon'ble Court has dealt the issue in favour of the assessee. The Id. AR respectfully relied on the order of the Hon'ble Gujrat High in the case of **Pr. CIT vs. Parasben Kasturchand Kochar, [2021] 130 taxmann.com 176 (Gujarat)**, the observation is reproduced as below.

*“3. Thus, the Tribunal has recorded the finding of fact that the assessee discharged his onus of establishing that the transactions were fair and transparent and further, all the relevant details with regard to such transactions were furnished before the Income-tax*

*authorities and the Tribunal also took notice of the fact that some of the shares also remained in the account of the appellant.*

*4. We take notice of the fact that the assessee has a Demat Account maintained with the ICICI Securities Ltd. and has also furnished the details of such bank transactions with regard to the purchase of the shares. In the last, the Tribunal took notice of the fact that the statements recorded by the investigation wing of the Revenue with regard to the Tax entry provided were informed to the assessee despite giving him opportunity to meet such an allegation. In the overall view of the matter, we believe that the proposed question cannot be termed as a substantial question of law for the purpose of maintaining the appeal under section 260-A of the Act, 1961.*

*5. In the result, this appeal fails and is hereby dismissed”.*

The SLP was filed against this order and was dismissed by the Hon’ble Apex Court [2021] 130 taxmann.com 177 (SC).

Alternatively, the Id. DR argued and specifically raised the voice against the share script M/s Kappac Pharma Ltd. The Id. DR mentioned that it is a sham transaction. The Id. DR respectfully relied on the order of Hon’ble **High Court of Delhi** in the case of **Udit Kalra vs ITO Wd. 50(1), ITA 220/2019 & CM No. 10774/2019 order dated 08/03/2019**. The observation is reproduced as below.

*“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.”*

8.2 We respectfully considered the catena of order, relied by the rival parties. The assessee was not able to show any document to bench related claim of relied upon documents of revenue related to addition. But the Id. AR separately agitated the issue before the bench. The Id. DR was remained silent against the assessee’s submission and was not able to produce any contrary fact. The order of **Udit Kalra** (supra) is specifically considered with the share which the assessee delt during impugned assessment year. The only issue is that the

assessee was denied the cross verification of documents which are relied by the revenue during assessment proceeding.

8.3 We find it fit to remit the matter back to the file of the Id. AO for allowing the assessee for cross verification. Needless to say, the assessee be given reasonable opportunity of being heard and the assessee shall also be cooperating for the effective disposal of the set aside assessment proceeding and will be at liberty to make further submissions as deem fit. Since the matter is restored to the file of Id. AO for meritorious adjudication by passing a speaking order in terms of our observations made hereinabove, we are not expressing any views on the merits of the case so as to limit the assessment procedure before the Id. AO. The observations herein made by us in remanding the matter back to the file of Id. AO will not impair or injure the case of the Revenue nor will it cause any prejudice to the defence/explanation of the assessee. Accordingly, we set aside the impugned order of the Ld. CIT(A) and restore the matter back to the file of the Id. AO to decide afresh after affording reasonable opportunity of being heard to the assessee and the assessee is directed to be diligent in the appellate proceedings.

9. In the result, the appeal of assessee in **ITA No.34/Asr/2019** is allowed for statistical purposes. The bench has noticed that the issue raised by the assessee in the above appeal is equally similar on set of facts and grounds. Therefore, it is not imperative to repeat the facts and various grounds raised by the assessee.

Hence, the bench feels that the decision taken by us in ITA No. 34/Asr/2019 shall apply mutatis mutandis in ITA Nos.32/Asr/2019, 33/Asr/2019 and 35/Asr/2019 as follows accordingly.

10. In the result, the appeal of the assessee **ITA No. 32 to 35/Asr/2019** are allowed for statistical purpose.

**Order pronounced in the open court on 13.09.2023**

**Sd/-**

**(Dr. M. L. Meena)**  
**Accountant Member**

**Sd/-**

**(ANIKESH BANERJEE)**  
**Judicial Member**

AKV

Copy of the order forwarded to:

- (1) The Appellant
- (2) The Respondent
- (3) The CIT
- (4) The CIT (Appeals)
- (5) The DR, I.T.A.T.

True Copy  
By order