

**IN THE INCOME TAX APPELLATE TRIBUNAL  
DELHI BENCH 'B': NEW DELHI**

**BEFORE,  
SHRI M. BALAGANESH, ACCOUNTANT MEMBER  
AND  
MS. MADHUMITA ROY, JUDICIAL MEMBER**

**ITA No.4141/Del/2019  
(ASSESSMENT YEAR 2014-15)**

Ms. Sheetal Saini 506, Sharp Bhawan, Azadpur, Delhi – 110033 PAN-CEAPS0350F <b>(Appellant)</b>	Vs.	Income Tax Officer Ward 72(1) New Delhi <b>(Respondent)</b>
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Appellant by	Sh. Gautam Jain & Sh. Parth Singhal
Respondent by	Sh. Vivek Kumar Upadhyay

Date of Hearing	25/04/2024
Date of Pronouncement	16/07/2024

**ORDER**

**PER M. BALAGANESH AM:**

This appeal of the Assessee arises out of the order of the Learned Commissioner of Income Tax, Delhi, [hereinafter referred

to as 'Ld. PCIT'] dated 05/03/2019 against the order passed by Income Tax Officer, Ward 72(1), New Delhi (hereinafter referred to as the 'Ld. AO') u/s 143(3) of the Income Tax Act (hereinafter referred to as 'the Act') on 21/12/2016 for the Assessment Year 2014-15.

2. Though the assessee has raised several grounds of appeal before us, the only effective issue to be decided in this appeal is as to whether the gains received on sale of listed company shares by the assessee in the sum of Rs 50,49,950/- is to be treated as business income or income from other sources in the facts and circumstances of the instant case.

3. We have heard the rival submissions and perused the materials available on record. The assessee is an individual and had filed her return of income for the Asst Year 2014-15 on 28.3.2015 declaring total income of Rs 6,76,086/-. During the year under consideration, the assessee sold shares of listed company and declared capital gains and claimed exemption u/s 10(38) of the Act in the return of income. The assessee thought it fit to revise its return of income by treating the gains arising on sale of shares as business income instead of offering capital gains and claim

exemption u/s 10(38) of the Act. But since the time limit for filing revised return of income had expired in terms of section 139(5) of the Act, the assessee filed a revised computation offering the gains on sale of shares of Rs 50,49,950/- as income from business. The assessee duly paid the taxes due on the same with applicable interest as per the revised computation of income. The ld. AO however observed that this revised computation of income had been filed by the assessee only after the return was selected for scrutiny and hence it cannot be held to be a voluntary act on the part of the assessee. The case was selected for scrutiny only to verify the suspicious capital gain transaction of the assessee. The ld AO observed that assessee had sold the shares of Kappac Pharma Ltd which is classified as a penny stock by the department and hence the gains arising on sale of shares would have to be treated as unexplained cash credit u/s 68 of the Act. This action of the ld. AO was upheld by the ld CIT(A).

4. At the outset, we find that the assessee had accepted the receipt of Rs.50,49,950/- as emanating out of sale of shares of Kappac Pharma Ltd. This money was admittedly received by the assessee from the Stock Exchange through the registered share

broker. Hence the nature of credit stands clearly established by the assessee as emanating out of sale of shares already held by her. The nature and source of credit is already proved in the instant case beyond reasonable doubt. Hence the provisions of section 68 of the Act cannot be made applicable. Further we find that part of the very same company shares were offered to tax by the assessee in Asst Year 2015-16 as 'income from business' which has been accepted by the revenue, though u/s 143(1) of the Act. The ld. AR made a statement from the Bar that the said assessment had become final and no reopening u/s 147 of the Act or revision u/s 263 of the Act had been done on the same. In view of the same, there is no reason for the revenue to treat the amounts received on sale of shares as unexplained cash credit u/s 68 of the Act in the facts and circumstances of the instant case. Hence we direct the ld. AO to recompute the income in accordance with the revised computation of income filed by the assessee during the course of assessment proceedings. Accordingly, the grounds raised by the assessee are allowed.

5. In the result, the appeal of the assessee is allowed.

Order pronounced in the open court on 16<sup>th</sup> July, 2024.

-Sd/-  
**(MADHUMITA ROY)**  
**JUDICIAL MEMBER**

-Sd/-  
**(M. BALAGANESH)**  
**ACCOUNTANT MEMBER**

Dated:16/07/2024

*Rohit/p.s.*

Copy forwarded to:

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

ASSISTANT REGISTRAR

ITAT NEW DELHI