

THE INCOME TAX APPELLATE TRIBUNAL
AHMEDABAD "B" BENCH

**Before: Shri TR Senthil Kumar, Judicial Member
And Shri Narendra Prasad Sinha, Accountant Member**

**ITA No. 662/Ahd/2023
Assessment Year 2015-16**

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| Lalita Ramniranjan Agarwal, B-201, Sandal Wood Residency, Urmi Char Rasta Productivity Road, Vadodara-390020 PAN: AECPA0173J (Appellant) | Vs | The ITO, Ward-1(2)(4), Vadodara (Respondent) |
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**Assessee by: Shri P.M. Jagasheth, A.R.
Revenue by: Shri Nitin Vishnu Kulkarni, Sr. D.R.**

Date of hearing : 24-02-2025
Date of pronouncement : 28-02-2025

ORDER

PER : TR SENTHIL KUMAR, JUDICIAL MEMBER:-

This appeal is filed by the Assessee as against the appellate order dated 17.07.2023 passed by the Commissioner of Income Tax (Appeals), National Faceless Appeal Centre, Delhi, (in short referred to as "CIT(A)"), arising out of the assessment order passed under section 143(3) of the Income Tax Act, 1961 (hereinafter referred to as 'the Act') relating to the Assessment Year 2015-16.

2. The brief facts of the case is that the assessee is an individual who filed her Return of Income for the Asst. Year 2015-16 on 09-11-2015 declaring total income of Rs.2,33,410/- and claiming exempt income u/s.10(38) of Rs.52,75,306/-. The return was processed u/s.143(1) of the Act and then selected for scrutiny assessment to examine the suspicious transactions in the investment and sale of shares in M/s. Kappac Pharma Ltd. [hereinafter referred as KPL]. The Assessing Officer examined the sale transactions and noted the above shares KPL is identified by Investigation Wing of Kolkata as penny stock. The modus operandi followed by such operators was to first show, purchase of shares of some penny stock companies controlled by them at very nominal price and thereafter sale of the same at very high price by rigging the price of these shares. The holding period of shares is shown exceeding 18 months so that the entire capital gain is claimed as exempt u/s. 10(38) of the Act.

2.1. The assessee has purchased KPL shares for Rs. 2,00,000/- on 12-10-2012 and sold the shares for Rs.54,75,306/- between 23-04- to 23-05-2014 and claimed exemption of Rs.52,75,306/- u/s. 10(38) of the Act. Therefore a show cause notice was issued to the assessee as to why not deny the claim of exemption u/s.10(38) of the Act.

2.2. In response, the assessee replied that 10,000 shares of KPL was purchased on 10-10-2012 then dematerialized and sold the shares and earned Long Term Capital Gain of Rs. 52,75,306/- through recognized stock exchange and also paid appropriate

Security Transaction Tax (STT). Further the assessee received the payment through cheque/RTGS. Hence the genuineness of the transaction cannot be doubted and the claim of deduction u/s. 10(38) of the Act should not be denied and relied upon various case laws.

2.3. The Ld. A.O. considered the above submissions and held that the Director of M/s. Kappac Pharma Ltd. and M/s. Sankeshwar Metals Pvt. Ltd. are the same namely Shri Anand Ramanlal Trivedi who was actively involved in off-market transactions of shares in fraudulent ways and SEBI has also initiated action against them for fraudulent activities. Further the assessee is not regular investor in shares and the purchase of shares of KPL is the first transaction of shares done by the assessee and therefore the claim of exemption u/s.10(38) is not accepted as genuine. Therefore the AO treated the amount of Rs.52,75,306/- as not genuine and added as the total income of the assessee u/s. 68 of the Act and demanded tax thereon.

3. Aggrieved against the same, assessee filed an appeal before Commissioner of Income Tax (Appeals). The Ld. CIT(A) held that the transaction as bogus and confirmed the addition as bogus Penny Stock Long Term Capital Gain and confirmed the addition made by the Assessing Officer.

4. Aggrieved against the same, the assessee is in appeal before us raising the following Grounds of Appeal:

- “1. On the facts and in the circumstances of the case as well as the law on the subject, the learned Commissioner of the Income Tax (Appeals) has erred in confirming the action of the Assessing Officer in making addition of Rs.52,75,306/- on account of LTCG earned from share transactions done through stock exchange treated as alleged unexplained cash credit u/s.68 of the Income Tax Act, 1961.
2. It is therefore prayed that the above addition may please be deleted as learned members of the tribunal may deem it proper.
3. Appellant craves leave to add, alter or delete any ground(s) either before or in the course of the hearing of the appeal.”
5. Ld. Counsel Shri P.M. Jaga Sheth appearing for the assessee submitted that the assessee produced all the details of share trading of M/s. Kappac Pharma Ltd. during the course of assessment proceedings. However the Ld. A.O. based on the information received from Investigation Wing, Kolkata denied the claim of exemption u/s.10(38) and added as the income u/s. 68 of the Act. The Assessing Officer also made an observation that this is the only share transactions made by the assessee, whereas the assessee is in the share transactions as early from August 2016 wherein she was allotted with the Demat Account No. 1202300000070502 with M/s. Emkay Share and Stock Brokers Ltd. with DPID23000 [copy of the same is placed in the Paper Book as Annexure A, details of the share trading as Annexure B]. Thus the Assessing Officer is not a onetime trader or investor as observed by him. The shares of KPL were acquired by the assessee as the financials of the company also show an increase in share capital. The shares of KPL were not included in the penny stock list issued by Bombay Stock Exchange at the relevant time or even in subsequent time. Further, the assessee is neither involved in nor

named in any proceedings by the SEBI. The only proceedings before SEBI against M/s. Kappac Pharma Ltd. was a penalty of Rs.1,00,000/- for compliance issues and not for any price rigging. The assessee also sold the shares after demating through SEBI registered authorized broker and a prominent broker namely M/s. Emkay Global Financial Services, having regular broking agreement with the assessee for the past many years. Further M/s. Kappac Pharma Ltd. is not a Kolkata-based company; therefore, the findings of the investigation report submitted by Kolkata have no relevance to the case of the assessee

5.1. Ld. Counsel further submitted that the Hon'ble Jurisdictional High Court in the case of Pr.CIT -Vs- Affluence Commodities P Ltd. [2024] 161 taxmann.com 476, dismissed the Department's appeal concerning the very same shares of M/s. Kappac Pharma Ltd. as not a penny stock and not rigging of the price of the shares. Therefore the Lower Authorities are not correct in holding KPL as a Penny stock. Ld. Counsel further relied on the decision of this Co-ordinate Bench of this Tribunal in the case of Shivani Ashokbhai Shah -Vs- ITO in ITA No. 517/Ahd/2023 wherein it was held that KPL is not a penny stock shares and the sale of shares is considered as genuine transaction.

5.2. Ld. Counsel drawn our attention to the recent Hon'ble Supreme Court Judgment in the case of PCIT vs. Kuntala Mohapatra reported in [2024] 160 taxmann.com 608 wherein dismissed the Revenue's SLP, by holding that shares were purchased via Account Payee cheques, held in a Demat Account for

over 12 months and sold through a recognized stock exchange after payment of Security Transaction Tax (STT) then the assessee was eligible to claim exemption u/s. 10(38) for long-term capital gains. Similarly Hon'ble Supreme Court dismissed Revenue's SLP in the case of PCIT vs. Renu Aggarwal [2023] 153 taxmann.com 579 (SC). Thus Ld. Counsel relied upon various other case laws as cited in Case Laws Compilation:

- (i) Pr. CIT Vs. Kuntala Mohapatra [2024] 160 taxmann.com 608 (SC)
- (ii) Pr. CIT Vs. Kuntala Mohapatra [2024] 160 taxmann.com 567 (Orissa)
- (iii) Pr. CIT Vs. Renu Aggarwal [2023] 153 taxmann.com 579 (SC)
- (iv) Pr. CIT Vs. Affluence Commodities (P.) Ltd. (2024) 161 taxmann.com 476 (Gujarat)
- (v) Pr. CIT Vs. Affluence Commodities (P.) Ltd. (ITA No. 593/AHD/2020)
- (vi) Pr. CIT Vs. Sandipkumar Parshottambhai Patel [2023] 150 taxmann.com192 (Gujarat)
- (vii) Swati Luthra Vs. ITO [2020] 115 taxmann.com 167 (Delhi - Trib.)
- (viii) Farzad Sheriar Jehani Vs. ITO [2024] 159 taxmann.com 9 (Mum-Trib.)
- (ix) Ketan Harilal Mehta HUF Vs. ITO (ITA No.770/MUM/2023)
- (x) Shri Prakash Javia HUF Vs. ITO (ITA No.464/IND/2019)
- (xi) Arpit Mahendrabhai Shah Vs. DCIT (ITA No.112/SRT/2023)
- (xii) Shri Arnav Goyal Vs. ITO (ITA No.275/JP/2020)
- (xiii) Suresh M. Jain HUF Vs. ITO (ITA NO.6614/MUM/2019)
- (xiv) DCIT Vs. Saurabh Mittal (ITA No. 16/JP/2018)
- (xv) Navneet Agarwal Vs. ITO [2018] 97 taxmann.com 76 (Kolkata - Trib.)

6. Per contra, Ld. Sr. D.R. appearing for the Revenue supported the order passed by the Lower Authorities and pleaded to uphold the additions made by the Assessing Officer.

7. We have given our thoughtful consideration and perused the materials available on record including Paper Book filed by the assessee. It is seen from records, assessee produced complete evidence regarding buying of the shares, demat account for dematerialization of shares, sale transaction, payment received

through bank accounts and statement of broker, etc. for verification of genuineness of transaction. Just merely the details of transaction done by the assessee was matching with some pattern of fraudulent transactions done by some third party namely Shri Anand Ramanlal Trivedi, who was the Director of KPL. Further the Assessing officer has erroneously mentioned that the assessee is not a regular investor in shares but purchase of KPL share as the first transaction and thereby denied the claim of exemption u/s. 10(38) of the Act. Whereas the assessee opened the demat account as early as 29-08-2006 with Emkay Share and Stock Brokers Ltd., Mumbai and she is a regular trader/investor of shares from 2006 onwards. In our considered view, merely relying upon the Investigation Wing report of Kolkata, the Ld AO has not even verified the basic details as available in this case. Thus based on surmises and conjectures the A.O. made the addition which is not permissible under the law. Further, there is no mention about the name of the assessee or his broker in the so called Investigation Wing report from Kolkata. Therefore the addition made on this count is not sustainable in law.

7.1. The Jurisdictional High Court in the case of Affluence Commodities Pvt Ltd. (cited supra) held that where assessee purchased and sold KPL shares and incurred loss, since assessee had proved genuineness of transactions and moreover assessee had no control whatsoever on share prices, addition made by Assessing Officer on account of disallowance of losses booked in penny stocks was liable to be deleted by observing as follows:

".... 7. Being aggrieved, the Revenue has preferred appeal before the Tribunal and the Tribunal has held as under:

9. The 3rd ground namely losses booked under penny stocks of Rs. 73,12,905/- on sale of Alang Industrial Gases Ltd. Shares. The assessee has proved the genuineness of the transactions beyond doubt by furnishing contract notes, ledger accounts, bank transactions from books of brokers whereas the AO without any material evidence disallowed the losses of in scripts of Alang Industrial Gases Ltd. And the valuation of the closing stock in **Kappac Pharma** just bases on the SEBI general information and Investigation Wing. Kolkatta. The AO made the disallowance without documentary proof whereas the assessee proved the genuineness of the transactions and established on online trading platforms and it had no control whatsoever on share prices and thus incurred losses in shares of Alang Industrial Gases Ltd. It is the case of the assessee that it sold only part of the shares and remaining shares have been held by the assessee in subsequent assessment year also. Thus following Jurisdictional High Court Judgement, the Ld. CIT(A) deleted the addition.

11. Respectfully following the above Jurisdictional High Court judgements and also the fact that the assessee is a retaining **Kappac Pharma** shares as stock-in-trade and the closing stock is valued at the market rate. Since the market rate is lower it has incurred a business loss of Rs. 53,02,455/- though the shares are not sold. The difference is only because the valuation of shares which is as per the Accounting standard and the share of **Kappac Pharma** are still forming part of closing stock of the assessee company as on 31.03.2019. Thus, we have no hestiation in deleting the disallowance made by the AO which was correctly deleted by the 1d. CIT(A). Thus the grounds raised by the Revenue is without any basis and the same is liable to be rejected. The remaining ground Nos. 4 to 6 are general in nature, which does not require specific adjudication."

8. We have considered the concurrent findings of fact arrived at by the CIT(A) and Tribunal and are in complete agreement with such findings to the effect that the assessee has proved the genuineness of the transactions and established on online trading platforms that it had no control what so ever on share prices and thus, incurred losses in shares of Alang Industries Gas Ltd. It was also found by both the authorities that the

assessee sold only the part of the shares and remaining shares have been held by the assessee in the subsequent assessment year also. With regard to shares of Kappac Pharma Ltd., it was rightly held by the Tribunal that since the market rate was lower, the assessee had incurred business loss though the shares are not sold.

9. In view of the above concurrent findings of fact, no questions of law much less any substantial question of law would arise and accordingly, the appeal, being devoid of any merits, is dismissed.”

7.2. Similarly the Jurisdictional High Court in the case of PCIT vs. Sandipkumar Parsottambhai Patel (cited supra) held that since payments were received through account payee cheques and transactions were done through recognized stock exchange, and there was no evidence that assessee had paid cash in return of receipt through cheque, therefore the Tribunal rightly deleted addition holding that transactions were genuine by observing as follows:

“.....6. Being aggrieved and dissatisfied by the aforesaid, the assessee approached the Income-tax Appellate Tribunal, Surat by way of ITA No. 8 and 9/SRT/2019 for the Assessment Year 2013-14 and 2014-15. The learned ITAT, Surat having considered the submissions, allowed the said Appeal by observing as under:

“22. We note that all evidences of sales including contract notes were submitted by the assessee, as noted by us above. The Assessing officer has not found any fault in the documents, as noted by us above. The payments were received through account payee cheques and transaction were done through recognized stock exchange. The inflow of shares is reflected by way of physical share certificate and demat account. The shares were transferred through demat account and the assessee does not know the buyer. There is no evidence that assessee has paid cash in return of the receipt through cheque. In other words, there is no evidence that the cash was recycled. The assessee is not a party to alleged price rigging. He has no nexus with the company, its directors or operators. He is

not concerned with the activity of broker and has no control over the same. Even there is no evidence that directors of company or broker were involved in price rigging. The Assessee has got only incidental benefit of price rise. The assessee invested in shares, which gave rise to capital gains in a short period, does not mean that the transaction is bogus, as all the documents ---and evidences have been produced before assessing officer. The shares were sold in piece meal on tate through recognized stock exchange at quoted price.

23. Regarding the statement of Shri Anil Khemka, alleged entry provider, which is reproduced in Assessment Order at Page 8, we note that said statement recorded neither implicate Sun & Shine Worldwide Ltd nor the broker Trade bulls Securities Pvt. Ltd and nor the assessee. We note that physical delivery of shares is proved by the memorandum of transfer of shares stated in the share certificate being registered on 30-10-2012. Regarding the escalation of prices of shares of M/s Sun & Shine Worldwide Ltd., that is, the prices have increased by 140 times over the period of 17 months. At this juncture, it is submitted by Id Counsel that prices of shares are determined by the market forces and not solely on the basis of financial statements.

24. We also note that Assessing officer and CIT(A) has relied on the case of Sumati Dayal vs. CIT (214.LIB 8011(SC). We are of the view that said decision is not applicable to the assessee under consideration, as the assessee has successfully demonstrated with help of evidences on record to have made the transaction of purchase and sale of alleged shares. No single material was brought on record indicating name of any of the entry provider taking assessee's name or assessee's broker name. We note that assessee has submitted enough evidences such as:

(a) Ledger Account of Jainam Share Consultancy Securities Pvt. Ltd. (8) Contract Notes of Jainam Share Consultancy Securities Pvt. Ltd. (c) Relevant Bank Statement showing that all transactions were through banking channel. (d) Contra confirmation of broker M's Corporate Commodity Broker Private Ltd. (e) Share Certificate, (f) Share Transfer Form, (g). Debit Note and (4) Cash Receipt etc. Therefore, addition in assessee's case cannot be made on generalization, human probabilities, suspicion, conjectures and surmises.

25. We note that assessee submitted before lower authorities the share brokers contract note indicating name of the scrip which was traded on the stock exchange, quantity of equity shares sold; date and time on which such shares had been sold, rate at which sale was executed; stock exchange at which such share had been dealt with; amount of brokerage charged; amount of service tax charged; amount of Securities Transaction Tax charged; amount of BSE transaction charges paid; amount of stamp duty paid. Therefore, evidence with regard to source and purpose for which amount had been received and credited in the books has been submitted and which has not been found false, forged and fabricated. The Identity of the party is established from the contract note itself wherein it has been prominently stated that name of the Share Broker is Mrs. Tradebulls Securities Pvt. Ltd. and that they are member of the Bombay Stock Exchange Ltd. The Demat Account statement evidencing holding of equity shares of Company of which shares have been dealt with at Bombay Stock Exchange and also the quantity which has been sold and the date on which such quantity was sold. The demat account statement, contains BSE settlement number which is very much matching with settlement number appearing in the contract note issued by the share broker. The Bank statement evidencing receipt of funds from the Share Broker has already been furnished in the course of assessment proceedings. The AO have not brought any material indicating that said amount proposed to be taxed has not been received from the Share Broker or the sum received is from the sources other than the sale consideration claimed against sale of shares. In view of these facts, we are of the view that addition should not be made under section 68 of the Act.

26. In the light of the documents and evidences submitted by the assessee, we find that there is absolutely no adverse material to implicate the assessee to the entire gamut of unfounded/unwarranted allegations leveled by the AO against the assessee, which in our considered opinion has no legs to stand and therefore has to fall. We take note that Id. DR could not controvert the facts which are supported with material evidences furnished by the assessee. We note that the allegations that the assessee/brokers got involved in price rigging/manipulation of shares must therefore consequently fail. At the cost of repetition, we note that the assessee had furnished all relevant evidences in the form of bills, contract notes, demat statement and bank account to prove the genuineness

of the transactions relevant to the purchase and sale of shares resulting in long term capital gain. Neither these evidences were found by the AO nor by the Id. CIT(A) to be false or fictitious or bogus. The facts of the case and the evidences clearly support the claim of the assessee that the transactions of the assessee were genuine and the authorities below was not justified in rejecting the claim of the assessee exempted u/s.10(38) of the Act on the basis of suspicion, surmises and conjectures. It is to be kept in mind that suspicion how so ever strong, cannot partake the character of legal evidence. In the aforesaid facts and circumstance, for allowing the appeal we rely on the decision of the Hon'ble Calcutta High Court in the case of M/s Alipine Investments in ITA No. 620 of 2008 dated 26th August, 2008 where in the High Court held as follows:

"It appears that there was loss and the whole transactions were supported by the contract notes, bills and were carried out through recognized stock broker of the Calcutta Stock Exchange and all the bills were received from the share broker through account payee which are also filed in accordance with the assessment. It appears from the facts and materials placed before the Tribunal and after examining the same, the tribunal allowed the appeal by the assessee. In doing so the tribunal held that the transactions cannot be brushed a side on suspicion and surmises. However, it was held that the transactions of the shares are genuine. Therefore, we do not find that there is any reason to hold that there is no substantial question of law held in this matter. Hence the appeal being ITA No. 620/2008 is dismissed."

27. In the aforesaid facts and circumstances of the case, we hold that the Id.CIT(A) was not justified in upholding the addition of sale proceeds of the shares as undisclosed income of the assessee u/s 68 of the Act. We therefore delete the addition of Rs. 33,15,263.

28. Since, we have deleted the main addition of Rs. 33,15,263/-, therefore, the addition on account of commission payment of Rs. 3,29,188/- which is consequential in nature, and hence the same is here by deleted.'

7. Having regard to the aforesaid finding of facts recorded by the Tribunal, we are not inclined to interfere in this appeal.

8. We are of the considered opinion that question of law formulated by the Revenue is more on facts rather than on law. It cannot be said to be a substantial question of law.

9. In the result, this appeal fails and is hereby dismissed. In view of the aforesaid, the connected Tax Appeal No. 521 of 2022 also stands dismissed.”

7.3. The Hon’ble Apex Court in the case of PCIT vs. Kuntala Mohapatre (cited supra) deleted the addition made on account of statement from entry operators who are unrelated parties with the assessee by observing as follows:

“Section 10(38), read with sections 68 and 69, of the Income-tax Act, 1961 Capital gains -Income arising from transfer of long term securities (Illustrations) - Assessment year 2014-15-Assessee filed its return for relevant year - Subsequently, pursuant to a survey assessee filed revised return and claimed exemption in respect of long-term capital gains on shares under section 10(38) - Assessing Officer rejected assessee's plea and made additions under sections 68 and 69 by relying on statements from 'entry operators' On appeal, Commissioner (Appeals) accepted assessee's claim, noting that shares were purchased via Account Payee Cheques, held in a Demat Account for over 12 months, and sold through a recognized stock exchange after payment of security transaction tax Tribunal upheld Commissioner (Appeal)'s decision, emphasizing assessee's right to correct mistakes and criticized Assessing Officer's reliance on statements from entry operators' to support additions under sections 68 and 69 as those statements were recorded in unrelated proceedings before survey on assessee, and assessee was not afforded an opportunity to challenge or cross-examine providers of those statements - On revenue's appeal, High Court confirmed order of Tribunal - Whether there was no reason to interfere with order passed by High Court and therefore, SLP was to be dismissed Held, yes [Para 3] [In favour of assessee]”

7.4. The Hon’ble Supreme Court in the case of PCIT vs. Renu Aggarwal (cited supra) dismissed the SLP filed by Revenue by observing that no material relating to assessee was found in

investigation wing report, additions made by Assessing Officer had rightly been deleted as follows:

“Section 69A, read with section 10(38), of the Income-tax Act, 1961- Unexplained moneys (Share dealings) High Court by impugned order held that where Assessing Officer disallowed exemption claimed by assessee under section 10(38) and made additions, alleging involvement in penny stock which were being misused for providing bogus accomodation of LTCG, **however, there was lack of adverse comments from stock exchange and officials of company involved in these transactions and no material relating to assessee was found in investigation wing report, additions made by Assessing Officer had rightly been deleted** Whether SLP filed by revenue against said impugned order was to be dismissed Held, yes [Para 2] [In favour of assessee)”

8. Further the Co-ordinate Bench of this Tribunal in the case of Shivani Ashokbhai Shah (cited supra) have considered many other decisions of this Tribunal wherein it was held that KPL share are not a penny stock share by observing as follows:

“...16. It was further argued by the Ld. Counsel appearing for the assessee that the scrip of M/s. Kappac Pharma Ltd. was found to be genuine in very many cases in appeal by the ITAT itself. One of such matter is Shri Prakash Javia Huf vs. ITO & Ors. in ITA No.464/Ind/2019 & Ors. and ACIT vs. M/s. Affluence Commodities Pvt. Ltd. in ITA No.593/Ahd/2020. In that view of the matter as scrip of the said company has been held to be genuine, the addition on surmises and conjunctures is found to be not sustainable and liable to be set aside as is the crux of the case made out by the assessee.

17. We have considered the entire set of judgments relied upon by the assessee and order passed by the ITAT in identical case, we find substance in such submission advanced by the Ld. Counsel appearing for the assessee that the issue is squarely covered by the judgment in case of Shri Prakash Javia Huf vs. ITO & Ors. in ITA No.464/Ind/2019 & Ors., wherein the scrip of M/s. Kappac Pharma Ltd. has been held to be genuine and the claim under Section 10(38) of the Act has been allowed with the following observations:

“21. We have heard rival contentions and perused the records placed before us and carefully gone through the submissions, paper book and plethora of judgments referred and relied by both sides. Common issue raised in all three appeal is genuineness of claim of Long Term Capital Gain as exempt income u/s 10(38) of the Act arising out of the transactions of sale of equity shares of Kappac Pharma Limited.

22. The assessee namely Prakash Javia HUF, Jayesh Kumar Javia HUF and Prajash Javia purchased equity shares of Kappac Pharma Limited totaling to 3000, 2000 & 3000 respectively in cash through offline mode from existing shareholder of Kappac Pharma Ltd. at Rs.36000/-, Rs.24,000/- & Rs.36,000/-. Subsequently, during the F.Y. 2013-14 all these equity shares were converted in DMAT form maintained by respective assessee with Kotak Securities Ltd. During F.Y. 2013-14 after holding the shares for more than 12 months, respective assessee(s) sold their holding of Kappac Pharma Ltd. through a registered broker namely Kotal Securities Ltd on the recognized stock exchange namely Bombay Stock Exchange Ltd and Long term Capital Gain calculated in each case have been shown in the income tax returns as exempt income u/s 10(38) of the Act.

23. During the assessment proceedings the assessing officer on the basis of report of the investigation carried out by the Investigation Wing of Income Tax Department at various brokers in other parts of the country, lack of information from the purchaser of equity shares sold by one of the assessee namely Prakash Javia HUF and raising doubt on the abnormal increase of the share price of Kappac Pharma Ltd. which in no way could termed as a fair market value looking to the financial position, gross sales and income shown by the listed company KPL and based on all these observations concluded that the alleged transactions of sale of equity shares of KPL are bogus, Kappac Pharma Ltd. is a penny stock company, and the assessee has adopted a colorable device to convert unaccounted money into accounted money by arranging bogus LTCG.

24. As far as, the contention that share prices of Kappac Pharma Ltd. saw abnormal rise which is not commensurate to the financial results/position of the company, we find that this tribunal has dealt with this issue recently in the case of Aditya Mundra (supra) observing as follows:

Para 37 – “On the other hand all the relevant documents to prove the purchase and sale were before the Ld. A.O. Purchases were at the fair market value at Rs.12/-. Sales have been effected through registered broker after payment of security transaction tax and sold at the prices appearing at the recognized stock exchange. Merely observing that the prices of the equity shares have been increased drastically cannot be a evidence in itself to treat the transactions as bogus. There are number of incidences where the share prices of certain listed companies increased drastically but that all depends on demand and supply of the equity share, perception of its growth and the market sentiments. Unless and until the company of which the equity shares are being traded is found to be involved in malpractices the financial results

are not commensurate with the prices at the NSE/BSE portal and sufficient proofs are available showing the alleged company to be a bogus/penny stock or paper company, one cannot question the genuineness of transactions carried out on the portal of NSE/BSE which are under the control of Securities and Exchange Board of India." [emphasis supplied]

25. *The above finding of this Tribunal indicates that there are various other factors for the sudden rise and fall in the share prices of a listed company which are majorly linked to the market sentiments, performance of the sector, availability of shares i.e demand and supply, holding of the promoters, future prospects etc. In the instant case, nothing on record is available to show that any enquiry was conducted by department at the business premises of Kappac Pharma Ltd. and its involvement in this alleged racket of managing bogus LTCG. Kappac Pharma Ltd. is registered with Registrar of Companies and is still live at the portal of Registrar of companies. All transfers of shares of particular listed company is well recorded in the Registrar of shareholders. Even the purchase of shares by assessee is directly from a shareholder company, being original allottee of equity shares of Kappac Pharma Ltd. which were subsequently transferred in the name of respective assessee(s).*

26. *We, further note that as far as conditions provided in section 10(38) of the Act are concerned the same are duly fulfilled in the instant case Section 10(38) of the Act reads as follows:*

“any income arising from the transfer of a long-term capital asset, being 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 a transaction is chargeable to securities transaction tax under that Chapter.....”

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28. *Ongoing through the facts of the case, we find that the assets are in the nature of equity shares which are not part of a business stock and have been held for more than 12 months so will come under the category of Long Term Capital Asset. The equity shares are sold through recognized stock exchange (Bombay Stock Exchange) and security transactions tax have been paid on this transaction.*

29. *Now coming to the part of purchase and sale: Purchase is off line and made in cash. Ld. AO has raised doubt on the purchases being made in cash but there is no bar under the law to make purchase in cash. In all these cases equity shares were purchased from Shah & Sons Propon Private Limited. PAN No. of the seller was provided before both the lower authorities. The seller namely Shah & Sons Propon Private Limited purchased equity shares in November 2010 and was originally allotted the shares by Kappac Pharma Ltd. which is a company*

registered at Mumbai. Genuineness of the documents namely share certificate placed page 10 of the paper book is not doubted. For sure the details of shareholder would be available on the portal of the Registrar of Company where annual returns are filed by the Companies. Further has this certificate being bogus then how could the shares are dematerialized. Because once a share are lodged for dematerialization the original share certificate is to be deposited and the correctness of the certificate is verified through the company which has issued the share certificate. Once the details are found to be correct the shares are dematerialized.

30. *Now coming to the sale part: The assessee has opened DMAT account with Kotak Securities Ltd. which is known to be a reputed company engaged in the providing services as share broker. Kotal Security is registered with Bombay Stock Exchange. Sale is effected on the portal operated and controlled by Bombay Stock Exchange. The seller has no idea as to who is the buyer on the other side. On the portal the payment for the sale is received by broker which in this case is Kotak Security Limited who after deducting the brokerage and other applicable tax including Security Transactions Tax remits the balance amount in the bank account of the assessee which is registered in the DMAT Account. In the instant case, no flaw or any inconsistency has been found by the Revenue authorities with all these transaction of purchase and sale.*

31. *Further the aspect that whether Kappac Pharma Ltd is a 'penny stock' company or not has been dealt in detail by I.T.A.T., Kolkata Bench in the case of Yogendra Dalmia (supra) wherein the Tribunal after considering another decision of Bangalore Tribunal in the case Canara Bank vs. JCIT held the transaction from sale of equity shares of Kappac Pharma Limited as genuine and also allowed the claim of assessee of LTCG from the sale of equity shares of Kappac Pharma Ltd. and also deleted the alleged commission expenditure added by Ld. AO for arranging the bogus LTCG. The relevant extract of decision of Coordinate Bench Kolkata in the case of Yougendra Dalmia (supra) is reproduced below:*

Para 6 – “Next comes assessee’s latter appeal ITA No.775/Kol/2018 seeking to reverse both the lower authorities action treating his sale proceeds amounting to Rs.1,81,009/- derived from sale of shares in M/s GCM Securities Pvt. Ltd and Kappac Pharma Ltd. has to be in the nature of unexplained cash credits. Both the lower authorities have further disallowed the alleged commission expenditure @ 5% thereupon with coming to O1,81,009/- u/s. 69C of the Act. The CIT(A)’s detailed discussion under challenge to this effect reads as under:-.....”

Para 7 – “We have given our thoughtful consideration to rival contentions. There can hardly be any dispute that assessee has placed on record his supportive documentary evidence comprising of relevant purchase bills of shares allotment, certified copies, contract notes, brokerage details etc. We put up a specific query as to whether any of entry operators searched or survey has quoted these assessee’s names or not before the departmental authorities. There is no such material in the

case file indicating such as statement. I find that this co-ordinate bench's decision in ITA No. 1918/Kol/2018 in Smt. Sangita Jhunjhunwala vs. ITO decided on 04.01.2019 has deleted similar bogus LTCG vide following detailed discussion in para 3 to 5 as under....."

Para 8 – "This tribunal's yet another decision in (2017) 60 ITR (Trib) 1 (Bang) Canara Bank vs. JCIT holds that the estoppel principle does not apply in income tax proceedings. We therefore reject Revenue's arguments in support of impugned addition. We take into account all the relevant facts and circumstances to adopt the learned co-ordinate bench's above extracted detailed reasoning mutatis mutandis to delete the impugned addition forming subject-matter of the instant appeal. Commission expenditure disallowance; if any, shall automatically follow suit as a necessary corollary. No other argument has been raised before us during the course of hearing. This assessee's latter appeal ITA No. 775/Kol/2018 is allowed." [emphasis supplied]

32. *Records placed before us also shows that report of the investigation wing or any enquiry conducted from 3rd persons were not made available to the assessee which thus grossly violates the principles of natural justice. As the assessee never got opportunity to go through these reports this action of the lower authorities was not justified in view of ratio laid down by Hon'ble Supreme Court in the case of Sona Builders (supra) wherein Hon'ble Court held that:*

Para 7 – " Having regard to the statutory limit within which the appropriate authority has to act and his failure to act in conformity with the principles of natural justice, we do not think we can remand the matter to the appropriate authority. We must set his order aside.

Para 8 – "The appeal is, accordingly, allowed. The judgment and order under appeal is set aside. The order of the appropriate authority dated 31-5-1993 is quashed." [emphasis supplied]

33. *We, therefore, in the totality of facts and in view of the ratios laid down by Hon'ble Courts and decision of Coordinate Benches squarely applicable on the instant issue raised before us, are of the considered view the alleged transaction of purchase and sale of equity shares of Kappac Pharma Ltd. are not bogus as the respective assessee(s) have duly charged there onus to prove the genuineness of purchase and sale of equity shares of listed company KPL (listed in Bombay Stock Exchange) by placing necessary documents to prove that the purchase are directly from the shareholder and sold through a registered broker and nothing adverse has been found by the revenue authorities and KPL is not held to be a penny stock company.*

34. *Further, with regard to the alleged addition we find that the it is purely based on the report of the investigation wing carried out in the case of other persons finding no mention or the involvements of assessee(s) in any of such report and thus, the claim of the LTCG has been rightly made as exempt income u/s 10(38) of the Act. We, thus, set aside the finding of the Ld. CIT(A) in all the instant appeals and direct the Ld. Assessing Officer to allow the claim of LTCG*

made u/s 10(38) of the Act made by the respective assessee(s) and also delete the disallowance of brokerage expenses of Rs.61,380/- made in the case of Prakash Javia.

35. In the result, all grounds raised by the assessee(s) are allowed and appeals filed by the assessee in ITANo. 464,465 & 466/Ind/2019 are decided in favour of the assessee and against the revenue.”

18. We have carefully considered the judgment passed in case of ACIT vs. M/s. Affluence Commodities Pvt. Ltd. in ITA No.593/Ahd/2020, wherein deletion of addition under Section 10(38) of the Act in respect of the LTCG out of the sale of scrip of M/s. Kappac Pharma Ltd. was upheld. The Co-ordinate Bench while dealing with the same observed as follows:

“9. The 3rd ground namely losses booked under penny stocks of Rs. 73,12,905/- on sale of Alang Industrial Gases Ltd. shares. The assessee has proved the genuineness of the transactions beyond doubt by furnishing contract notes, ledger accounts, bank transactions from books of brokers whereas the A.O. without any material evidence disallowed the losses of in scrips of Alang Industrial Gases Ltd. and the valuation of the closing stock in Kappac Pharma just based on the SEBI general information and Investigation Wing, Kolkatta. The A.O. made the disallowance without documentary proof whereas the assessee proved the genuineness of the transactions and established on online trading platforms and it had no control whatsoever on share prices and thus incurred losses in shares of Alang Industrial Gases Ltd. It is the case of the assessee that it sold only part of the shares and remaining shares have been held by the assessee in subsequent assessment year also. Thus following Jurisdictional High Court Judgment, the Ld. CIT(A) deleted the addition.

9.1. The Ld. D.R. could not produce any contra judgments in support of its case, whereas Ld. Counsel for the assessee submitted before us the following case laws:

10. The Jurisdictional High Court of Gujarat in the case of Himani M. Vakil (cited supra) held as follows:

“Assessee filed her return declaring certain amount as short term capital gain arising from sale of shares - Assessing Officer taking a view that share transactions were bogus, added amount of capital gain to assessee's taxable income as unexplained cash credit - Tribunal, however, concluded that genuineness of transactions was duly proved by contract notes for sale and purchase, bank statement of broker, demat Account showing transfer in and out of shares, as also abstract of transactions furnished by CSE - accordingly, addition made by Assessing

Officer was deleted - Whether since finding recorded by Tribunal was based on appreciation of material on record, no substantial question of law arose therefrom."

10.1. In the case of Ramniwas Ramjivan Kasat (cited supra) held as follows:

"Assessment year 2006-07- During relevant year, assessee sold certain shares owned by him - Assessing Officer opined that purchase of shares in question itself was bogus and, thus, there was no question of sale of same He thus added amount of sale proceeds of shares to assessee's taxable income Tribunal noted that shares had been purchased in previous assessment year - It was further found that assessment for previous assessment year had been taken in scrutiny and in assessment order purchase of shares had been accepted as genuine - Tribunal thus concluded that no addition could be made with aid of section 68 when such shares were sold in relevant assessment year - Whether on facts, impugned order passed by Tribunal did not require any interference."

10.2. In the case of Maheshchandra G. Vakil (cited supra) held as follows:

"Assessment year 2006-07 - Assessee filed return of income declaring certain amount as short term capital gain arising from sale of shares - Assessing Officer framed assessment treating short term capital gain as explained cash credit - Tribunal, however, opined that genuineness of transactions was proved by contract notes for sale and purchase, bank statement of broker, Demat Account Showing transfer in and out of shares, as also abstract of transactions furnished by stock exchange - Accordingly, Tribunal deleted addition made by Assessing Officer - Whether since impugned order of Tribunal was based on appreciation of evidence on record, it did not require any interference."

11. Respectfully following the above Jurisdictional High Court judgments and also the fact that the assessee is a retaining Kappac Pharma shares as stock-in-trade and the closing stock is valued at the market rate. Since the market rate is lower it has incurred a business loss of Rs. 53,02,455/-, though the shares are not sold. The difference is only because of valuation of shares which is as per the Accounting Standard and the share of Kappac Pharma are still forming part of closing stock of the assessee company as on 31.03.2019. Thus, we have no hesitation in deleting the disallowance made by the A.O. which was correctly deleted by the Ld. CIT(A). Thus the grounds raised by the Revenue is without any basis and the same is liable to be rejected."

19. We find that the Co-ordinate Bench while upholding the order passed by the Ld. CIT(A) in deleting addition made under Section 10(38) of the Act in respect of sale of scrip of M/s. Kappac Pharma Ltd. relied upon the judgment passed by the Jurisdictional High Court in the case of Maheshchandra G. Vakil (supra).

9. Respectfully following the above judicial precedents, we hereby hold the addition made by the Assessing Officer is not legally correct in making addition of Rs.52,75,306/- on account of LTCG earned from sale of KPL shares done through stock exchange as alleged unexplained cash credit u/s.68 of the Act and the same liable to be deleted. Thus the Grounds raised by the assessee is allowed.

10. In the result, the appeal filed by the Assessee is allowed.

Order pronounced in the open court on 28 -02-2025

Sd/-
(NARENDRA PRASASD SINHA)
ACCOUNTANT MEMBER

Sd/-
(T.R. SENTHIL KUMAR)
JUDICIAL MEMBER

Ahmedabad :

Dated 28/02/2025

आदेश की प्रतिलिपि अग्रेषित / Copy of Order Forwarded to:-

1. Assessee
2. Revenue
3. Concerned CIT
4. CIT (A)
5. DR, ITAT, Ahmedabad
6. Guard file.

By order/आदेश से,

उप/सहायक पंजीकार
आयकर अपीलीय अधिकरण,
अहमदाबाद