

IN THE INCOME TAX APPELLATE TRIBUNAL
NAGPUR “SMC” BENCH : NAGPUR
(through virtual)
BEFORE DR. MANISH BORAD, ACCOUNTANT MEMBER

I.T.A.No.619/NAG/2024
(Assessment Year 2014-2015)

Vishnukumar Ramswaroop Agrawal, Dhiraj Iron and Steel, Shahid Chowk, Itwari, Nagpur-440002 PAN : AAJPA 4341 B (Appellant)	vs.	ITO, Ward-4(1), Nagpur. (Respondent)
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For Assessee :	Shri Rachit Thakar proxy counsel appeared on behalf of Shri Kapil Dewani, Advocate
For Revenue :	Shri Surjit Kumar Saha, Sr.DR

Date of Hearing :	04.02.2026
Date of Pronouncement :	12.02.2026

ORDER

This appeal at the instance of the assessee is directed against the order of Ld. ADDL/JCIT (Appeals)-4, Chennai [“CIT(A)”], dated 28/10/2024 passed u/s. 250 of the Income Tax Act, 1961 (for short, 'the Act') which is arising out of assessment order dated 26.12.2016 passed u/s. 143(3) of the Act by ITO, Ward-4(1), Nagpur, for the Assessment Year 2014-15 (A.Y.)

2. The grounds raised by the assessee are challenging the addition for unexplained cash credit u/s. 68 of the Act at

₹16,82,500/- received by the assessee towards sale consideration from sale of equity shares of M/s. Kappac Pharma Ltd. and the addition for unexplained expenditure at ₹84,125/- deemed to be incurred by the assessee for arranging the long term capital gain (LTCG) u/s. 10(38) of the Act.

3. At the outset, learned counsel for the assessee referring to the plethora of decisions of the coordinate benches as well as Hon'ble High Courts submitted that the genuineness of gain/loss from sale of equity shares of M/s. Kappac Pharma Ltd. has come up for consideration before the Hon'ble Courts as well as the coordinate Benches, and that the same have consistently allowed the claim of respective assessee(s) for the LTCG u/s. 10(38) of the Act/loss incurred from sale of equity shares of M/s. Kappac Pharma Ltd. treating them to be genuine. Learned counsel for the assessee also made reference to the written submissions dated 07.07.2025 as well as paper book running into 34 pages along with placing reliance on various decisions including that of Hon'ble Madhya Pradesh High Court in the case of *CCIT vs. Shri Jayesh Kumar Javia (HUF)* in ITA No. 108/2021, dated 16.05.2024 and the decision of Hon'ble Gujarat High Court in the case of *PCIT (Central) vs. Affluence Commodities (P.) Ltd.* [2024] 161 taxmann.com 476 (Guj. HC) and recent decision of this Tribunal in the case of *Rameshwarlal Mathuraprasad (HUF) vs. ACIT* in ITA No. 37/NAG/2025, dated 14.05.2025.

4. On the other hand, Ld. Departmental Representative (DR) vehemently argued referring to the written submissions filed on 06.03.2025 and also placed reliance on the decision of Hon'ble Delhi High Court in the case of *Udit Kalra vs. ITO* in ITA No. 220/2019, dated 08.03.2019.

5. I have heard rival contentions and perused the records placed before me. I observe that assessee is individual and declared income of ₹ 5,18,790/- in the e-return for A.Y. 2014-15 furnished on 31.01.2015. After the case being selected for scrutiny under CASS followed by validly serving statutory notices, assessment proceedings have been carried out. Ld.AO observed that assessee has claimed LTCG of ₹16,48,270/- from sale of 2500 equity shares of M/s.Kappac Pharma Ltd. The gross sale consideration is ₹16,82,500/- and after deduction of brokerage and Security Transaction Tax (STT), net sale amount of ₹ 16,75,770/-. Assessee has purchased 4000 equity shares on 12.10.2012, out of which assessee has sold 2500 equity shares costing to ₹27,500/-. Ld.AO based on information received in the course of survey operations u/s. 133A of the Act at the office premises of M/s. Devshyam Stock Broking Pvt. Ltd., Kolkata came to a conclusion that M/s. Kappac Pharma Ltd. is a penny stock company and the market rate of these shares are not based on the business results of the company, but rather fluctuated by insider trading from negligent price to very high price and *vice*

versa. Ld.AO concluded the proceedings making the addition u/s. 68 of the Act for the total sale consideration of ₹16,82,500/- and also made addition for unexplained expenditure u/s. 69C of the Act at ₹ 84,125/- for arranging of such alleged bogus LTCG. The assessee has failed to get any relief from Ld. CIT(A). Before me, learned counsel for the assessee has referred and relied on plethora of decisions wherein the decision referred by the Ld.DR duly stands considered.

6. I first take note of the decision of this Tribunal at Indore in the case of *Shri Jayesh Kumar Javia (HUF) vs. ITO* in ITA No. 464/IND/2019, dated 25.05.2021 which is authored by the undersigned member and the very same issue about the genuineness of LTCG u/s. 10(38) of the Act from sale of equity shares of M/s. Kappac Pharma Ltd. was under consideration and the coordinate bench Indore held in favour of the assessee allowing the claim of LTCG u/s. 10(38) and also deleting the addition for brokerage expenditure u/s. 69C of the Act. Subsequently, the Department carried the matter before the Hon'ble Madhya Pradesh and the Hon'ble Court vide order dated 16.05.2024 has affirmed the order of coordinate bench Indore thereby dismissing the Revenue's appeal.

7. Similarly, the issue about the genuineness of loss incurred from transacting equity shares of M/s. Kappac

Pharma Ltd. came up for consideration before the Hon'ble High Court of Gujarat in the case of *Affluence Commodities (P.) Ltd.* (supra) and the Hon'ble Court has observed that they are in complete agreement with the finding of Ld.CIT(A) and the Tribunal to the effect that assessee has proved the genuineness of the transaction established on online trading platform and that it had no control whatsoever on share price. The Hon'ble Court has further with regard to shares of M/s. Kappac Pharma Ltd. affirmed the view taken by the Tribunal that since market rate was lower, the assessee has incurred business loss. The Hon'ble Court has held that no question of law much less any substantial question of law would arise and accordingly appeal of the Revenue being devoid of any merits, is dismissed.

8. In the light of the above judgments, where the transactions carried out by the respective assesseees from sale of equity share of M/s. Kappac Pharma Ltd. have been found to be genuine, I note that in the instant case also, assessee has kept the equity shares in Demat account and after holding them for more than a year, has sold equity shares through registered sale broker on online platform of the recognized stock exchange and that the shares have been sold on the live share price appearing on the recognized stock exchange controlled by the SEBI. The assessee also duly paid STT and therefore has fulfilled all the conditions prescribed u/s. 10(38)

of the Act for claiming benefit of exemption of LTCG from sale of equity shares.

9. Respectfully following the decisions referred herein above of the Hon'ble High Court of Madhya Pradesh in the case of *Shri Jayesh Kumar Javia (HUF)* (supra) and that of Hon'ble High Court of Gujarat in the case of *Affluence Commodities (P.) Ltd.* (supra) which has been subsequently affirmed by the Hon'ble Apex Court vide order dated 08.08.2025 (177 taxman.com 352), the alleged claim of assessee u/s. 10(38) of the Act stands allowed. Further, since LTCG u/s. 10(38) of the Act has been found to be genuine, finding of Ld.CIT(A) is reversed and the impugned addition of ₹ 16,82,500/- made u/s. 68 of the Act stands deleted and since I have hold the alleged LTCG to be genuine, therefore, addition for unexplained expenditure u/s. 69C of the Act at ₹ 84,125/- also stands deleted. Effective grounds of appeal raised by the assessee are allowed.

10. In the result, appeal of the Assessee is allowed.

Order pronounced in the open Court on 12.02.2026

Sd/-
[MANISH BORAD]
ACCOUNTANT MEMBER

Dated : 12th February, 2026

vr/-

Copy to

1.	The appellant
2.	The respondent
3.	The Pr.CIT, Nagpur concerned.
4.	D.R. ITAT, SMC Bench, Nagpur.
5.	Guard File.

//True Copy //

By Order

Senior Private Secretary
ITAT, Nagpur