

आयकर अपीलीय अधिकरण, अहमदाबाद न्यायपीठ "सी", अहमदाबाद ।  
IN THE INCOME TAX APPELLATE TRIBUNAL  
" C " BENCH, AHMEDABAD

श्री टी.आर. सेन्थिल कुमार, न्यायिक सदस्य एवं  
श्री मकरंद वसंत महादेवकर, लेखा सदस्य के समक्ष।

BEFORE SHRI T.R. SENTHIL KUMAR, JUDICIAL MEMBER  
AND  
SHRI MAKARAND V. MAHADEOKAR, ACCOUNTANT MEMBER

आयकर अपील सं./ITA No.39/Ahd/2021  
निर्धारण वर्ष /Assessment Year : 2015-16

The DCIT Central Circle-1(1) Ahmedabad - 380 009	<u>बनाम/ v/s.</u>	Smt. Denisha Rajendra Keshwani 44, Asopalav Bungalows Nr.Muktidham Temple Thaltej, Ahmedabad - 380 054 (Gujarat)
स्थायी लेखा सं./PAN: AHZPK 0889 K		
(अपीलार्थी/ Appellant)		(प्रत्यर्थी/ Respondent)
Assessee by :		Shri Mehul K. Patel, AR
Revenue by :		Shri Rignesh Das, Sr.DR

सुनवाई की तारीख/Date of Hearing : 30/01/2025  
घोषणा की तारीख /Date of Pronouncement: 06/02/2025

**आदेश/ORDER**

**PER MAKARAND V. MAHADEOKAR, AM:**

The present appeal has been filed by the Revenue against the order of the Commissioner of Income Tax (Appeals)-11, Ahmedabad [hereinafter referred to as "CIT(A)"], dated 22.01.2021, for the Assessment Year (AY) 2015-16, wherein the CIT(A) has deleted the addition of Rs.1,17,78,534/- made under Section 68 of the Income Tax Act, 1961 [hereinafter referred to as "the Act"] by the Dy. Commissioner of Income Tax, Central Circle - 1(1),

Ahmedabad, [hereinafter referred to as "AO"] as per his order passed under section 143(3) of the Act.

**Facts of the Case:**

2. The assessee filed the return of income for A.Y. 2015-16 on 22.08.2015, declaring a total income of Rs.40,66,310/-, which was processed under Section 143(1) of the Act. The case was subsequently picked up for scrutiny, and a notice under Section 143(2) of the Act was issued on 26.07.2016, duly served upon the assessee. The case was initially under the jurisdiction of ACIT, Central Circle-3(3), Ahmedabad. However, it was transferred to DCIT, Central Circle-1(1), Ahmedabad, in view of an order under Section 127 of the Act, passed by the Pr CIT-3, Ahmedabad, vide order No. Pr.CIT-3/Centralization/Amrapali Group/2014-15, dated 14.11.2014. Subsequently, due to a change in the incumbent officer, fresh notices under Section 142(1) of the Act were issued on 05.09.2017 and 27.10.2017.

3. During the scrutiny proceedings, the Assessing Officer (AO) observed that the assessee had declared Long Term Capital Gain (LTCG) of Rs.1,40,06,685/-, arising from investments in various shares, including Kappac Pharma Ltd. (KPL). The AO issued notices under Section 142(1) of the Act dated 05.09.2017 and 13.09.2017, seeking details and documentary evidence for the LTCG claim. The assessee submitted the required details vide submission dated 26.10.2017. The AO conducted a detailed examination of the transactions involving Kappac Pharma Ltd. (KPL) shares and found the following:

- i. 51,000 shares of KPL were purchased on 06.02.2013 at Rs.20.59 per share through offline mode from Shashwat Stock Brokers Pvt. Ltd. A debit note of Rs.10,50,000/- was issued against this purchase.
- ii. As per the website printout submitted by the assessee, the total traded volume on the exchange from 01.02.2013 to 28.02.2013 was only 1,900 shares which indicated that KPL was a thinly traded stock with negligible public interest.
- iii. The physical shares were later converted into Demat form on 03.06.2013. The entire shareholding was sold through ASE Capital Market Ltd. on the Bombay Stock Exchange (BSE) between 24th and 25th November 2014, at a price between Rs.251 and Rs.252.5 per share, generating an LTCG of Rs.1,17,78,534/-. The AO found the increase in price from Rs.20.59 per share to Rs.252.5 per share within a short span highly suspicious.

3.1. The AO relied on various reports and investigations conducted by the Income Tax Department in Kolkata, Delhi, and Mumbai, which unearthed accommodation entry operations in penny stocks. The AO identified common features of penny stock companies, which were present in KPL as well:

1. Initial allotment of shares to beneficiaries through preferential allotment or off-market transactions.
2. Sharp rise in market price within a short period.
3. Extremely low trading volume except during the manipulation period.
4. Most investors receive their initial capital back in cash, with only a small portion retained as security.
5. Companies have little to no real business activity.
6. The stock price movement is not backed by fundamentals or company performance.

3.2. The Securities and Exchange Board of India (SEBI) had taken action against various penny stock scams, including the one involving Kappac Pharma Ltd. (KPL). The AO noted that BSE suspended trading in KPL shares on 01.01.2015 due to price manipulation concerns and suspension was in force at the time of assessment. Upon examining the sale transactions of KPL shares by the assessee, the AO found that the counterparties were Affluence Commodities Pvt. Ltd. and Unipon India Ltd. (formerly Oasis Textiles Pvt. Ltd.) The AO also noted that Affluence Commodities Pvt. Ltd. was involved in tax evasion schemes by booking fictitious losses and Unipon India Ltd. was a suspended company on BSE, further indicating its involvement in accommodation entries.

3.3. The AO issued a show cause notice to the assessee on 06.11.2017, asking why the LTCG of Rs.1,17,78,534/- should not be treated as bogus and added to total income. The assessee submitted a response on 10.11.2017, defending the genuineness of the LTCG transaction. The assessee argued that the shares were bought at market price as per the stock exchange, Payment was made via account payee cheques, Delivery of shares was done via Demat accounts, the shares were held for more than 15 months, qualifying them as LTCG under Section 10(38) of the Act. The assessee also argued that Transactions Were Conducted via SEBI-Registered Brokers and STT (Securities Transaction Tax) was paid. The assessee also stated that the AO relied on general observations about penny stock manipulation, without direct proof against the assessee.

3.4. The AO rejected the argument that the purchase and sale were genuine. The AO concluded that penny stock frauds operate as an ecosystem and

relying on the decision of Co-ordinate bench in case of ITO vs. Shamim M. Bharwani (Mumbai ITAT) [69 Taxmann.com 65] treated the LTCG of Rs.1,17,78,534/- as bogus. The LTCG was treated as unexplained cash credit under Section 68 and added to the total income of the assessee.

5. The CIT(A) deleted the addition, holding that the assessee had furnished all supporting documents such as bank statements, contract notes, Demat account records, and audited financials, proving the genuineness of the transaction. The CIT(A) also concluded that the AO failed to establish any link between the assessee and alleged entry operators and the AO's findings were based solely on the general report of the Investigation Wing, without any specific material against the assessee.

6. Aggrieved by the order of the CIT(A) the revenue is in appeal with following grounds of appeal:

1. *On the facts and in the circumstances of the case and in law, the Ld.CIT(A) has erred in deleting the addition of Rs.1,17,78,534/- made under section 68 of the Act despite the fact that the assessee failed to prove the genuineness of the transaction?*
2. *On the facts and circumstances of the case and in law, the Ld. CIT(A) has failed to appreciate that the Assessing Officer has categorically established the LTCG on sale of shares of Kappac Pharma Ltd was non-genuine and there was no financial credentials to justify such a significant increase in price of shares in short period and the assessee had a windfall Long Term Capital Gain of Rs. 1,17,78,534/-.*
3. *On the facts and in the circumstances of the case and in law, the Ld. CIT(A) ought to have upheld the order of the A.O.*

4. *It is, therefore, prayed that the order of the Ld. CIT(A) be set aside and that of the A.O. be restored to the above extent.*
5. *This case is covered under exception as per CBDT's Circular No.23 of 2019 dated <sup>1</sup>06.09.2019 read with Office Memorandum dated 16.09.2019 vide F.No.279/Misc./M-93/2018-ITJ(Pt.).*

7. During the course of hearing before us, the Departmental Representative (DR) relied on the order of AO and pointed out that the purchase was made offline, and assessee has traded in only one share. The Authorized Representative (AR) of the assessee argued that the assessee has not dealt with only one share and the CIT(A) has concluded that the assessee is making the investment in shares of different companies since years and has substantial investment in share in proportion to her capital.

8. The AR stated that the AO has noted in his order that the counter parties of the sale in case of the assessee are Affluence Commodities Pvt. Ltd. and Unipon India Ltd. (Oasis Textile Ltd.) and in case of Affluence Commodities Pvt. Ltd. the Hon'ble Jurisdictional High Court of Gujarat, the purchase of the shares of Kappac Pharma sold by the assessee are considered as genuine. The AR placed on record the copy of judgment of Affluence Commodities Pvt. Ltd. in Tax Appeal No. 264 of 2024. The AR argued that when purchase by the counter party is treated as genuine, how sale can be treated as bogus. The AR, while relying on the order of CIT(A), stated that the CIT(A) in his order (para 6.1) has reproduced the details of purchase and sale as submitted by the assessee with the supporting references from the paper book and relying on various judicial precedents concluded that the assessee has demonstrated the genuineness of share transactions.

9. The DR in rebuttal stated that in case of Affluence Commodities Pvt. Ltd., where the purchase was considered as genuine, the purchase of the shares was the business which resulted in loss and in case of assessee the sale resulted in LTCG and therefore the facts can be distinguished.

10. We have carefully considered the rival submissions, perused the orders of the lower authorities, and examined the material placed on record. The primary issue for consideration in the present appeal is the addition of Rs.1,17,78,534/- made under Section 68 of the Act, treating the Long-Term Capital Gain (LTCG) on sale of shares of Kappac Pharma Ltd. as non-genuine. The DR) has relied on the order of the AO, contending that the purchase was made offline and that the assessee has traded in only one share, which raises doubts regarding the genuineness of the transaction. On the other hand, the AR has vehemently opposed this contention and demonstrated that the assessee has been making investments in multiple shares over the years, and her investment in shares is substantial in proportion to her total capital, as also observed by the CIT(A) in para 6.1 of the appellate order. The AR has furnished a detailed breakdown of the purchase and sale transactions along with supporting documentary evidence, including bank statements, Demat account statements, contract notes, and audited financials, which were duly considered by the CIT(A).

10.1. Furthermore, the AR has placed reliance on the judgment of the Hon'ble Gujarat High Court in the case of Affluence Commodities Pvt. Ltd. in Tax Appeal No. 264 of 2024, wherein the purchase of the very same shares of Kappac Pharma Ltd. was treated as genuine. The AR contended that when

the purchase by the counterparty is held to be genuine, the sale by the assessee cannot be treated as bogus in the absence of any contrary material brought on record by the AO.

10.2. In rebuttal, the DR submitted that in the case of Affluence Commodities Pvt. Ltd., the purchase was treated as a business transaction that resulted in a loss, whereas in the case of the assessee, the sale resulted in LTCG, and hence, the factual matrix is distinguishable.

10.3. At the outset, we find that the CIT(A) has examined the assessee's transactions in detail, including the mode of purchase, sources of funds, period of holding, and sale through a recognized stock exchange with payment of STT. The Revenue has not brought any conclusive evidence to rebut these findings.

10.4. We also note that the contention of the AO that the assessee traded in only one share is factually incorrect. The CIT(A) has categorically observed that the assessee has been making investments in various shares over the years, which forms part of her regular investment portfolio. The Revenue has not controverted this factual finding with any contrary evidence.

10.5. As regards the reliance placed by the AR on the Hon'ble Gujarat High Court's judgment in the case of **Affluence Commodities Pvt. Ltd. (Tax Appeal No. 264 of 2024)**, we find merit in the argument that when the purchase of the same shares by the counterparty has been held to be genuine, the sale by the assessee cannot be treated as bogus, unless the Revenue

establishes with concrete material that the transaction was pre-arranged or collusive. The AO has not brought any such evidence on record.

10.6. The Revenue's contention that the purchase by Affluence Commodities Pvt. Ltd. resulted in a business loss, whereas the assessee's sale resulted in LTCG, and hence, the two cases are distinguishable, does not hold much weight in the absence of evidence to demonstrate manipulation of price or collusion between the parties. Mere variation in tax treatment or outcome does not *ipso facto* establish that the transaction was non-genuine.

10.7. The Hon'ble Gujarat High Court in the case of **Pr. CIT v. Himani M. Vakil [2014] 41 taxmann.com 425** and **Pr. CIT v. Maheshchandra G. Vakil [2013] 40 taxmann.com 326** has held that unless there is specific material to prove that the transaction is a sham, mere reliance on the Investigation Wing's report or abnormal price fluctuations cannot justify an addition under Section 68. We note that the assessee has placed reliance on these judicial precedents and CIT(A) has considered the same in his order.

10.8. In the present case, the assessee has duly discharged the onus by producing all necessary evidence, and the Revenue has failed to rebut them with substantive material. The AO has neither examined the counterparty to establish collusion nor provided any direct evidence of price rigging. The addition, therefore, appears to be made on the basis of suspicion and generalization rather than concrete facts.

10.9. Considering the above facts and the settled judicial precedents, we do not find any reason to interfere with the well-reasoned order of the CIT(A).

The Revenue has failed to establish that the LTCG earned by the assessee is non-genuine, and the addition made under Section 68 is unsustainable.

11. Accordingly, we uphold the order of the CIT(A) deleting the addition of Rs.1,17,78,534/-, and the Revenue's appeal is dismissed.

**Order pronounced in the Open Court on 6<sup>th</sup> February, 2025 at Ahmedabad.**

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

**Sd/-**  
**(MAKARAND V. MAHADEOKAR)**  
**ACCOUNTANT MEMBER**

अहमदाबाद / Ahmedabad, दिनांक / Dated 06/02/2025

*टी. सी. नायर, व. नि. स. / T.C. NAIR, Sr. PS*

आदेश की प्रतिलिपि अग्रेषित / Copy of the Order forwarded to :

1. अपीलार्थी / The Appellant
2. प्रत्यर्थी / The Respondent.
3. संबंधित आयकर आयुक्त / Concerned CIT
4. आयकर आयुक्त (अपील) / The CIT(A)-11, Ahmedabad
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, राजकोट/DR, ITAT, Ahmedabad,
6. गार्ड फाईल / Guard file.

आदेशानुसार / BY ORDER,

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