

**IN THE INCOME TAX APPELLATE TRIBUNAL
(DELHI BENCH 'E' : NEW DELHI)**

**BEFORE SHRI R.K. PANDA, ACCOUNTANT MEMBER
and
SHRI KULDIP SINGH, JUDICIAL MEMBER**

**ITA No.1881/Del./2018
(ASSESSMENT YEAR : 2014-15)**

AND

**Stay No.233/Del/2019
(in ITA No.1881/Del./2018)
(ASSESSMENT YEAR : 2014-15)**

Shri Sanat Kumar,
210, Amber Tower,
Commercial Complex, Azadpur,
Delhi – 110 033.

vs. ACIT, Circle 36 (1),
New Delhi.

(PAN : AAQPJ3291A)

(APPELLANT)

(RESPONDENT)

ASSESSEE BY : Shri S.K. Gupta, Advocate
REVENUE BY : Shri N.K. Bansal, Senior DR

Date of Hearing : 06.06.2019

Date of Order : 14.06.2019

ORDER

PER KULDIP SINGH, JUDICIAL MEMBER :

Appellant, Shri Sanat Kumar (hereinafter referred to as the 'assessee') by filing the present appeal sought to set aside the impugned order dated 01.11.2017 passed by the Commissioner of

Income-tax (Appeals)-12, New Delhi qua the assessment year 2014-15 on the grounds inter alia that :-

“1. The order of Ld. Commissioner of Income tax (Appeals), XII (‘Ld. CIT (A)/Ld.AO had grossly erred in facts and in law by holding that the Long term capital gains earned by the assessee and claimed as exempt u/s 10(38) of the Act, is an undisclosed income which has been taxed u/s 68 read with section 115BBE(1) of the Act @30%.

2. That the Ld. CIT(A) / Ld. AO had grossly erred in facts and in law by holding that the LTCG earned by the assessee is bogus, by totally ignoring the robust documentation submitted by the assessee during the course of assessment and appellate proceedings.

3. That the Ld. CIT(A) / Ld. AO had grossly erred in facts and in law by extrapolating the statements of third parties in the present case without providing an opportunity for cross objection by the assessee and also had grossly erred in not making any individual efforts by issuing summons to record the statements of any SEBI officer and any director of the company.

4. That the Ld. CIT(A) / Ld. AO had grossly erred in simply taxing an exempt transaction of the assessee on the basis of a 'borrowed satisfaction'.

5. That neither the Ld. CIT(A) nor the Ld. AO had been able to prove by bringing any document on record in order to establish their allegation that the assessee had purchased the exempt LTCG from the share broker in question.

6. Without prejudice, the provisions of section 68 are not applicable in the present case which has been applied by the Ld. CIT(A) / Ld. AO.”

2. Briefly stated the facts necessary for adjudication of the controversy at hand are : Assessee filed return of income declaring total income of Rs.24,29,600/- after declaring deductions under section 6A (vi) of the Income-tax Act, 1961 (for short ‘the Act’) Rs.1,00,000/-. Assessee has also shown Long Term Capital Gain

(LTCG) of Rs.1,21,69,408/- and claimed the same as exempt income u/s 10(38) of the Act on account of sales of shares of M/s. Cressanda Solution Ltd..

3. The Directorate of Investigation, Calcutta unearthed an organized racket of generating bogus entries for LTCG which is exempt from tax. The modus operandi of the operators was to make the beneficiary to purchase some shares of pre-determined penny stock company controlled by them, then these shares are transferred to the beneficiary at a nominal price mostly off-line through preferential allotment or off-line sale to save STT, beneficiary used to hold the shares for one year and then claimed the LTCG u/s 10(38) of the Act. The operators used to rig the prices of the stock and gradually enhanced its price many times, oftenly 500 to 1000 times.

4. AO noticed that the assessee is one of such beneficiaries who has taken entry of Rs.1,21,69,408/- during the year under assessment. Initially, assessee purchased 25,000 shares for an amount of Rs.2,50,000/- on 31.10.2011 and sold the same during the period 27.06.2013 to 23.09.2013 for sale consideration of Rs.1,21,69,408/-. AO from the details supplied by the assessee noticed that the assessee indulged in bogus LTCG and claimed the amount of Rs.1,21,69,408/- as exempt u/s 10(38) of the Act by way

of purchase and sale of shares of Cressanda Solution Ltd. through its broker, Indo Jatalia Securities Pvt. Ltd. After issuing the notice to the assessee, AO investigated the matter and called necessary information u/s 133 (6) of the Act from Principal Officer, Bombay Stock Exchange. AO examined the genuineness of the transaction and reached the conclusion that though the transaction qua the LTCG claimed by the assessee appears real but in fact are sham transactions as the assessee has adopted a colourable device to evade the tax and found the transaction bogus, sham and nothing but a racket of accommodation entry and thereby made an addition of Rs.1,21,69,408/-, and thereby assessed the total income of the assessee at Rs.1,45,99,000/-.

5. Assessee carried the matter by way of an appeal before the Id. CIT (A) who has confirmed the addition by dismissing the appeal. Feeling aggrieved, the assessee has come up before the Tribunal by way of filing the present appeal.

6. We have heard the Id. Authorized Representatives of the parties to the appeal, gone through the documents relied upon and orders passed by the revenue authorities below in the light of the facts and circumstances of the case.

7. Ld. AR for the assessee challenging the impugned order contended inter alia that the AO as well as CIT (A) have

made/confirmed the addition without verifying the purchase and sale of the transaction of shares without verifying from the third party; that none of the statement recorded by the Investigating Wing of the Department contains name of the assessee as beneficiary of the transaction entered in the documents and its brokers through whom the assessee had sold the shares in question; that the assessee has not been provided with opportunity to cross examine various individuals whose statements have been relied upon; that the entire allegation made by the AO are based upon his (AO) imagination; that the AO has wrongly made the addition u/s 68 of the Act which is not attracted; that when the purchase of shares is genuine then sale cannot be questioned; that the addition has been made by the AO/CIT (A) on the basis of wild allegation without any evidence; that movement in prices of shares is based on supply and demand factor of a particular script and relied upon the decisions of *CIT vs. Vishal Holding & Capital Pvt. Ltd. in ITA 1031/2010 and CIT vs. Med Shave Health Care Ltd.*

8. However, on the other hand, ld. DR for the Revenue to repel the arguments addressed by the ld. AR for the assessee contended that Cressanda Solution Ltd. has been duly investigated by Department of Revenue Intelligence (DRI) and found that the same is a bogus company engaged in arranging for bogus LTCG; that

since certain amounts out of sale of shares is credited in the books of account by the assessee, section 68 is applicable and relied upon decisions of *Pooja Ajamni vs. ITO – ITA No.5714/Del/2018 order dated 25.04.2019* and *Udit Kalra vs. ITO – ITA No.6717/Del/2017 order dated 08.01.2019*.

9. Undisputedly, assessee has purchased 25,000 shares on 24.11.2011 by way of allotment for Rs.2,50,000/-, which were dematerialized on 12.06.2013 and thereafter assessee sold the shares on 25.06.2013 to 19.09.2013 for Rs.1,24,61,944/- after deducting STT of Rs.12,461/- and other charges of Rs.17,426/- and thereby claimed the same as exempt u/s 10(38) of the Act.

10. From the undisputed facts, arguments addressed by the Id. Authorized Representatives of the parties to the appeal, order passed by the lower Revenue authorities and case laws relied upon, the sole question arises for determination in this case is :-

“as to whether Id. CIT (A) has erred in facts and law in confirming the disallowance of long term capital gains made by the AO, claimed by the assessee u/s 10(38) of the Act on the ground that shares were purchased by the assessee by making payment through banking channel?”

11. Perusal of the assessment order framed by the AO apparently shows that a thorough investigation has been made by calling

information u/s 133(6) of the Act from Bombay Stock Exchange as to whether company, namely, Cressanda Solution Ltd. whose shares have been purchased and sold by the assessee to claim the LTCG was suspended for trade within last three years. AO received specific reply from Bombay Stock Exchange that “as per record available with the exchange, trading in the securities of the company, Cressanda Solution Ltd. was suspended w.e.f. February 18, 2013 on account of reduction of capital and revoked w.e.f. March 14, 2013”. When we examine this fact in the light of the date of shares of sale by the assessee i.e. 25.06.2013 to 19.09.2013, it becomes clear that working of the company was not above board and it was merely providing accommodation entries in the form of bogus LTCG and STCG in order to evade the taxes.

12. The contention of the assessee that he has purchased the shares through banking channel and as such, when the purchase is genuine then sale cannot be questioned, is not tenable because the entire transaction of sale and purchase is to be seen in entirety in the light of the attending circumstances particularly when share of Rs.10 is sold after a period of one year at 282 times which is otherwise improbable in the ordinary course of business. More particularly when trading of the company was suspended by Bombay Stock Exchange in February 2013 and revoked w.e.f. March 2013.

13. Furthermore, when during the course of argument, Id. AR for the assessee was asked to explain the business of Cressanda Solution Ltd., he feigns ignorance by stating that assessee is neither promoter nor Director of the said company and he is unable to disclose these facts. We are of the considered view that when assessee is the beneficiary to the maximum extent, he cannot be allowed to step aside the questions because in the ordinary course of business, no one can be expected to invest the amount in a company having no profile in public domain. First of all, anybody who makes an investment in the company by way of purchase of shares, he used to peruse the profile and go through the balance sheet of the company.

14. But Id. AR for the assessee has also shown his helplessness to bring on record the balance sheet of the company which further strengthens the findings returned by the AO as well as Id. CIT (A) that Cressanda Solution Ltd. was just providing accommodation entries in form of fictitious LTCG claim to evade the taxes.

15. When we examine para 9.1 of the Id. CIT (A) he has given factual matrix of the sale of the shares by recording the finding that the prices of the shares of Cressanda Solution Ltd. were below Rs.1 per share till January 2013 but suddenly rose to Rs.45 per share in May 2013 onwards. Assessee purchased the shares @ Rs.10 which

shot upto Rs.476/- to Rs.503.90 per share in June and July 2013. This improbable appreciation in the price of the share when examined in the light of the fact that the assessee was not aware of profile of Cressanda Solution Ltd., its financial performance, growth, risk factor, etc. and it makes the entire transaction bogus and ingenuine.

16. The contention of the Id. AR for the assessee that he was not provided an opportunity of cross examining the witnesses examined by the DRI is not tenable because on the basis of investigation, AO has further conducted the investigation and he has confronted assessee with all the evidence collected by him (AO).

17. Moreover, DRI, Calcutta has thoroughly investigated 84 penny stock shares quoted on BSE and examined on oath large number of brokers, Directors of the Companies, promoters of penny stock companies, the entry operators who managed the dummy companies involving in price rigging. Investigation conducted by DRI was further shared with SEBI who has investigated 11 cases and found the allegations to be correct. So, in these circumstances, merely because of the fact that the initial purchase has been made through banking channel by the assessee, the entire transactions which are apparently appeared to be bogus

providing 282 times of appreciation to the assessee by the company whose balance sheet and profile is not available, cannot be held to be valid one.

18. No doubt, shares of these penny stock companies are listed on exchange but they are controlled by its promoters who used to arrange for bogus LTCG by indulging into price rigging etc. Meteoric rise in the prices of an unknown company whose trading in securities was suspended on 18.02.2013 and subsequently revoked on 14.03.2013 by the Bombay Stock Exchange shows that the transaction itself is bogus having been purchased through the brokers who are dealing in such dummy purchases. In the given circumstances, the assessee has failed to prove that his transaction was genuine and he has not indulged into any such bogus purchases. Moreover, when some of the amount out of the sale of shares is found to be credited in the books of account of the assessee, section 68 is applicable.

19. Furthermore, investigation conducted by the DRI found that one of the Directors of Cressanda Solution Ltd., namely, Shri Ajit Kumar Tulsian confessed that scrip of Cressanda Solution Ltd. has been controlled and managed by Deepak Patwari which fact was duly brought to the notice of the assessee and he has not tried to discredit that statement by producing Shri Ajit Kumar Tulsian

before the AO during assessment proceedings particularly when the said statement was made part of the show-cause notice issued to the assessee.

20. For argument sake, even if the purchase of the assessee is assumed to be genuine, the sale of shares at astronomical price with no real buyer in the market itself shows that the transaction was bogus, sham and ingenuine one.

21. The contention of the Id. AR for the assessee that it has duly satisfied the conditions laid down u/s 10(38) of the Act to claim the LTCG of Rs.1,21,69,408/- from the sale of shares of Cressanda Solution Ltd. is not tenable when this company, Cressanda Solution Ltd., is proved to be in the air and assessee is not aware of its profile, growth, risk, etc. Even meteoric rise in the prices of the share in the given circumstances itself proves that it was merely a bogus transaction to convert the black money into white money.

22. The contention of the Id. AR for the assessee that risk appetite determines the profit in sale and purchase of shares and when he has invested the money by purchasing the shares of Cressanda Solution Ltd. through banking channel its sale cannot be questioned, is not tenable because it is not a case of risk appetite to determine the profit rather entire transaction is in the papers only

and Cressanda Solution Ltd. has no legs to stand to make 282 times of return to its investors.

23. The contention of the Id. AR for the assessee that suspension of trading activities of Cressanda Solution Ltd. by BSE is because of reduction in capital and not on the allegation of price rigging is also not tenable because the transaction has to be examined as a whole and not on the basis of one or two single facts.

24. The contention of the Id. AR for the assessee that hike in the prices of shares of Cressanda Solution Ltd. was because of the amalgamation of M/s. Smartchamp IT and Infra Ltd. is also not tenable because this is the common modus operandi of penny stock companies in order to provide improbable capital gain to the investors. Moreover, in the absence of profile and balance sheet of Cressanda Solution Ltd., its financial performance cannot be gauged. Assessee preferred not to throw any light on the profile and financial performance of Cressanda Solution Ltd. to prove the genuineness of the transactions.

25. We are further of the view that price rigging of the shares can only be determine from the circumstances in which shares have been purchased in physical form and then get dematerialized just before the sale at astronomical price because direct evidence in such circumstances is usually not available.

26. Coordinate Bench of the Tribunal in case cited as *Pooja Ajmani vs. ITO* (supra) in the identical set of facts dismissed the appeal of the assessee by returning following findings :-

“5. I have heard both the parties and perused the records especially the impugned order. I find that AO after a detailed analysis of the investigation report with the materials available on record in the case of the assessee and on further examination of the financials of Kappac Pharma Ltd., price & volume of the scrip of Kappac Pharma Ltd., concluded that the modus operandi adopted by the assessee followed the pattern discovered by the Investigation wing during various search and survey operations. It was held that the transactions showing long term capital gain, which had been claimed by the assessee as exempt under section 10(38), were sham transactions. It was held that it was a case of bogus long-term capital gain obtained through brokers and that the assessee had used colourable device for avoidance of tax. The receipt of Rs.23,68,313/- was deemed to be income under section 69A. The assessee has contended that 4,000 shares of Kappac Pharma Ltd. purchased from Corporate Stock Broking (P) Ltd. at a price of Rs.13.09 per share in physical form. It has also been submitted that out of the 4,000 shares, 3000 shares were sold on 04/02/2014 for @Rs.677 per share and another 500 were sold on 18/02/2014 for a sum of @Rs.691 per share. It has also been submitted that the assessee did not indulge in any manipulation which may have been done by some broker and that the appellant was not given opportunity for cross examination. It has also been submitted that the Assessing Officer has made the addition without considering the facts of the case and only on the basis of presumption and presuppositions. It is noticed that prima facie, copies of all documents have been submitted to substantiate the genuineness of transactions related to purchase and subsequent sale of shares leading to long-term capital gain claim by the appellant. I find that these documents were also placed before the Assessing Officer who, after detailed examination and discussion and going beyond the said documents has established that the said documents were a mere mask to hide the real nature of transactions. By analysing the Balance Sheet, Profit & Loss account and the trade pattern of Kappac Pharma Ltd. during the period March, 2010 to March 2014, the Assessing Officer has pointed out that the share price of this company was neither affected by the movement of sensex nor the financials of the company justified such extraordinary jump in the price of its shares. It is noticed that apart from being based on evidences gathered during search and survey operations, analysis of the material on record and analysis of information from various sources, the findings of the Assessing Officer are also based on strong surrounding circumstances, preponderance of probability and human conduct in the light of detailed analysis of the modus operandi adopted by brokers and operators engaged in the business of providing entries of long term capital gains to the interested beneficiaries which has come to surface as a result of deep and wide investigation. Initial investment in a company of unknown credentials and subsequent jump in the share price of such a company cannot be

an accident or windfall but was possible, as clearly brought on record by the Assessing Officer, because of the manipulations in the price of shares in a pre-planned manner by the interested broker and entry operators. The insistence of the assessee that the transactions leading to long-term capital gains are supported by documents such as sale and purchase invoices, bank statements etc. cannot be accepted in view of the fact and circumstances of the case brought on record by the Assessing Officer after proper examination of the material facts and after taking into account the findings of SEBI and corroborating evidences gathered by the Directorate of Investigation, Kolkata against a network of brokers and operators engaged in manipulation of market price of shares of certain companies controlled and managed by such persons with a purpose to provide accommodation entries in the form of long term capital gains. Further, the contention of the assessee that long term capital gains cannot be treated as bogus merely because some investigation with regard to certain company and broker or investigation has been carried out by the Directorate of Investigation, Kolkata only proves that the appellant wants to take shelter under such documentary evidences which themselves have been created as masks to cover up the true nature of transaction. A genuine transaction must be proved to be genuine in all respect. The onus was on the appellant to prove that the transaction leading to claim of long term capital gains was distinctly genuine transaction and not bogus, premeditated transaction arranged with a view to evade taxes. The onus was on the assessee to contradict the findings that Kappac Pharma Ltd. was a company whose scrip was capable of being traded at high price as it was the appellant who had traded in the shares of the this company which resulted into claim of long term capital gains which is exempt under section 10(38). Once the assessee was made aware of the result of the investigation which proved that trading of shares leading to long term capital gains was not genuine, as per section 101 of the Indian Evidence Act, 1972, the onus was on the assessee to prove that she had earned genuine long term capital gains as it was the assessee who has made a claim that she was engaged in genuine share transactions. I find that in the case of Shri Charan Singh vs. Chandra Bhan Singh (AIR 1988 SC 6370), the Hon'ble Supreme Court have clarified that the burden of proof lies on the party who substantially asserts the affirmative of the issue and not upon the party who denies it. It has been further held that the party cannot, on failure to establish a prima facie case, take advantage of the weakness of his adversary's case. The party must succeed by the strength of his own right and the clearness of his own proof. He cannot be heard to say that it was too difficult or virtually impossible to prove the matter in question. In the case under consideration, since it is the appellant who had made the claim that she had earned genuine long term capital gain, all the facts were especially within her knowledge. Section 102 of Indian Evidence Act makes it clear that initial onus is on person who substantially asserts a claim. If the onus is discharged by him and a case is made out, the onus shifts on to deponent. It is pertinent to mention here that the phrase "burden of proof" is used in two distinct meanings in the law of evidence viz, 'the burden of establishing a case', and 'the burden of introducing evidence'. The burden of establishing a case remains throughout trial where it was originally placed, it never shifts. The burden of evidence may shift constantly as evidence is introduced by one side or the others. In this case, once the evidence that assessee has claimed bogus long

term capital gain was introduced by the Assessing Officer, the burden of evidence shifted to the assessee. During the assessment proceeding and even during the assessee proceeding, the assessee has failed to produce any evidence to prove that the long term capital gain claimed by her was genuine. In the present case, it is seen that the assessee has failed to discharge her burden of proof and the Assessing Officer, on the other hand, has proved that the claim of the appellant was incorrect. The enquiry conducted by SEBI was further corroborated by the investigation carried out by the Directorate of Investigation, has been thoroughly analysed by the Assessing Officer to prove that the assessee has introduced bogus long term capital gains in her books of account by routing her unaccounted income through a tax evasion scheme. The statement of brokers engaged in providing bogus long term capital gains clearly proves that Kappac Pharma Ltd. is one of such companies whose scrips have been manipulated to provide bogus long term capital gains. It is noted that on similar facts and circumstances, Hon'ble ITAT A-Bench, Chandigarh in the case of Shri Abhimanyu Soin vs ACIT, Circle-7, Ludhiana in ITA No.951/Chd./2016 vide order dated 18/04/2018, have expressed the view that the undisclosed income in the garb of long term capital gain has to be assessed as unexplained. The Hon'ble ITAT have held as under:-

"14. The ratio laid down by the Hon'ble Supreme Court in the case of SumatiDayal Vs. CIT [1995] 214 ITR 801 = 2002-TIOL-885-SC-IT-LB is squarely applicable in this case. Though the assessee has received the amounts by the way of account payee cheques, the assessee could nowhere prove the purchase of shares as claimed to have been made on 02/72/2008 in cash and it urns also not proved about the availability of the funds with the assessee as on the date of purchase of shares. The assessee was not in India as per the passport details available as per the record. This, coupled with the fact that the transfer of money in cash from Ludhiana to Delhi and a person representing the broker operating at Kolkata has collected the money at Delhi cannot be accepted. The tax authorities are entitled to look into the surrounding circumstances to find out the realities and the matter has to be considered by applying test of human probabilities as enunciated by the Hon'ble Supreme Court. The fact that inspite of earning 3072% of profits, the assessee never ventured to involve himself in any other transactions with the broker which gave him even much lower profits during the period which cannot be a mere coincidence or lack of interest or absence of advice from the financial institutions as done earlier.

15. In view of the detailed discussion above, and keeping in view the entirety of the facts and circumstances and specific peculiarity of the instant case and the judgments quoted above, we decline to interfere in the order of the Ld. CIT (A).

16. In the result, appeal of the Assessee is dismissed."

5.1 On the issue of circumstantial evidence and in the matters related to the discharge of 'onus of proof' and the relevance of

surrounding circumstances of the case, the Hon'ble Supreme Court in the case of CIT Vs. Durga Prasad More [(1972) 82 ITR540], have observed as under:

"...that though an appellant's statement must be considered real until it was shown that there were reasons to believe that the appellant was not the real, in a case where the party relied on self-sewing recitals in the documents, it was for the party to establish the transfer of those recitals, the taxing authorities were entitled to look into the surrounding circumstances to find out the reality of such recitals. Science has not yet invented any instrument to test the reliability of the evidence placed before a Court or Tribunal. Therefore, the Courts and the Tribunals have to judge the evidence before them by applying the test of human probability. Human minds may differ as to the reliability of piece of evidence, but, in the sphere, the decision of the final fact finding authority is made conclusive by law."

5.2 *I further find that the above ratio as laid down by the Hon'ble Supreme Court has been reiterated and applied by the Hon'ble Apex Court in the case of Sumati Dayal vs. CIT (214 ITR 801). It is essential on the part of the Assessing Officer to look into the real nature of transaction and what happens in the real word and contextualize the same to such transactions in the real market situation. Further, in the case of McDowell & Co. Ltd. [(1985) 154 ITR 148 (SC)], the Hon'ble Supreme Court have observed as under:*

"Tax planning may be legitimate provided it is within the framework of law. Colourable devices cannot be part of tax planning and it is wrong to encourage or entertain the belief that it is honourable to avoid the payment of tax by resorting to dubious methods. It is the obligation of every citizen to pay the taxes honestly without resorting to subterfuges."

5.3 *Every person is entitled to so arrange his affairs as to avoid taxation but the arrangement must be real and genuine and not a sham or make believe.*

5.4 *Keeping in view of the aforesaid discussions, I am of the view that documents submitted as evidences to prove the genuineness of transaction are themselves found to serve as smoke screen to cover up the true nature of the transactions in the facts and circumstances of the case as it is revealed that purchase and sale of shares are arranged transactions to create bogus profit in the garb of tax exempt long term capital gain by well organised network of entry providers with the sole motive to sell such entries to enable the beneficiary to account for the undisclosed income for a consideration or commission. I further find that the share transactions leading to long term capital gains by the assessee are sham transaction entered into for the purpose of evading tax. I note that the landmark decision of the Hon'ble Supreme Court in the case of McDowell and Company Limited, 154 ITR 148 is squarely applicable in this case wherein it has been held that tax planning may be legitimate provided it is within the framework of the law and any colourable devices cannot be part of tax planning and it is wrong to*

encourage or entertain the belief that it is honourable to avoid the payment of tax by dubious methods. However, the case laws cited by the Ld. counsel for the assessee are on distinguished facts, hence, not applicable in the instant case. The assessee has not raised any legal ground and argued only on merit for which assessee has failed to substantiate his claim before the lower revenue authorities as well as before this Bench. In view of above discussions, I am of the considered opinion that Ld. CIT(A) has rightly confirmed the addition in dispute, which does not need any interference on my part, therefore, I uphold the action of the Ld. CIT(A) on the issue in dispute and reject the grounds raised by the Assessee.”

27. Similarly, coordinate Bench of the Tribunal in case cited as *Udit Kalra vs. ITO* (supra) dismissed the appeal filed by the assessee who has claimed deduction u/s 10(38) of the Act for Rs.27,20,457/- in the identical facts which has been confirmed by the *Hon’ble Delhi High Court in ITA 220/2019 order dated 08.03.2019* by returning following findings :-

“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 (Mis 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.”

28. When we examine facts and circumstances of this case in the light of the order passed by the coordinate Bench of the Tribunal, affirmed by Hon’ble High Court discussed in the preceding para, no doubt assessee has meticulously completed the paper work by routing his entire investment through banking channel but the results thereof are altogether beyond human probabilities. Because

neither in the past nor in the subsequent years, assessee has indulged into any such investment having huge windfall. Had the assessee been so intelligent qua the intricacies of the share market, he would have definitely undertaken such risk taking activities in the past or future by making such investment in the unknown stock. So, we are of the considered view that what appears to be apparent in making investment by the assessee in unknown stock is not real when examined the whole transaction of sale and purchase of the stock with huge windfall to the assessee.

29. Hon'ble Apex Court in *CIT vs. Durga Prasad More 82 ITR 540* while deciding the identical issue whether apparent was not real and in those circumstances, taxing authorities were held entitled to look into the surrounding circumstances to find out the reality of such recitals/transactions by returning following findings:-

“ Held, reversing the decision of the High Court, (i) that it could not be said that the finding of the Tribunal as to the unreality of the trust put forward was not based on evidence or was otherwise vitiated;

(ii) that the Tribunal did not interpret the two deeds but merely found itself unable to accept the correctness of the recitals in those documents: to accept those recitals or not was within the province of the Tribunal and the High Court could not interfere with its conclusion unless it was perverse or not supported by evidence or was based on irrelevant evidence;

(iii) that though an apparent statement must be considered real until it was shown that there were reasons to believe that the apparent was not the real, in a case where a party relied on self-serving recitals in documents, it was for that party to establish the truth of those recitals: the taxing authorities were entitled to look into the surrounding circumstances to find out the reality of such recitals.”

30. So, the irresistible conclusion in this case is meticulous paper work by the assessee in making investment in unknown stock by the assessee and then selling the same as per convenience of the broker and entry operator by rigging prices at astronomical rate shows that the tax authorities have been compelled to examine the entire transactions in the light of the surrounding circumstances and has unearthed the bogus transaction of purchase and sale of shares which was not real and assessee has failed to dispel all the quarries raised by the AO to establish that the transaction in question was real and not beyond human probabilities.

31. In view of what has been discussed above and following the decision rendered by the coordinate Bench of the Tribunal in cases cited as *Pooja Ajmani vs. ITO* (supra) and *Udit Kalra* (supra) subsequently affirmed by the Hon'ble jurisdictional High Court, we are of the considered view that purchase and sale of shares of unknown company, Cressanda Solution Ltd., having no profile, financial growth, risk factor etc. available with the assessee, whose shares were purchased @ Rs.10 per share by the assessee and sold @ Rs.476 to Rs.503.90 per share, is merely a sham transaction credited to get the bogus profit at astronomical rate under the garb

of LTCG in connivance with the entry providers to make undisclosed income as disclosed one by evading the tax.

32. So, we are of the considered view that the Id. CIT (A) has passed a valid and reasoned order on the basis of law applicable to the facts and circumstances of the case. Case laws relied upon by the Id. AR for the assessee are not applicable to the facts and circumstances of the case. Consequently, the question framed is answered in the negative, hence the appeal filed by the assessee is hereby dismissed.

33. In view of the fact that appeal bearing ITA No.1881/Del/2018, in which the present stay application was filed, has since been disposed off vide this composite order, the present stay application is hereby dismissed having been become infructuous.

Order pronounced in open court on this 14th day of June, 2019.

**Sd/-
(R.K. PANDA)
ACCOUNTANT MEMBER**

**sd/-
(KULDIP SINGH)
JUDICIAL MEMBER**

Dated the 14th day of June, 2019/TS

Copy forwarded to:

- 1.Appellant
- 2.Respondent
- 3.CIT
- 4.CIT(A)-12, New Delhi.
- 5.CIT(ITAT), New Delhi.

**AR, ITAT
NEW DELHI.**