

**IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCHES 'G', NEW DELHI**

Before Sh. H. S. Sidhu, Judicial Member

Dr. B. R. R. Kumar, Accountant Member

ITA No. 1006/Del/2019 : Asstt. Year : 2014-15

Suman Poddar, C/o Raj Kumar & Associates, CAs, L-7A (LGF), South Extension, Part-II, New Delhi-110049	Vs	Income Tax Officer, Ward-39(5), New Delhi-110002
(APPELLANT)		(RESPONDENT)
PAN No. AAOPP4893N		

**Assessee by : Sh. Raj Kumar Gupta, CA
Revenue by : Ms. Ashima Neb, Sr. DR**

Date of Hearing: 03.07.2019	Date of Pronouncement: 25.07.2019
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ORDER

Per Dr. B. R. R. Kumar, Accountant Member:

The present appeal has been filed by the assessee against the order of the Ld. CIT(A)-13, New Delhi dated 31.12.2018.

2. The assessee has raised following grounds of appeal:

"1. That under the facts and circumstances, both the lower authorities erred in law as well as on merits in disbelieving the genuineness of LTCG of Rs.73,77,806/- on sale of shares, consequently erred in not allowing the exemption claimed u/s.10(38) of the I.T. Act, thus erred in making addition of Rs.73,77,806/- U/s. 68 of the I.T. Act.

1.1 That under the facts and circumstances, the impugned findings for addition of Rs.73,77,806/- U/s. 68 are un sustainable in law as well as on merits for not confronting with all materials used adversely and also for not providing cross examination of persons whose statements have been recorded on the back of the assessee and has been used adversely, moreso, when specific request was also made for the same.

1.2 That the findings of addition of Rs.73,77,806/- U/s. 68 are based on no cogent material whatsoever and is a result of assumptions, presumptions, surmises and conjectures."

3. Brief facts of the case are that during the year, the assessee has declared income of Rs.4,96,650/- by filing the ITR online on 20.03.2015. She has shown income from house property, business and other sources. She has also shown long term capital gains of Rs.73,77,806/- and claimed it as exempt u/s 10(38). The Assessing Officer made addition of the Long Term Capital Gain u/s 68 of the Act after taking into consideration the affairs of the assessee which was supported by the findings of investigations done by the Revenue department at Kolkata. The Id. CIT (A) confirmed the addition made by the Assessing Officer for which the assessee is in appeal before us.

4. During the hearing the Id. AR argued that the assessee has purchased 1,500 shares of Smartchamps IT & Infra Ltd. vide cheque no. 31022494 dated 18.09.2011. The bank account depicting the transaction has been submitted. Owing to the merger of this company, the assessee has got 15,000 equity shares of Cressenda Solutions Ltd. vide the order of the Hon'ble High Court of Bombay dated 24.01.2013. Later, the shares have been dematerialized by NSDL depository namely, KK Securities Ltd. The assessee has sold these shares of Cressenda Solutions Ltd. on various dates from 17.07.2013 to 12.09.2013 and earned net amount of Rs.75,19,505/-. Before the Revenue the assessee has produced the contract notes detailing the trade dates and also the details of amounts received through the broker in their bank account maintained with Union Bank of India pertaining to the sale of these shares. Before the authorities, the assessee has produced the following to prove the genuineness of the transactions.

Regarding D-mat account : 1. Account opening form

2. Share dematerialization request form

Regarding purchase of shares: 1. Copy of Application form for purchase of shares of Smartchamps IT & Infra Ltd.

2. Bank statement reflecting share purchase dated 22.09.2011

3. Judgment of Bombay High Court approving amalgamation of Smartchapms IT & Infra Ltd. to Cressanda Solution Ltd.

4. Share certificate issue by Cressanda Solution Ltd.

5. Transaction statement of D-materialization

5. The main arguments of the assessee of the Id. AR revolved around the facts that the shares were purchased in A.Y. 2012-13 through banking channel and through D-Mat a/c. The purchase stands accepted in A.Y. 2012-13. Thereafter, in A.Y. 2014-2015, these shares were sold after retaining for a period of more than 12 months, through D-Mat a/c., through broker after suffering STT and through banking channel. It is also to be noted that before sale, the said company stood amalgamated in another company namely M/s Cressanda Solutions Ltd. through merger order passed by Hon'ble Bombay High Court, evidence thereof has already been filed. Hence, the purchase as well as sale of these shares has taken place in the normal course. The transaction satisfies all the conditions required for claiming the same as exempted u/s 10(38) of the I.T. Act, hence, the claim has been correctly made.

The time line of the entire transactions is as under:

<i>Date</i>	<i>Transactions</i>	<i>Amount</i>
22.09.2011	<i>Purchase of 15000 shares at the Rate of Rs.10/-per shares of M/s Smartchamps IT & Infra Ltd</i>	1,50,000/-
21.02.2013	<i>Letter dated 21 February 2013 from M/s Cressanda Solutions Limited informing the issue of shares pursuant to the Scheme of Amalgamation of Smartchamps IT and Infra Ltd. with Cressanda Solutions Limited, approved by the Hon'ble High Court of Bombay vide order dated 24 January 2013 to prove the conversion of shares of M/s Smartchamps IT & Infra Limited into the shares of M/s Cressanda Solutions Limited in the ratio of 1:1 as on record date of 21 February 2013 (15000 shares received) This was conveyed to the assessee by M/s Sharepro Services (India) Pvt. Ltd. who was the Share Transfer agent of M/s Cressanda Solutions.</i>	
05.07.2013	<i>Dematerialization of shares through DP, M/s KK Securities Ltd.</i>	
18.07.2013 to 12.09.2013	<i>Sale of 15000 shares @ varying between Rs. 501.75 to Rs. 503.50 through M/s Religare Securities. (broker)</i>	73,77,806/-

6. The Id. AR argued that the decisions have made solely on the report of the Investigation Wing and the statement of the persons recorded during the survey and opportunity of cross examination has not been provided. He further relied on the order of the Co-ordinate Bench of ITAT in the case of Swati Luthra in ITA No. 6480/2017 wherein the case was decided in favour of the assessee on the grounds that Revenue could not point out any specific defect with regard to the documents submitted by

the assessee. He relied on in the case of AA Estates Pvt. Ltd. in CA No. 3968 of 2019 (SC) and Yes Bank Ltd. CA No. 3148 of 2019 (SC) regarding the question of law. The Id. AR also tried to differentiate the case of Udit Kalra Vs ITO (ITA No. 6717/Del/2017) on the grounds that the referral value of this case goes away for the time being as the High Court has not framed any question of law. He tried to differentiate while the shares involved in the case of Udit Kalra are of Kappac Pharma Ltd. which was suspended temporarily by the SEBI, the present case involved shares of Cressanda Solutions Ltd. It was argued that the shares in the instant case have been purchased in cheque and the relevant bank statement has been provided and the shares have been purchased directly from the company. He reiterated his argument that the shares have been allotted by the way of amalgamation by the order of the High Court and no inquiries were conducted by the Investigation department to prove or to suggest any bogus nature of the transactions.

7. Against the arguments of the Id. AR the Departmental Representative, Ms. Ashima Neb heavily relied on the order of the Coordinate Bench of ITAT in the case of Sh. Abhimanyu Soin Vs ACIT in ITA No. 951/Chd/2016, order dated 18.04.2018 and in the case of Pooja Ajmani in ITA No. 5714/Del/2018, order dated 25.04.2019 and extensively argued on the ratio laid down in these judgments. It was argued that the case of Pooja Ajmani dealt with the shares of Kappac Pharma Ltd. and also argued on the similarity of the cases of Udit Kalra in relation to Kappac Pharma Ltd. and that of the assessee, the shares of Smartchamps/Cressanda Solutions Ltd. Regarding the judgment of Andman Timber Industries quoted in the order of Swati Luthra (supra), it was argued that in the said case the order of the Commissioner was based on the statement given by the two witnesses, the entire addition was made on the statement of the witness in a case of Central Excise

Evasion. In that case the opportunity to cross examine was not given by the adjudicating authority in spite of specific request by the appellant, whereas the addition made in the case is not solely based on the statement of witness but a number of corroborative and direct evidences collected by the department and hence, the case of Andman Timber Industries is differentiated on facts.

8. Heard the arguments of both the parties and perused the material available on record.

9. We have gone through the rationale given by both the parties pertaining to their arguments. In this case, it is an uncontroverted fact that the assessee has failed to prove the genuineness of the transaction. The AO has worked out the glaring facts, which cannot be ignored and which are clear indicative of the non-genuine nature of the transactions. The assessee could not satisfactorily explain how the investments in the absence of any evidence as to the financials, growth and operations of the company could earn profit of 4910% over a short period of 5 months from the date of allotment of shares (21.02.2013-date of allotment and 18.07.2013 to 12.09.2013 -date of sale) of Cressanda Solutions Ltd. against the purchase of 15,000 shares of Smarchamps IT and Infra Ltd. on 22.09.2011. Most importantly, in spite of earning so much of profit, the assessee has never embarked upon any transactions for investments with the broker or in any other dealing of shares. The revenue from operations of Cressanda Solutions Ltd. for the year March 2012 was Rs.00 and, for the year March 2013 is Rs. 0.99 Cr. The financials of the company proving that the entity is a penny stock company are as under:

Balance Sheet of Cressanda Solution

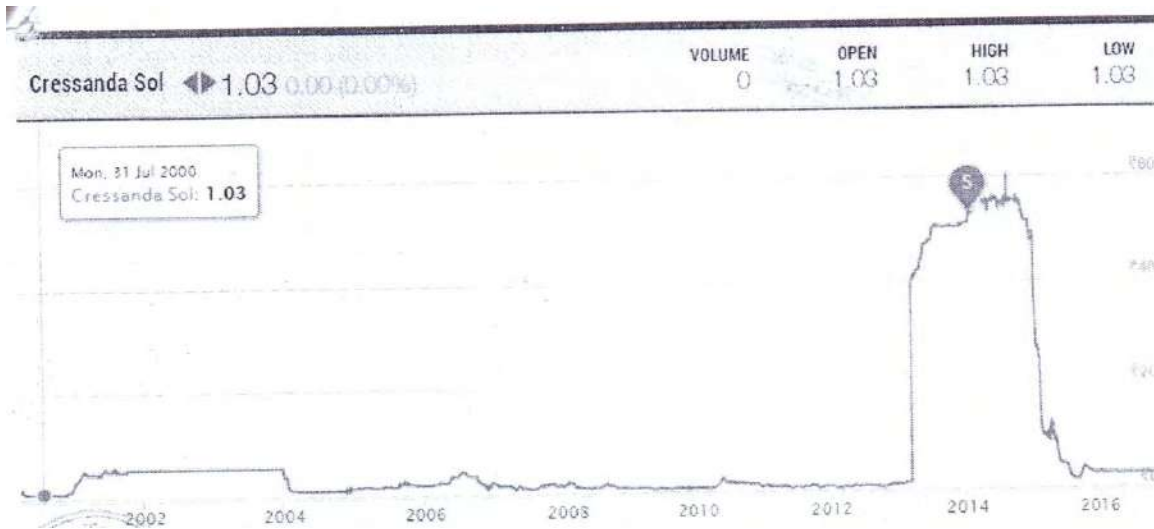
----- in Rs. Cr. -----

	Mar 16	Mar 15	Mar 14	Mar 13	Mar 12
	12 mths	12 mths	12 mths	12 mths	12 mths
EQUITIES AND LIABILITIES					
SHAREHOLDER FUNDS					
Equity Share Capital	30.36	30.36	30.36	30.36	9.00
Total Share Capital	30.36	30.36	30.36	30.36	9.00
Reserves and Surplus	-	-0.65	-0.82	0.63	-8.89
Total Reserves and Surplus	-	-0.65	-0.82	0.63	-8.89
Total Shareholders Funds	29.29	29.71	29.54	30.99	0.11
NON-CURRENT LIABILITIES					
Long Term Borrowings	0.00	0.00	0.00	0.00	1.48
Other Long Term Liabilities	0.00	0.00	0.00	0.00	0.15
Long Term Provisions	0.00	0.00	0.00	0.00	0.05
Total Non-Current Liabilities	0.00	0.00	0.00	0.00	1.68
CURRENT LIABILITIES					
Trade Payables	0.00	0.00	23.82	22.35	0.00
Other Current Liabilities	0.01	0.10	0.32	0.56	0.00
Short Term Provisions	0.00	0.00	0.00	0.08	0.00
Total Current Liabilities	0.01	0.10	24.14	22.99	0.00
Total Capital And Liabilities	29.30	29.81	53.68	53.98	1.79
ASSETS					
NON-CURRENT ASSETS					
Tangible Assets	0.03	0.04	0.05	0.06	0.00
Fixed Assets	0.03	0.04	0.05	0.06	0.00
Non-Current Investments	0.00	0.00	0.00	1.09	1.09
Long Term Loans And Advances	18.96	18.87	24.11	25.11	0.00
Other Non-Current Assets	10.21	10.60	0.15	0.77	0.65
Total Non-Current Assets	29.20	29.50	24.31	27.03	1.74
CURRENT ASSETS					
Inventories	0.00	0.00	0.00	0.70	0.00
Trade Receivables	0.00	0.00	29.13	26.01	0.00
Cash And Cash Equivalents	0.10	0.23	0.18	0.18	0.04
Short Term Loans And Advances	0.00	0.00	0.00	0.00	0.01
Other Current Assets	0.00	0.08	0.05	0.05	0.00
Total Current Assets	0.10	0.31	29.37	26.95	0.05
Total Assets	29.30	29.81	53.68	53.98	1.79

Profit & Loss account of Cressanda Solution

----- in Rs. Cr. -----

	Mar 16	Mar 15	Mar 14	Mar 13	Mar12
	12 mths	12mths	12 mths	12 mths	12 mths
INCOME					
Revenue From Operations [Gross]	0.00	0.00	6.44	0.99	0.00
Revenue From Operations [Net]	0.00	0.00	6.44	0.99	0.00
Total Operating Revenues	0.00	0.00	6.44	0.99	0.00
Other Income	0.03	0.17	0.14	0.07	0.02
Total Revenue	0.03	0.17	6.58	1.06	0.02
EXPENSES					
Operating And Direct Expenses	0.00	0.00	5.14	0,08	0,00
Changes In Inventories Of FG,WIP And Stock-In Trade	0.00	0.00	0.70	0.00	0.00
Employee Benefit Expenses	0.05	0.04	0.03	0.06	0.00
Depreciation And Amortization Expenses	0.01	0.01	0.01	0.01	0.00
Other Expenses	0.14	0.28	2.14	0.41	0.04
Total Expense~	0.20	0.32	8.02	0.57	0.04
	Mar 16	Mar15	Mar 14	Mar13	Mar 12
	12 mths	12 mths	12 mths	12 mths	12 mths
Profit/Loss Before Exceptional, Extra Ordinary Items And Tax	0.17	-0.15	-1.44	0.49	-0.02
Profit/Loss Before Tax	0.17	-0.15	-1.44	2.49	-0.02
Tax Expenses-Continued Operations					
Current Tax	0.00	0.00	0.00	0.09	0.00
Tax For Earlier Years	0.25	0.00	0.00	0.00	0.00
Total Tax Expenses	0.25	0.00	0.00	0.09	0.00
Profit/Loss After Tax And Before Extra Ordinary Items	0.42	-0.15	-1.44	0.40	-0.02
Profit/ Loss From Continuing Operations	0.42	-0.15	-1.44	0.40	-0.02
Profit/Loss For The Period	0.42	-0.15	-1.44	0.40	-0.02
	Mar 16	Mar 15	Mar 14	Mar 13	Mar 12
	12 mths	12 mths	12 mths	12 mths	12 mths
OTHER ADDITIONAL INFORMATION					
EARNINGS PER SHARE					
Basic EPS (Rs.)	0.01	-0.01	-0.48	0.13	-0.02
Diluted EPS (Rs.)	0.01	-0.01	-0.48	0.13	-0.02



10. With such financials and affairs of business, the purchase of share of face value Rs. 10/- at the rate of Rs.491/- by any person and the assessee's contention that such transaction is genuine and credible and arguing to accept such contention would only make the decision of the judicial authorities a fallacy.

11. The evidences put forth by the Revenue regarding the entry operation fairly leads to a conclusion that the assessee is one of the beneficiaries of the accommodation entry receipts in the form of long-term capital gains. The assessee has failed to prove that the share transactions are genuine and could not furnish evidences regarding the sale of shares except the copies of the contract notes, cheques received against the overwhelming evidences collected by the Revenue regarding the operation of the entire affairs of the assessee. This cannot be a case of intelligent investment or a simple and straight case of tax planning to gain benefit of long-term capital gains. The earnings @ 491% over a period of 5 months is beyond human probability and defies business logic of any business enterprise dealing with share

transactions. The net worth of the company is not known to the assessee. Even the brokers who coordinated the transactions were also unknown to the assessee. All these facts give credence to the unreliability of the entire transaction of shares giving rise to such capital gains. The ratio laid down by the Hon'ble Supreme Court in the case of Sumati Dayal vs. CIT, 214 ITR 801 is squarely applicable to the case. Though the assessee has received the amounts by way of account payee cheques, the transactions cannot be treated as genuine in the presence of the overwhelming evidences put forward by the Revenue. The fact that in spite of earning such steep profits, the assessee never ventured to involve himself in any other transaction with the broker cannot be a mere coincidence of lack of interest. Reliance is placed on the judgment in the case of Nipun Builders and Developers Pvt. Ltd. (supra), where it was held that it is the duty of the Tribunal to scratch the surface and probe the documentary evidence in depth, in the light of the conduct of assessee and other surrounding circumstances in order to see whether the assessee is liable to the provisions of section 68 or not. In the case of NR Portfolio , it was held that the genuineness and credibility are deeper and obtrusive. Similarly, the bank statements provided by the assessee to prove the genuineness of the transactions cannot be considered in view of the judgment of Hon'ble court in the case of Pratham Telecom India Pvt. Ltd., wherein, it was stated that bank statement is not sufficient enough to discharge the burden. Regarding the failure to accord the opportunity of cross examination, we rely on the judgment of Prem Castings Pvt. Ltd. Similarly, the Tribunal in the case of Udit Kalra, ITA No. 6717/Del/2017 for the assessment year 2014-15 has categorically held that when there was specific confirmation with the Revenue that the assessee

has indulged in non-genuine and bogus capital gains obtained from the transactions of purchase and sale of shares, it can be a good reason to treat the transactions as bogus. The differences of the case of Udit kalra attempted by the Ld. AR does not add any credence to justify the transactions. The Investigation Wing has also conducted enquiries which proved that the assessee is also one of the beneficiaries of the transactions entered by the Companies through multiple layering of transactions and entries provided. Even the BSE listed this company as being used for generating bogus LTCG. On the facts of the case and judicial pronouncements will give rise to only conclusion that the entire activities of the assessee is a colourable device to obtain bogus capital gains. The Hon'ble High Court of Delhi in the case of Udit Kalra, ITA No. 220/2009 held that the company had meager resources and astronomical growth of the value of the company's shares only excited the suspicion of the Revenue and hence, treated the receipts of the sale of shares to be bogus. Hon'ble High Court has also dealt with the arguments of the assessee that he was denied the right of cross examination of the individuals whose statements led to the enquiry. The ld. AR argument that no question of law has been framed in the case of Udit Kalra also does not make any tangible difference to the decision of this case. Since the additions have been confirmed based on the enquiries by the Revenue, taking into consideration ratio laid down by the various High Courts and Hon'ble Supreme Court, our decision is equally applicable to the receipts obtained from all the three entities. Further, reliance is also placed on the orders of various Courts and Tribunals listed below.

- *M.K. Rajeshwari vs. ITO in ITA No. 1723/Bang/2018, order dated 12.10.2018*
- *Abhimanyu Soin vs. ACIT in ITA No. 951/Chd/2016, order dated 18.04.2018*
- *Sanjay Bimalchand Jain vs. ITO 89 taxmann.com 196*
- *Dinesh Kumar Khandelwal, HUF vs. ITO in ITA No. 58 & 59/Nag/2015, order dated 24.08.2016*
- *Ratnakar M. Pujari vs. ITO in ITA No. 995/Mum/2012, order dated 03.08.2016*
- *Disha N. Lalwani vs. ITO in ITA No. 6398/Mum/2012, order dated 22.03.2017*
- *ITO vs. Shamim M. Bharwoni [2016] 69 taxmann.com 65*
- *Usha Chandresh Shah Vs ITO in ITA No. 6858/Mum/2011, order dated 26.09.2014*
- *CIT vs. Smt. Jasvinder Kaur 357 ITR 638*

12. The facts as well as rationale given by the Hon'ble High Court are squarely applicable to the case before us. Hence, keeping in view the overall facts and circumstances of the case that the profits earned by the assessee are a part of major scheme of the accommodation entries and keeping in view the ratio of the judgments quoted above, we, hereby decline to interfere in the order of the ld. CIT(A).

13. In the result, the appeal of the assessee is dismissed.

(Order Pronounced in the Open Court on 25/07/2019).

Sd/-

(H. S. Sidhu)
Judicial Member

Sd/-

(Dr. B. R. R. Kumar)
Accountant Member

Dated: 25/07/2019

Subodh

Copy forwarded to:

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

ASSISTANT REGISTRAR