

**IN THE INCOME TAX APPELLATE TRIBUNAL  
DELHI BENCH: 'F' NEW DELHI**

**BEFORE SHRI N.K. SAINI, ACCOUNTANT MEMBER  
&  
SMT. BEENA PILLAI, JUDICIAL MEMBER**

**I.T.A .Nos. 1538 & 3936/Del/2014  
(ASSESSMENT YEAR-2004-05)**

|                               |                                       |   |
|-------------------------------|---------------------------------------|---|
| ACIT,<br>Circle-1,<br>Meerut. | vs                                    | Jitendra Kumar Gupta,<br>219, Railway Road,<br>Meerut.<br><b>AARPG5507B</b> |
| <b>Appellant by</b>           | <b>Sh. Ved Prakash Mishra, Sr. DR</b> |   |
| <b>Respondent by</b>          | <b>Sh. Sanjiv Sapra, Adv.</b>         |   |

|                              |                   |
|------------------------------|-------------------|
| <b>Date of Hearing</b>       | <b>03.12.2015</b> |
| <b>Date of Pronouncement</b> | <b>11.12.2015</b> |

**ORDER**

**PER BEENA PILLAI, JUDICIAL MEMBER:**

These are the appeals filed by the Revenue against the ld. CIT(A)-Meerut, vide his order dated 10/12/2013 for A.Y. 2004-05, in quantum appeal, and penalty appeal filed against the order dated 25/02/2014 by ld. CIT(A)-Muzaffarnagar for A.Y. 2004-05 on the following grounds of appeal:

**Grounds of ITA No. 1538/D/14 – Quantum appeal:**

1. *“Whether in the facts and circumstances of the case, the ld. CIT(Appeals) is justified in allowing the long term capital loss of Rs. 45,69,287/- on the sale of 5,800 shares of M/s R.B. Credit (P) Ltd. ignoring the fact that the shares having face value of Rs. 10/- were acquired by the assessee in*

*March, 2000 and January 2002 at a premium of Rs. 40/- (50,000 shares) and Rs. 240/- (8,000 shares) but the sale was effected by the assessee at the face value of Rs. 10/- only on 29/09/2013 and 20/10/2013 respectively.*

- 2. That the appellant craves leave to add, modify and/or delete any grounds of appeal.*
- 3. In the facts and circumstances of the case, the order of the CIT(A), Meerut may be set aside and that of the Assessing Officer restored.”*

**Grounds of ITA No. 3936/D/14 – Penalty appeal:**

- 1. “Whether in the facts and circumstances of the case, the ld. CIT(A) is justified in deleting the penalty of Rs. 1005243/- imposed by the Assessing Officer on the ground that the additions on the basis of which penalty is imposed, have been deleted by the ld. CIT(A), without appreciating the fact that the said order of ld. CIT(A), deleting the additions, has not been accepted by the department and departmental appeal against the said order is pending before ld. ITAT, New Delhi.*
- 2. That the appellant craves leave to add, modify and/or delete any grounds of appeal.*
- 3. In the facts and circumstances of the case, the order of the Commissioner of Income Tax (Appeals), Meerut, may be set aside and that of the Assessing Officer restored.”*

2. We first take up **ITA No. 1538/D/2014**, being the Quantum appeal:

The brief facts of the case are as under:

The assessment u/s 143(3) was completed by the ld. Assessing Officer vide order dated 29/12/2006 at an income of Rs. 77,55,375/- after rejecting the long term capital loss of Rs. 45,69,287/-.

2.1. During the course of the assessment proceedings the ld. Assessing Officer had disallowed the long term capital loss which

was incurred by the assessee on sale and purchase of shares. The ld. CIT(A), Meerut vide his order dated 07/01/09 confirmed the addition made by the Assessing Officer.

2.2. Aggrieved by the order of the ld. CIT(A) the assessee had filed appeal before this Tribunal being ITA No. 1540/D/2008. This Tribunal vide its order dated 30/12/09 directed the ld. Assessing Officer to examine the matter afresh vide para 16 of the order, which is reproduced below:

*“After considering the assessment order as well as order of CIT(A), we are of the opinion that no material has been brought on record by the assessee to justify that the purchase price given by him for the shares was a justified price and similar is the position with regard to sale price. There is no material on record to show also that the shares purchased and sold by the assessee were not belonging to the family concern. There is lack of material either in the order of CIT(A) or in the order of Assessing Officer. Though the Assessing Officer has observed that the value of shares as on the date of purchase cannot be taken at Rs. 50/- and Rs. 250/- per share but he has also not given any finding that what could be an appropriate rate of purchase and whether the sale shown rate shown by the assessee was justified. All these aspects have not been made clear. Therefore, we are of the opinion that this matter is required to be restored to the file of Assessing Officer for giving appropriate findings on the purchase and the sale of shares on which such long term capital loss has been claimed by the assessee. After giving a reasonable opportunity of hearing to the assessee, the Assessing Officer will re-decide this issue in accordance with law. We, direct accordingly.”*

2.3. Following the directions of this Tribunal, the assessee was called upon vide letter dated 01/11/2010 by the ld.AO.

2.4. Accordingly, the assessee filed certain reply on 10/11/2010. The ld. Assessing Officer issued notice u/s 142(1) as the facts were insufficient to reconsider the issue as per the directions of this Tribunal. The ld. AR did not appear on the date fixed. The ld. Assessing Officer, therefore, relying upon the findings of the Assessing Officer in the assessment order, completed the assessment on the total income at Rs. 10,48,550/-.

3. Aggrieved by the order of the Assessing Officer the assessee preferred an appeal before the ld. CIT(A). Before the ld. CIT(A) the assessee filed an affidavit stating that, the assessee had not received the assessment order and the notice of demand, and it was only after the receipt of the order passed u/s 271(1)(c) of the Act dated 29/06/2011, that the assessee gathered regarding the assessment being completed.

3.1. It was noted by the ld. CIT(A) that the assessee had claimed a long term capital loss of Rs. 45,69,287/- on the sale of 58,000 shares of M/s R.B. Credit Pvt. Ltd. having face value of Rs. 10/- which were acquired by the assessee in March, 2000 and January, 2002 at a premium of Rs. 40/- (5,000 shares) and Rs. 240/- (8,000 shares) respectively. After indexing the cost of acquisition, the resultant long term capital loss was worked out at Rs. 45,69,287/-. The ld.CIT(A) observed that, the Assessing Officer had determined the net asset value at Rs. 34.49 per shares of M/s R.B. Credit Pvt.

Ltd., as on 31/03/2004 and concluded that the purchase price shown by the assessee amounting to Rs. 50/- and Rs. 250/- per share cannot be accepted. The ld. CIT(A) further recorded that without making any further comment the Assessing Officer rejected the loss as claimed by the assessee. He also observed that the Assessing Officer during the proceedings u/s 254 has merely repeated what has been stated in the original assessment order and has not brought any new facts on record.

3.2. The ld. CIT(A) after going into the submissions of the assessee held that the actions of the Assessing Officer could not be sustained as the purchases and the sales of the shares have been settled through banking channels and nothing has been brought on record to show that such sales or purchases were in the nature of collusive transactions.

4. Aggrieved by the order of the ld. CIT(A) the assessee is in appeal before us.

4.1. The ld. DR submitted that the shares were not quoted at the market value and the Assessing Officer was right in working out the sale price on the basis of book value thereby making a disallowance while working out the capital gain.

4.2. The ld. DR relied upon the order of the Assessing Officer.

5. On the contrary, the ld. AR submitted that the issue under consideration is squarely covered vide order dated 27/02/2015 in the case of ACIT, Circle (1), Meerut vs. Shri Aditya Gupta in ITA No. 4938/D/2011 for A.Y. 2002-03 (copy of the said order was furnished which is placed on record). It is submitted by the ld. AR

that Shri Ashish Gupta is the brother of assessee herein, and the transactions in shares were similar in both these cases and that this Tribunal has dismissed the appeal filed by the Revenue in the case of ACIT vs. Shri. Ashish Gupta in ITA no.225/D/2012 vide order dated 9.08.2012 and ACIT vs. Sh. Aditya Gupta in ITA no. 4938/D/2011 for asst.yr.2002-03, vide order dated 02.2015 .

5.1. The ld. AR submitted that the long term capital gain or loss is to be computed in the manner as laid down in section 48 of the Act as in the section the expression used is “full value of consideration received or accrued”, meaning thereby there is no scope of any fair market value or estimation.

5.2. It has been submitted before us that there is no material on record on the basis of which it can be said that the assessee had received over and above the agreed consideration. The ld.AR submitted that, it is a well settled position in law that, in a case of sale, the Assessing Officer has no power to replace the value of consideration agreed between the parties. In support of this proposition reliance has been placed on the following decision:

- i.* “Nilofar Singh 309 ITR 233 (Del.);
- ii.* George Hanorson 66 ITR 622 (SC);
- iii.* Gillanders Arbuthonot 87 ITR 407 (SC).

5.3. The ld. AR further submitted that the Assessing Officer has accepted the sale consideration received by the assessee as genuine, as it is evident from the fact that while computing the income of the assessee the Assessing Officer has adopted the net

figure of loss as computed by the assessee in its computation and no separate addition has been made.

6. In the present case, the assessee had claimed a long term capital loss of Rs. 45,69,287/- the assessee had claimed a long term capital loss of Rs. 45,69,287/- on the sale of 58,000 shares of M/s R.B. Credit Pvt. Ltd. having face value of Rs. 10/- which were acquired by the assessee in March, 2000 and January, 2002 at a premium of Rs. 40/- (5,000 shares) and Rs. 240/- (8,000 shares) respectively. After indexing the cost of acquisition, the resultant long term capital loss was worked out at Rs. 45,69,287/-.

6.1. Considering the above submission by both the parties, we find that, during the year under consideration the Assessing Officer has accepted the claimed loss regarding the shares, but has doubted the genuineness of the claim on the basis that, the shares have not been valued at market price. It has been contended that the authorities below have overlooked that the shares were duly transferred in the name of the other party, and the consideration was received by cheque.

6.2. Besides the factual contention of the assessee, the long term capital gain or loss is to be computed in the manner, as laid down in section 48 of the Act, wherein expression used is full value of consideration received or accrued. The main thrust behind this contention of the assessee was that there is no scope of any fair market value or estimation, and in the case of sale of shares the Assessing Officer has no power to replace the value of the sale consideration agreed between the parties.

6.3. We find substance in the above contention of the assessee, in respect of this settled position in law. In this regard, we find strength from the above cited decision of Hon'ble Delhi High Court in the case of Nilofar Singh (supra) holding that the expression "full value of consideration" used in section 48 of the Act does not have any reference to market value. Similar view has been expressed in other decision, cited hereinabove, by the ld. AR.

6.4. Similar was the situation in the case of Shri Ashish Gupta (supra) and Aditya Gupta (supra), brothers of assessee. This Tribunal in para 7 of the order had adjudicated identical issue in Aditya Gupta(supra), by relying on the order of Ashish Gupta (Supra) as under:

*"8. We have heard the rival submissions of both the parties and have gone through the material available on record. We have observed that the case of the assessee had traveled upto the stage of ITAT and Hon'ble ITAT vide its order dated 16.12.2010 had remanded back to the office of ld. CIT(A) being a non-speaking order of ld. CIT(A) and again in the second round of appeal the case has reached before us. We have carefully considered the facts of the case and have gone through the assessment order, the ld. CIT(A)'s order and order of the Hon'ble ITAT, we have noted that sale and purchase of share was done through cheques and transfer of shares was properly supported by the transfer deeds and complete formalities were done by the issuing company in respect of allotment of shares and transfer of shares. Nothing adverse was brought by the Assessing Officer except his belief that assessee is not expected to sell shares below the book value section 48 clearly states that for the purpose of calculation of capital gain of shares, it is only the sum received which can be*

*considered for calculation of capital gain. In view of the above, we are of the considered opinion that the ld. CIT(A) has rightly considered the loss declared by the assessee. In view of the above, we do not see any reason to interfere in the order of the ld. CIT(A)."*

6.5. In view of the findings in the above cited decisions that the expression "full value of consideration" used in section 48 of the Income Tax Act, 1961 does not have any reference to market value, we are of the view that the Assessing Officer was having no power to replace the value of the consideration agreed between the parties with any fair market value or estimation. Only because the Pioneer Ltd. had shown the book value of shares at the rate of Rs. 40/- (50,000 shares) and Rs. 240/- (8,000 shares), the Assessing Officer was not justified to ignore the price agreed between the parties and to doubt the genuineness of the claimed loss, even ignoring the valuation report.

6.6. In view of the above discussion, on merits as well as the findings of the Tribunal in the case of Shri Aditya Gupta (supra) brother of the assessee, we do not see any merit in the appeal filed by the Department.

6.7. In the result, the appeal filed by the Revenue is dismissed.

7. Now we take up the appeal no. **3936/D/2014**, being the penalty appeal.

7.1. This penalty appeal is against the addition that has been deleted by the ld. CIT(A) in the quantum appeal. As we have

decided the quantum appeal discussed hereinabove, in favour of the assessee, the penalty appeal preferred by the Revenue does not survive.

7.2. The penalty appeal filed by the Revenue is hereby dismissed.

**The order is pronounced in the open court on  
11.12.2015**

**Sd/-  
(N.K. SAINI)  
ACCOUNTANT MEMBER**

Dated: 11.12.2015

*\*Kavita, P.S.*

**Sd/-  
(BEENA PILLAI)  
JUDICIAL MEMBER**

Copy forwarded to:

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

ASSISTANT REGISTRAR  
ITAT NEW DELHI

|     |  | Date     |
|-----|--|----------|
| 1.  | Draft dictated on                                | 08.12.15 |
| 2.  | Draft placed before author                       | 09.12.15 |
| 3.  | Draft proposed & placed before the second member |          |
| 4.  | Draft discussed/approved by Second Member.       |          |
| 5.  | Approved Draft comes to the Sr.PS/PS             |          |
| 6.  | Kept for pronouncement on                        |          |
| 7.  | File sent to the Bench Clerk                     |          |
| 8.  | Date on which file goes to the AR                |          |
| 9.  | Date on which file goes to the Head Clerk.       |          |
| 10. | Date of dispatch of Order.                       |          |