

**IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH 'A' NEW DELHI**

**Before Sh. N. K. Saini, AM AND Sh. Kuldip Singh, JM
ITA No. 721/Del./2016 : Asstt. Year : 2008-09**

Praveen Kumar Gupta C/o R. Kumar Singal & Co. 602, Nilgiri Apartments, 9, Barakhamba Road, New Delhi	Vs	ITO Ward 36(2), New Delhi
(APPELLANT)		(RESPONDENT)
PAN No. AGMPG9842L		

**Appellant by : Sh. R.K.Singhal, CA
Respondent by : Sh. K.K.Jaiswal, DR**

Date of Hearing : 13.04.2016	Date of Pronouncement : 24.05.2016
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ORDER

PER N.K. SAINI, A.M.

This is an appeal by the Assessee against the order dated 17/12/2015 of CIT(A)-19, New Delhi. Following grounds has been raised in this appeal :

1. “ *That vide order dated 17.12.2015 the Ld. Commissioner of Income Tax (Appeals)-19 has erred in fact and law by partly dismissing the appeal filed by the appellant and thereby*

- upholding the assessment order 21.12.2010 passed by the Ld. Assessing Officer.*
2. *That vide order dated 17.12.2015 the Ld. Commissioner of Income Tax (Appeals)-19 has erred in fact and law by holding that the Assessing Officer has correctly made the addition of an amount of Rs. 93,206/- to the income of the assessee on account of undervaluation of closing stock. That in fact and circumstances of the case the assessee has duly explained the valuation of closing stock.*
 3. *That vide order dated 17.12.2015 the Ld. Commissioner of Income Tax (Appeals)-19 has erred in fact and law by holding that Ld. Assessing Officer has correctly made the addition of an amount of Rs. 125000/- received from Rekha Gupta. That in fact and circumstances of the case the assessee has duly discharged the onus casted upon him to prove the identity, genuineness and creditworthiness of Rekha Gupta as provided under section 68 of the Income Tax Act, 1961 and further the assessee has also explained the source of amount deposited in bank account of Rekha Gupta by providing her cash book.*
 4. *That vide order dated 17.12.2015, the Ld. Commissioner of Income Tax (Appeals)-19 has erred in fact and law by holding that the addition of Rs. 1,50,000/- made by the Ld. Assessing Officer on account of low household drawings is logical and correct.*
 5. *That while passing the order dated 17.12.2015 the Ld. Commissioner of Income Tax (Appeals)-19 has not taken into consideration the facts and the documents submitted by the assessee during the course of the assessment and the appeal proceedings.*
 6. *The assessee craves leave of this Hon'ble Tribunal to add to or amend the aforesaid grounds before disposal of the appeal."*

2. Ground no. 1, 5 and 6 are general in nature so do not require any comments on our part.

3. Vide ground no. 2 grievance of the assessee relates to the confirmation of addition of Rs. 93,206/- made by the AO on account of under valuation of closing stock.

4. The facts related to this issues in brief are that the assessee filed the return of income declaring an income of Rs. 1,67,820/- later on the case was selected for scrutiny. During the course of assessment proceedings, the A.O. noticed that the assessee had included certain shares in closing stock but the value of the same was taken at Rs. nil. According to him, the assessee did not furnish any explanation as to why the value of such shares was shown at Rs. nil and that the shares were appearing in the Demat statement as on 31/3/2008 therefore it was conclusively proved that the assessee was the owner of such shares but he had not shown any value thereof. The value of those shares was shown in the opening stock by the assessee as under :

<i>"Name of scrip</i>	<i>Qty(nos.)</i>	<i>Value(Rs.)</i>
<i>Fourth Gen Info</i>	<i>2000</i>	<i>1,780/-</i>
<i>Goyal Associates</i>	<i>5000</i>	<i>3,200/-</i>
<i>Numero Uno</i>	<i>950</i>	<i>4,541/-</i>
<i>S M Dychem</i>	<i>500</i>	<i>5,435/-</i>
<i>Somani Cement</i>	<i>2000</i>	<i>11,260/-</i>
<i>Western Industries</i>	<i>14,500</i>	<i><u>66,990/-</u></i>
	<i>Total</i>	<i>93,206/-"</i>

The AO was of the view that the assessee had under-valued the closing stock by the aforesaid sum and accordingly addition of Rs. 93,206/- was made.

5. Being aggrieved the assessee carried the matter to the Id. CIT(A) and submitted that the scripts under consideration were

not traded on the stock exchange as on 31.3.2009 and therefore valuation was taken as nil and since stock was being valued by the assessee at cost or market price, as the market price was nil, no value was taken in respect thereof.

6. The Ld. CIT(A) after considering the submission of the assessee observed that it was not necessary that each and every scrip should have been traded on the last day of the financial year and if the scrip had not been traded for few days or may be months then same is required to be valued at the last traded price and not at nil. He therefore confirmed the addition made by the AO.

7. Now the assessee is in appeal. The Id Counsel for the assessee reiterated the submissions made before the authorities below. It was further submitted that the details of purchase and sale of shares with Demat account to show that the entire transactions were delivery based, were furnished before the Ld. C.I.T. (A) which revealed that the transactions were delivery based and did not reflect any jobbing. It was further submitted that scripts were not traded on the stock exchange as on 31st March, 2009 and therefore, valuation was taken as nil and since the closing stock was being valued at cost or market price and as the market price was nil, no value was taken in respect of the

said closing stock. In his rival submissions, the Id. DR supported the impugned order passed by the Ld. CIT(A).

7. We have considered the submissions of both the parties and carefully gone through the material available on the record. In the present case it is an admitted fact that the assessee was valuing the closing stock at cost or market price whichever was lower and this practice was followed consistently. In the instant case, it was claimed that in the preceding year and succeeding year, similar valuation has been accepted by the Deptt. and whenever the shares were sold, the profit earned in the trading was offered for taxation, the contention of the assessee was that no trading took place as on 31st March, 2009 in respect of the shares in question, as such the valuation on that date was not quoted and considered as nil. The above said contention was not rebutted by bringing any cogent material on record. It was also not rebutted by the department that whenever the shares were sold the profit earned on the said transaction was offered for taxation and accepted by the Deptt. We, therefore, by considering the totality of the facts, are of the view that the addition made by the AO and sustained by the Id. CIT(A) was not justified, accordingly the same is deleted.

8. The next issue vide ground no. 3 relates to the sustenance of addition of Rs. 1,25,000/- received from Smt. Rekha Gupta.

The facts of the case in brief are that the AO during the course of assessment proceedings noticed that the assessee has shown various credit balances in the name of P.K.Gupta and Company owned by his wife. He also found that the assessee has taken a loan of Rs. 1,25,000/- from Shri P.K.Gupta whose bank statement revealed that before the issue of the cheque a cash of Rs. 1,25,000/- had been deposited in the bank. He, therefore, considered it an accommodation entry and added the same in the income of the assessee.

9. Being aggrieved assessee carried the matter to the Id. CIT(A) and submitted that the confirmation and copy of the Income-tax return was furnished in support of the claim, however, the AO treated the same as unexplained because the lender was the wife of the assessee.

10. The Id. CIT(A) after considering the submission of the assessee observed that the assessee could not explain the source of cash deposit in the bank neither in the assessment proceeding nor during the course of appellate proceeding, therefore, the AO rightly made the addition. The reliance was placed on the following case laws :

- i) Vajubhai Kanani vs. ITO 221 Taxman 140 (Gujarat H.C)*
- ii) Blessing Construction Co. vs. ITO 214 Taxman 645*
- iii) Umesh Kumar vs. ITO 217 Taxman 13.*

11. Being aggrieved the assessee is in appeal, the Id. Counsel for the assessee reiterated the submissions made before the authorities below and further submitted that the assessee filed a copy of bank ledger and bank statement wherein the cheque of Rs. 1,25,000/- received by the assessee was duly credited a reference was made to page no. 40 to 44 and 54-55 of the assessee's paper book which are the copies of bank statement of assessee and of M/s. P.K. Gupta & Co. (proprietor Smt. Rekha Gupta) respectively. It was further submitted that the assessee proved the identity of the lender, her creditworthiness and genuineness of transaction, therefore, the addition sustained by the Id. CIT(A) was not justified. The reference was made to page no. 47 and 66 of the assessee's paper book which are the copies of confirmation from Smt. Rekha Gupta and Copy of her Income-tax return respectively. It was also submitted that the assessee filed letter dated 26.12.2013 and extract of cash book for M/s. P.K. Gupta & Co. (proprietor concern of Rekha Gupta) before the Ld. C.I.T.(A), explaining the source of cash deposit in the books of M/s. P.K.Gupta & Co. Reference was made to page no. 127 to 130 of the assessee's paper book. In his rival submissions, the Ld. DR supported the orders of the authorities below.

12. We have considered the submissions of both the parties and carefully gone through the material available on the record. In the instant case, it is an admitted fact that the assessee received a cheque of Rs. 1,25,000/- from Smt. Rekha Gupta and deposited the same in his bank account Smt. Rekha Gupta is proprietor of M/s. P.K.Gupta & Co. and maintained the cash book in her regular course of business. She deposited a sum of Rs. 1,25,000/- on 14.3.2008 which is evident from page no. 130 of the assessee's paper book. She also furnished her confirmation which has not been doubted, copy of the same is placed at page no. 46 of the assessee's paper book. She also disclosed her address as well as bank and Income-tax ward where she was assessed. Smt. Rekha Gupta also furnished copy of her Income-tax return which is placed at page no. 66 of the assessee's paper book. From the above narrated facts, it is clear that the assessee discharged the onus cast upon him to prove the identity of the depositor, her creditworthiness and genuineness of the transactions. Therefore, the addition made by the AO and sustained by the Ld. CIT(A) was not justified, accordingly the same is deleted.

13. The last issue vide ground no. 4 relates to the sustenance of addition of Rs. 1,50,000/- on account of low household

withdrawals. The facts related to this issue in brief are that the AO during the course of assessment proceedings noticed from the copy of the assessee's capital account that a sum of Rs. 55,000/- was withdrawn for household expenses which he considered on lower side and made the addition Rs. 1,50,000/-.

14. Being aggrieved the assessee carried the matter to the Id. CIT(A) who observed that the family of the assessee included two school going children and that even when the fees had been paid separately, the withdrawals of Rs. 1,00,000/- by the assessee and his wife were not sufficient, therefore, the addition of Rs. 1,50,000/- made by the AO was logical correct.

15. Now the assessee is in appeal. The Id. Counsel for the assessee submitted that the withdrawals made by the assessee and her wife were as under :

Particulars	Drawings of Praveen Kr. Gupta	Drawings of Rekha Gupta	Total Drawings
Cash drawings	60,000.00	40,000.00	100,000.00
School Fees	-----	23,730.00	23,730.00
TDS	11,895.00	18,562.00	30,457.00
STT	58,422.09		58,422.09
Total	130,317.09	82,292.00	212,609.09

16. It was further submitted that the family of the assessee comprises of only four members i.e. self, his wife and two childrens. They are residing in their own house and the school fees of both the children were made out by drawings made through M/s. P.K.Gupta & Co., a proprietary concern of Mrs Rekha Gupta. Therefore, the withdrawals of Rs. 1,00,000/- by assessee and his wife were sufficient to fulfil the day to day needs and no addition was called for. In his rival submissions, the ld. DR supported the orders of the authorities below.

17. We have considered the submissions of both the parties and carefully gone through the material available on record. In the present case, it is noticed that the assessee and his wife had withdrawn a sum of Rs. 1,23,730/- out of which Rs. 23730/- were on account of school fees of the children. The assessee is residing with his family in his own house, and no rent was paid. In the present case, it is not brought on record that how and in what manner the withdrawals by the assessee and his wife were not sufficient to meet out the needs of the day to day life. It, therefore, appears that the addition has been made by the AO only on the basis of presumption which is not tenable in the eyes of law. We, therefore, delete the addition made by the AO and sustained by the Ld. CIT(A).

15. In the result, appeal of the assessee is allowed.

(Order Pronounced in the Court on 24/05/2016).

Sd/-
(Kuldip Singh)
JUDICIAL MEMBER

Dated: 24 / 05/2016

B. Rukhaiyar

Copy forwarded to:

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

sd/-
(N. K. Saini)
ACCOUNTANT MEMBER

ASSISTANT REGISTRAR

		Date	<u>Initial</u>	
1.	Draft dictated on	27.04.2016		
2.	Draft placed before author	27.04.2016		
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	24.05.2016		
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.			