

**आयकर अपीलीय अधिकरण, मुंबई**  
**IN THE INCOME TAX APPELLATE TRIBUNAL**  
**MUMBAI BENCHES 'A' MUMBAI**  
सर्व श्री राजेन्द्र,लेखा सदस्य एवं श्रीमती बीना पिल्लै, न्यायिक सदस्य के समक्ष  
**BEFORE SHRI RAJENDRA, ACCOUNTANT MEMBER AND**  
**SMT. BEENA PILLAI, JUDICIAL MEMBER**

ITA NO.2024/MUM/2012  
Assessment Year 2005-06

Mrs. Ameeta P. Gupta,  
A-39, Rashtrasarathi CHS Ltd.,  
Dindayal Nagar, Mulund (East),  
Mumbai 400 081  
PAN: AEKPG6992F  
(Appellant )

The ITO 23(2)(1),  
Bandra Kurla Complex,  
Bandra (East)  
Mumbai.  
(Respondent)

Appellant by : Shri Devendra Jain  
Respondent by : Shri R.A.Dyani  
Date of hearing : 29/10/2015  
Date of pronouncement : 29/10/2015

**ORDER**

**PER BEENA PILLAI, J.M:**

The present appeal has been filed by the assessee against the order passed by Ld. CIT(A)-11, Mumbai vide order dated 24/01/2012 for assessment year 2005-06.

The assessee has raised the following ground of appeal:-

*“1. The CIT(A) has erred in retaining the addition of Rs.3,31,500/- as unexplained cash credit under section68. The same may please be deleted.”*

2. The brief facts of the case as recorded by the ld.AO are as under.

The assessee is an individual and has filed her return of income, declaring total income of Rs.35,086/- on 3/2/2006. The case was reopened under section 148 of the Income Tax Act, 1961(in short “the Act) and notices under section 143(2) & 142(1), were issued and duly served upon the assessee. The assessee derived income from partnership firm, M/s.Prasad Enterprises and income from other sources. During the relevant year it was noticed by the Id. AO that, the assessee had introduced capital in the partnership firm. The assessee filed all the relevant details as called by the Id. AO. On verification of the documents filed, the Assessing Officer observed that an amount of Rs.11,36,000/- was received by the assessee by way of gifts from relatives and her brother. The Assessing Officer called for the details in respect of the gifts received. The assessee was also asked to file bank statement, return of income and capacity of the donor to make such gifts. The Id. AO observed from the details filed that, assessee was taking shelter of withdrawals of the assessment year 2002-03, 2003-04 and 2004-05 to prove that the same are gifts received. The assessee had received payments from Shri Sudhir Kumar Gupta, being the brother of the assessee, who had made gifts on various dates. The Assessing Officer held that, as the assessee could not explain the cash credit, which was deposited in the partnership firm, which has taken guise of the gifts. An amount of Rs.10.78 lacs was taxed as unexplained cash credit under section 68 of the Act..

2.1 The Assessing Officer further observed that, the assessee had introduced Rs.25.90 lacs in the partnership firm but since the assessee failed to explain the introduction of Rs.3,31,500/- out of Rs.25.90 lacs, the Id. AO made an addition under section 68 of the Act, being unexplained cash credit.

Aggrieved by the order of the Assessing Officer the assessee preferred an appeal before the Ld. CIT(A).

3. The Ld. CIT(A) held as under:-

*“2.5 Considering the submission of the Ld. AR and the facts of the case, it is hereby held that identity of donor, relationship between appellant and donor and creditworthiness of the donor cannot be disputed. The donor is brother of the appellant who is employee abroad and whose income is not taxable in India. In view of the submission of donor as well as done appellant both that fit has been paid out of cash withdrawals from the bank accounts of donor by his father on the instruction of donor and given to the appellant as gift on the instruction and also on the declaration of the donor to this effect, even genuineness of transactions cannot be disputed. Therefore, it is hereby held that the appellant has received gift of Rs.10.78 lacs from his brother out of natural love and affection and accordingly, the addition of Rs.10.78 lakhs made on this account is deleted. This ground is allowed”.*

On the addition in respect of unexplained cash credit under section 68 of the Act to the extent of Rs.3,31,500/-, the CIT(A) held as under:

*“ 3.3 However, in the submission, the Ld.AR could not show that Rs.3,31,500/- was introduced in the firm out of opening balance or this sum was opening credit balance in the account of the appellant in the books of the firm. Hence, the order of the Assessing Officer on this account is hereby upheld. This ground is dismissed.”*

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

5. We have heard the rival submissions of both the parties and perused the Paper Book filed by Ld. Representative for the assessee. The issue before us is in respect of Rs.3,31,500/- confirmed by Ld. CIT(A) being difference between the gross investment and the cash deposited by the assessee, into the partnership account. The assessee had introduced Rs.25.90 lacs as capital into the firm of which she is a partner. On perusal of the summary of the bank account no. OD-DEP-68 with Jankalyan Bank, Mulund(E)(page 4 of the paper book), held by the assessee, it is observed that cash amounting to Rs.22,22,500/- has been deposited into the said account by the assessee. Out of the total cash deposited Rs.10,78,000/- amounted to gift, the addition of which has been deleted by the

ld.CIT(A). There is also at the same time capital amounting to Rs.11,16,000/- was withdrawn and deposited to the

6. In view of the above discussion, we hold that the said amount of Rs.3,31,000/- stands explained as the same is an inclusive part of Rs.14,74,000/-. The assessee's appeal is accordingly allowed.

7. In the result, the appeal filed by the assessee is allowed.

*Order pronounced in the open Court on 29/10/2015*

आदेश की घोषणा खुले न्यायालय में 29/10/2015 को की गई।

Sd/-

Sd/-

(राजेन्द्र, /RAJENDRA )

(बीना पिल्लै /BEENA PILLAI)

लेखा सदस्य /ACCOUNTANT MEMBER

न्यायिक सदस्य / JUDICIAL MEMBER

मुंबई Mumbai; दिनांक Dated 29/10/2015

**आदेश की प्रतिलिपि अग्रहित/Copy of the Order forwarded to :**

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

आदेशानुसार/ BY ORDER,

सत्यापित प्रति //True Copy//

उप/सहायक पंजीकार (Dy./Asstt. Registrar)

आयकर अपीलीय अधिकरण, मुंबई / ITAT, Mumbai

व.नि.स./Vm, Sr. PS