

**IN THE INCOME TAX APPELLATE TRIBUNAL  
LUCKNOW BENCH "A", LUCKNOW**

**BEFORE SHRI SUNIL KUMAR YADAV, JUDICIAL MEMBER  
AND SHRI A.K. GARODIA, ACCOUNTANT MEMBER**

ITA No.267/LKW/2015  
Assessment year:2011-12

Shri Mahesh Chandra Chaurasia, 23, Batashe Wali Gali, Aminabad, Lucknow. PAN:ABIPC1468M	Vs	D.C.I.T., Central Circle-II, Lucknow.
(Appellant)		(Respondent)

Appellant by	Shri Rakesh Garg, Advocate
Respondent by	Shri Amit Nigam, D. R.
Date of hearing	03/03/2016
Date of pronouncement	17/03/2016

**ORDER**

**PER A. K. GARODIA, A.M.**

This is assessee's appeal directed against the order passed by learned CIT(A)-III, Lucknow dated 29/01/2015 for the assessment year 2011-12.

2. In this appeal the assessee has raised the following grounds:

- "1. *The Ld. Commissioner of Income-tax (Appeals) has erred in law and on facts in passing the order which is illegal, improper and against the principles of natural justice.*
2. *The Ld. Commissioner of Income-tax (Appeals) has erred in law and on facts in passing the order without giving adequate opportunity of being heard and without considering the submission made before him.*
3. *The Ld. Commissioner of Income-tax (Appeals) has erred in law and on facts in making addition of Rs.9,82,448/- on account of Long Term Capital Gain."*

3. It was submitted by Learned A. R. of the assessee that photocopy of DEMAT account statement for the period from 01/12/2007 to 31/12/2007 is available on page No. 3 of the paper book and the same for the period from

01/04/2010 to 31/03/2011 is available on page No. 4 of the paper book. He further submitted that as per the DEMAT account statement available on page No. 3 of the paper book, it can be seen that the shares of Allahabad Bank in question were credited in this DEMAT account of the assessee during this period to the extent of 4,400 shares and as per the DEMAT account statement available on page No. 4 of the paper book for financial year 2010-11, it can be seen that during this period, out of the same opening balance of 4,400 shares of Allahabad Bank, 4000 shares were sold out during this period. He submitted that under these facts, even if it is held that the assessee has not explained the source of acquisition of these shares, the addition may be made in the year of purchase i.e. assessment year 2008-09 and not in assessment year 2011-12 when these shares were sold by the assessee.

4. Learned D. R. of the Revenue supported the orders of the authorities below.

5. We have considered the rival submissions. We find that as per Para 6(vi) of the assessment order, it is noted by the Assessing Officer that DEMAT account furnished by the assessee do not reflect purchase of shares of Allahabad Bank and therefore, the exemption on account of Long Term Capital Gain of Rs.9,82,448/- is denied and the same is being treated as income from other sources. Before this, in Para 6(v) of the assessment order, it is noted that despite of giving several opportunities, the assessee could not furnish any supportive documents on the basis of which date and rate of purchase of shares could be determined. Hence, it is seen that the Assessing Officer is doubting the date and rate of purchase of these shares of Allahabad Bank which were purchased as per the assessee on 31/08/2002 and thereafter, the same were dematerialized during December 2007 as per the copy of DEMAT account statement available on page No. 3 of the paper book. Even if these shares were purchased during December,

2007 being the month in which these shares were noted in the DEMAT account, the addition in respect of these shares to the extent of cost of purchase can be made in that year being assessment year 2008-09 and not in the present year. Regarding the gain on sale of these shares also, it cannot be said that the gain is not Long Term Capital Gain even if the date of purchase is taken as December, 2007 being the date of credit in DEMAT account of the assessee then also, the period of holding is more than one year and therefore, the gain is Long Term Capital Gain on sale of quoted shares which is exempt and once it is held that the Long Term Capital Gain is exempt, what is the cost of acquisition and how much is capital gain is not relevant because whatever be the gain, the entire gain will be exempt. Under these facts, we feel that the addition made is not justified. However, the Assessing Officer is at liberty to examine the evidence and source of acquisition of these shares and if the assessee is not able to explain the source, the addition may be made in the year of purchase which may be assessment year 2003-04 or 2008-09 but no addition can be made in the present year.

6. In the result, the appeal of the assessee stands allowed.

(Order was pronounced in the open court on the date mentioned on the caption page)

**Sd/.**  
**(SUNIL KUMAR YADAV)**  
**Judicial Member**

**Sd/.**  
**( A. K. GARODIA )**  
**Accountant Member**

**Dated:17/03/2016**

**\*Singh**

**Copy of the order forwarded to :**

- 1.The Appellant
- 2.The Respondent.
- 3.Concerned CIT
- 4.The CIT(A)
- 5.D.R., I.T.A.T., Lucknow

Asstt. Registrar