

**IN THE INCOME TAX APPELLATE TRIBUNAL  
(DELHI BENCH: 'G': NEW DELHI)**

**BEFORE SHRI AMIT SHUKLA, JUDICIAL MEMBER  
AND  
SHRI ANADEE NATH MISSHRA, ACCOUNTANT MEMBER**

**ITA No:- 3956/Del/2015  
(Assessment Year: 2011-12)**

Income Tax Officer, Ward-48(4), New Delhi-110002.	Vs.	Sh. Manmohan Singh Sehgal, 5/58, W.E. A., Saraswati Marg, Karol Bagh, New Delhi-110005.
<b>PAN No:</b> ABAPS6153M		
<b>APPELLANT</b>		<b>RESPONDENT</b>

**Revenue by** : Shri Saras Kumar, Sr. DR  
**Assessee by** : Shri C.S. Anand, Adv. and  
Shri Mayank Maheshwari, Adv.

**Per Anadee Nath Misshra, AM**

**(A)** This appeal has been filed by Revenue against the impugned appellate order dated 31.03.2015 passed by Learned Commissioner of Income Tax (Appeals)-16, New Delhi, ["Ld. CIT(A)", for short] pertaining to Assessment Year 2011-12, on the following grounds:

*"1. The Ld. CIT(A) has erred in law and on facts in deleting the addition of Rs. 79,10,385/- made by the AO by disallowing claim of exemption u/s 54F of the Act."*

*2. The Ld. CIT(A) has erred in law and on facts in deleting the addition of Rs.5,90,376/- made by AO by applying a net profit rate of 2 % on total sales of Rs.2,30,49,244/-.*

3. *"The Ld. CIT(A) has erred in law and on facts in deleting the addition of Rs.10.95.230/- made by the AO treating miscellaneous income credited to P&I account of M/s. Gagandeep Impex Pvt. Ltd. as Income from Other Sources.*

4. *"The Ld. CIT(A) has erred in law and on facts in deleting the addition of Rs.42,40,155/- made by the AO u/s 68 of the Act. The Ld. CIT(A) without appreciating the fact that inspite of repeated request to the assessee, he has not produced books of accounts and also not established the identity, creditworthiness, genuineness and capacity of the creditors."*

5. *"The Ld. CIT(A) has erred in law and on facts in deleting the addition of Rs.1,15,43,077/- made by the AO as unexplained cash credits in the hands of the assessee u/s 68 of the Act."*

6. *"The Ld. CIT(A) has erred in law and on facts in deleting the addition of Rs.10,00,000/- made by the AO u/s 2(22)(e) of the Act. The Ld. CIT(A) without appreciating the fact that the assessee is a Director of the company and If Pvt. Ltd. company has made any payment .directly or indirectly to its director then such payment shall be treated as deemed income u/s 2 (22) (e) of the Act."*

7. *"The Ld. CIT(A) has erred in law and on facts in deleting the addition u/s 2(22)(e) by observing that the said payment is reflected in the books of accounts of the company i.e. M/s. Gagandeep Impex Pvt. Ltd., ignoring the fact that the AO has nowhere stated that the said payment made on behalf of the assessee was made outside the books of account of the company.*

8. *"The appellant craves leave for reserving the right to amend, modify, alter, add or forego any ground(s) of appeal at any time before or during the hearing of this appeal"*

(B) In this appeal, filed by Revenue the disputes pertained to the following additions made by the Assessing Officer ("AO", for short) (vide Assessment Order dated 28.03.2014 U/s 143(3) of the Income Tax Act, 1961), which were deleted by Ld. CIT(A) vide impugned appellate order dated 31.03.2015.

(a) Addition of Rs. 5,90,376/- made by the AO by applying net profit rate of 2% on total sales.

(b) Addition of Rs. 10,95,230/- made by the AO treating miscellaneous

income as income from other sources.

- (c) Additions of Rs. 42,40,155/- and Rs. 1,15,43,077/- made by the AO under Section 68 of I.T. Act.
- (d) Addition of Rs. 10,00,000/- made by the AO under Section 2(22)(e) of I.T. Act.

(B.1) For the ease of reference, portion of aforesaid Assessment Order dated 28.03.2014 is reproduced as under:

1. The assessee is an individual. The assessee has derived income from Salary from Gagandeep Impex Pvt. Ltd, business of wholesale trading (as per the statement of income) of mobile accessories(as per the Form 3CD), in the proprietorship concern of the assessee in the name and style of M/s Gagandeep Enterprises, capital gains on sale of immovable properties and sale of other capital asset(stated to be old gold jewellery).The purchases were made by the assessee from the import from abroad and from Indian market. The assessee filed his return of income declaring total income of Rs.24,78,860/- on 29.09.2011, which was processed u/s 143(1) of the IT Act, 1961. The case was taken up for scrutiny under CASS(Computer Aided Selection of Scrutiny) and the statutory notice u/s 143(2) of the IT Act, 1961 was issued on 03.08.2012, by the ITO, Ward-30(4), New Delhi which was duly served upon the assessee. Further notice u/s 143(2) of IT Act, 1961 were issued on 22-11-2012, 23-08-2013 and 03-09-2013, etc. which were duly served upon the assessee. The notice u/s 142(1) of the IT Act, 1961 alongwith questionnaire were issued on 23.08.2013 and 03-09-2013, etc., by the Income Tax Officer, Ward- 30(4), New Delhi which were duly served upon the assessee. Later on, as per the Action Plan of the CBDT, New Delhi, this case has been assigned by the Commissioner of Income Tax, Delhi-X, New Delhi to the undersigned for the completion of the assessment. Accordingly, Notice u/s 142(1) of the IT Act, 1961 was issued on 18.11.2013 which was duly served upon the assessee. In response to the

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same Sh. Arun Mehta, FCA, the Authorized Representative (AR) of the assessee attended and furnished written reply and details. The Power of Attorney in favour of the AR has been furnished which is placed on the file. As per the order sheet entries, the learned A.R. attended from time to time and furnished the details which were seen by test check. The assessee follows mercantile system of accounting as is evident from the Form no. 3CD of the audit report placed on the file.

2. It was noted from the chart of the computation of income that the assessee has sold other capital asset for a sale consideration of Rs.49,40,385/- on 06-07-2010, claiming a long term capital gain of Rs.15,65,375/-, and other capital asset for a sale consideration of Rs.29,70,000/- on 03-02-2011, claiming a long term capital gain of Rs.8,89,614/- against which the assessee has claimed deduction of Rs.58,86,000/- u/s 54F of the IT Act, 1961.

In the course of the assessment proceedings, the assessee was asked to furnish the details of the other capital asset as referred to above. The assessee explained, vide Annexure-7 to his written reply, dated 05-03-2014 that he had sold old gold jewellery amounting to Rs. 79,10,385, the details of which are as given below:

Sl. No.	Date of sale	Purchaser's name	Sale amount
1.	02-07-2010	Ginni Gold Limited	24,71,250
2.	06-07-2010	P.K. Jewellers	12,69,135
3.	06-07-2010	P.K. Jewellers	12,00,000
4.	28-01-2011	Harnam Jewellers	9,70,000

The assessee also furnished the copies of the sale bills in respect of the above mentioned sale of gold jewellery. As regards the source of the acquisition of the above mentioned jewellery, the assessee has stated, vide his reply, dated 24-03-2014 that

- i. due to ill health of the assessee's father, Shri Darshan Singh Sehgal and due to his old age factor (subsequently died on 29-05-2011), the assessee was gifted with gold weighing approx. 5471.7578 gms (22 carat) dated 26-06-2010.
- ii. whereas the assessee's father inherited the gold weighing approx. 4971.15 gms (22 carat) from his wife on her demise in the month of February 1999. And balance 0.50 kgs. were acquired by him from his past savings.
- iii. whereas the assessee's mother, Late Smt. Harbhajan Kaur inherited the gold as ancestral gold which she left for her husband before her death (date of death: 21-02-1999)."

2.1 It is also noted that in compliance with the summons u/s 131 of the IT Act, 1961 Sh. Manmohan Singh Sehgal (the assessee) attended the office of the undersigned on 25-03-2014 and his statement on oath was recorded which is placed on the file. The assessee has furnished

a copy of the valuation report of M/s Krishna Jewellers. The assessee has also furnished a photo copy of the handwritten (in Gurmukhy Script) document, which the assessee has claimed to be the will of his late mother Smt. Harbhajan Kaur. The assessee has also translated the same in English in the course of the proceedings u/s 131 of the IT Act, 1961, as referred to above, which was reduced to writing in English by Sh. Arun Menta, FCA (the assessee's A.R.) who was present in the above referred proceedings. The assessee has also furnished a photocopy of the so called gift deed of his late father, Sh. Darshan Singh, executed on 26-06-2010.

**2.2** The above referred explanation of the assessee and the above referred copies of the documents submitted by him have been considered very carefully. It is noted that the assessee has not produced the originals of any of the above referred documents before the undersigned at any stage. Hence, the authenticity of the same cannot be said to be proved by the assessee. It is also noted that in the so called will of the assessee's late mother, except the weight of 497.10 (Tolla), description and details of the jewellery is not mentioned. The value of the jewellery shown in the valuation report of M/s Krishna Jewellers is stated to be Rs. 83,82,721/-, which was more than the maximum value of the net wealth which was exempt from charge of wealth tax under the W.T. Act, 1957. However, no evidence has been furnished/produced to prove that wealth tax return was ever filed either by late Sh. Darshan Singh or by his legal heir for any of the A.Y. No evidence has been furnished or produced regarding the proof of the assessee's mother or father being an income tax assessee or wealth tax assessee and the documentary evidence of their statement of net wealth ever filed with the Income Tax/Wealth Tax Department has not been filed/produced. Thus the capacity of the assessee's father to have made the alleged gift and the very bequeathing of the alleged "old gold jewellery" from the assessee's mother to his father is not proved.

**2.3** It is noted that in none of the sale bills, the description and details of the jewellery purchased by the so called purchasers from the assessee has been mentioned except the weight of the jewellery. It is further noted that even the weight of the sold jewellery does not match with the weight of the jewellery stated to have been acquired by the assessee from his father through so called gift. The total of the net weight of the sold jewellery as per the sale bills is 5273 grams whereas the gross as well as net weight of the jewellery received by the assessee from his father is stated to be 5471.75 grams as per the valuation report of the above referred M/s Krishna Jewellers.

**2.4** It is further noted that in the sale bill/purchase invoice stated to be issued by M/s P.K. Jewellers, Pitampura, Delhi, the description of the jewellery is stated to be "New Gold Jewellery" and the said bill has not been signed by anyone on behalf of the purchaser being M/s P.K. Jewellers. When confronted with the above noted deficiencies and contradiction and asked to explain how this "new" jewellery can be treated "old" and indexed at 1981 index value, the

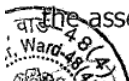
assessee has only resubmitted the said party's bill and the description given now is "old Jewellery". The above referred bill submitted on 24-03-2014 is neither duplicate nor any mistake is pointed out in the bill submitted earlier. It is also noted that the assessee has shown two sale transactions on 06-07-2010 of Rs. 12,69,135/- and Rs. 12,00,000/- from sale of jewellery to M/s P.K. Jewellers, whereas the above noted concern in the alleged bill has shown a single transaction of Rs. 24,69,135/-.

It is also noted that the alleged gift deed mentions the date of making the gift on 26-06-2010 irrevocably. However, the above referred valuation report of M/s Krishna Jewellers is made on 30-06-2010 and it mentions "The following Jewellery & Precious stones owned by Sh /Smt. Mr. Darshan Singh...". When the property has been gifted irrevocably to the assessee on 26-06-2010 by Mr. Darshan Singh, how can the same be termed to be Mr. Darshan Singh's Jewellery and why he would get it valued four days after he has gifted it "irrevocably" to the assessee.

**2.5** It has been held by the Hon'ble Bombay High Court, in the case of H.N. Lakhani V. CIT (1983) 14 Taxman 504 (Bom), that in case where the assessee claims that a certain cash is the result of conversion of certain gold into cash by him, what the assessee is required to prove is that the gold belonged to him. The assessee's claim can be accepted if there is material to support it. The material may be in the form any direct evidence or material may be in the form of circumstances which the income tax authorities are entitled to take in to consideration in deciding the issue.

In view of the above noted discussion it is proved that the existence of "old gold jewellery" and its stated sale is an afterthought, stage managed and is fictitious. No such jewellery in fact belonged to the assessee during the F.Y. 2010-11.

It is thus concluded that the assessee has failed to prove the acquisition of the "old gold jewellery" to have been genuinely acquired through the so called gift from the assessee's father(deceased) or by his father through the will of the assessee's late mother. The so called receipt of the sale consideration from the sale of the jewellery has been cooked up only to give a façade to explain the source of investment in the purchase of the residential house against which the assessee has claimed deduction u/s 54F. In fact, it is assessee's own money from undisclosed sources which has been utilized by him by investing into the purchase of residential house. It is, therefore, held to be from the undisclosed sources and it is held to be the assessee's deemed income within meaning of section 69 of the IT Act, 1961. As the very acquisition of the "old gold jewellery" has been held to be sham, there is no question of long term capital gain arising to the assessee and giving benefit of section 54F of the IT Act, 1961 to the assessee..



**(addition of Rs. 79,10,385/-)**

**2.6** The undersigned is satisfied that the assessee has concealed particulars of his income by furnishing inaccurate particulars of his income. Hence, it is a fit case for initiation of penalty u/s 271(1)(c) of the IT Act, 1961. Penalty notice u/s 271(1)(c) of the IT Act, 1961 is issued, separately.

**3.** A perusal of the assessee's Profit and Loss Account reveals that the assessee has earned net profit of Rs.9,65,838.85. This amount of net profit has been earned after having a miscellaneous income of Rs.10,95,230/-. When asked, the assessee has explained that miscellaneous income represents his referral/commission income in cash from irregular customers. It is noted that no such miscellaneous income has been disclosed by the assessee to have been earned by the assessee in earlier assessment years as is evident from the income tax returns of the assessee in earlier assessment years. It is interesting to note that if such miscellaneous income is excluded, the assessee's Profit and Loss Account would show a loss of Rs.1,29,391.50. The assessee's reply in this regard has been considered very carefully. The assessee has made sales of Rs.2,30,49,244.60 from his main trading activity. Assuming a meager net profit rate of 2% only from trading activity which is the assessee's main business, the business of the assessee should post a profit of Rs.4,60,984.89. Hence, amount of Rs.5,90,376.39 (4,60,984.89+1,29,391.50) is considered to be the net profit from trading and is added to the total income of the assessee.

**(addition of Rs. 5,90,376.39)**

**3.1** The undersigned is satisfied that the assessee has concealed particulars of his income by furnishing inaccurate particulars of his income. Hence, it is a fit case for initiation of penalty u/s 271(1)(c) of the IT Act, 1961. Penalty notice u/s 271(1)(c) of the IT Act, 1961 is issued, separately.

**4.** The miscellaneous income of Rs.10,95,230/- is held to be the assessee's income from other sources and it will be taxed under the head Income From Other Sources.

**4.1** The undersigned is satisfied that the assessee has concealed particulars of his income by furnishing inaccurate particulars of his income. Hence, it is a fit case for initiation of penalty u/s 271(1)(c) of the IT Act, 1961. Penalty notice u/s 271(1)(c) of the IT Act, 1961 is issued, separately.

**5.** It is noted that the assessee has debited Rs.10,00,000/- to the Profit and Loss Account for the year ending 31-03-2011 on account of "Legal Settlement Expenses". When asked the assessee has explained that Legal settlement expenses of Rs.10 lacs. Have been paid to Nokia Corporation for infringement of commercial rights. The assessee has submitted a MOU and a note for the same. It is noted that Nokia Corporation had filed a complaint with the Police on 12-12-2010 under the provisions of Trade Marks Act, 1999 as the ownerfeit and infringed NOKIA goods were seized. Pursuant to the complaint filed



by Nokia Corporation, an FIR bearing no. 137, dated 12-12-2010 was registered with the Police Station Karol Bagh, New Delhi under section 103/104 of the Trade Marks Act, 1999. It is in this regard that the assessee entered into the above referred MOU with the Nokia Corporation to settle the matter with Nokia Corporation out of court that the assessee has paid Rs. Ten lac. in the previous year relevant to the A.Y. under consideration out of the total settled amount of Rs. 30 lac to be paid to Nokia Corporation. Taking the cognizance of the above noted MOU and the assessee's sworn prayer, the Hon'ble High Court of Delhi has been pleased to quash the FIR against the assessee.

It is thus evident that the above noted expenditure of Rs. Ten lac. has been incurred by the assessee to avoid his arrest by the Police and prosecution by the Court for the infringement of the provisions of the Trade Marks Act, 1999, which is law of the land. It is the trite law that what cannot be done directly, can also not be done indirectly. Hence, the incurring of the above noted expenditure is absolutely for a purpose which is an offence and which is prohibited by law, hence it is covered by the Explanation to section 37(1) of the IT Act, 1961. It is, therefore, disallowed and added back to the total income of the assessee.

**(addition of Rs. 10,00,000/-)**

**5.1** The undersigned is satisfied that the assessee has concealed particulars of his income by furnishing inaccurate particulars of his income. Hence, it is a fit case for initiation of penalty u/s 271(1)(c) of the IT Act, 1961. Penalty notice u/s 271(1)(c) of the IT Act, 1961 is issued, separately.

**6.** It is noted that the assessee has paid interest of Rs. 2,81,514/- to Kotak Mahindra Prime on car loan during the previous year relevant to the A.Y. 2011-12. The assessee has failed to deduct tax at source on the above noted payment of expenditure as per section 194A of the IT Act, 1961. The assessee, vide notice u/s 142(1) of the IT Act, 1961 was required to show cause as to why the above note expenditure of interest may not be disallowed u/s 40(a)(ia) of the IT Act, 1961 by concluding that the assessee has failed to comply with the provisions of section 194A of the IT Act, 1961 in respect of the above noted expenditure. As the assessee has failed to furnish any explanation in this regard, it is held that the assessee is hit by the provisions of section 40(a)(ia) of the IT Act, 1961. Hence, the expenditure of Rs. 2,81,514/- is disallowed and addition of Rs. 2,81,514/- is made to the total income of the assessee.

**(addition of Rs. 2,81,514/-)**

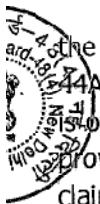
**7.** It is noted that the assessee has shown creditors of Rs. 77,90,243.36 in the Balance Sheet as on 31-03-2011 of the assessee's proprietary concern M/sGagandeep Enterprises. Vide notice u/s 142(1) of the IT Act, 1961 issued on 17-02-2014, the assessee was confronted with the query which is reproduced below:



"Please note that you have failed to furnish the complete details of sundry creditors of Rs.77,90,243.36 shown by you in your balance sheet as on 31-03-2011 inspite of the specific query made by the undersigned vide point no. 14 of the summons u/s 131 of the IT Act, 1961 issued on 26-12-2013. Further, your authorized representative had furnished the financial statements for the year ending 31-03-2010 and 31-03-2011 without any schedule and annexure, a fact which was pointed out to him and which was duly noted by him vide order sheet entry dated 06-01-2014, in the course of the hearing of the case. Hence, please show cause as to why it may not be concluded that you have failed to prove the identity of the creditors, their creditworthiness and genuineness of transaction, inspite of reasonable opportunity afforded to you in this regard and show cause why it may not be held to be unexplained cash credit and added to your total income as deemed income within meaning of section 68 of the IT Act, 1961."

**7.1** The assessee in his reply, dated 24-02-2014 has furnished a chart of such sundry creditors and has only furnished the confirmation letter signed by Sh. Gagandeep Singh Sehgal as proprietor of M/s Universe Holding Co. and as director of M/s Gagandeep Impex Pvt. Ltd. In these confirmation letters, only the closing balance as on 31-03-2011 have been confirmed. The detailed ledger accounts of the assessee in the books of the above noted concerns have not been furnished. Letters u/s 133(6) of the IT Act, 1961 were issued to the above noted creditors on 24-02-2014 at the addresses given by the assessee and they were asked to furnish certified copy of the ledger account of the assessee for the period 01-04-2010 to 31-03-2011. They were also asked to furnish copy of acknowledgement of furnishing their return of income for the A.Ys. 2011-12 and 2013-14. However, they have not responded to the above noted letters in any manner. It is noteworthy to reiterate the observations of the Hon'ble ITAT, Mumbai in the case of Athul kumar S. Mehta Vs. Tenth ITO(1988)32 TTJ(Bomb.) that it is assessee's duty and not that of ITO to secure presence of creditors. ITO's duty is only to give assistance to the assessee to secure their presence if assessee makes a prayer. The assessee has to establish identity and capacity of creditor and genuineness of transaction. Where the assessee produced confirmatory letters which did not contain their GIR No., and made no efforts to produce the creditors before the ITO, under a mistaken belief that the ITO could have summoned any of the creditors if there was any doubt about them, it was held that the burden was on the assessee to secure the presence of creditors and the duty of the ITO was only to give assistance to the assessee to secure presence if the assessee made a prayer.

It is note worthy that the assessee at no stage of the assessment proceedings produced the books of account stated to be kept and maintained by him; though the audit report u/s 44AB of the IT Act, 1961 has been filed which is placed on the records. Hence, the undersigned of the considered opinion that the assessee has failed to discharge the burden cast on him to prove the identity of the creditors, their capacity to pay and the genuineness of transaction claimed to have been made by the assessee with them. Although the assessee in the chart of



creditors furnished alongwith his reply, dated 24-02-2014 has mentioned "List of Creditors as on 31-03-2010 alongwith their complete address", but it is found that mentioning of 31-03-2010 instead of 31-03-2011 is only a typographical mistake as the total of creditors of Rs. 77,90,243.36 matches with the amount of creditors shown in the Balance Sheet as on 31-03-2011.

**7.2** It is noted that the assessee has shown M/s Sky Speed Freight Forwarders a creditor for Rs. 40,469/- as on 31-03-2011, whereas the above noted creditor has not shown any receivable from the assessee in the confirmation obtained from the creditor. Hence, it is held that the liability of Rs. 40,469/- shown by the assessee in this regard is fictitious liability.

**7.3** Although the assessee has not filed the confirmation from the Great Asian Exports from which the assessee has made purchases of Rs. 1,50,14,978.70 and which has been shown as creditor for Rs. 35,06,919.19 in the Balance Sheet of the assessee as on 31-03-2011, no adverse inference is drawn as the assessee has furnished the copies of bills of purchase and the assessee has also given the details of payments made by him in F.Y. 2011-12 of the entire credit of the above noted party through banking channel. However, in respect of the balance of Rs.42,80,624/-, the assessee has failed to furnish any satisfactory explanation.

In view of the above noted discussion, it is concluded that the assessee has failed to give any satisfactory explanation in respect of the balance of Rs. 42,80,624/- shown as creditor in the Balance Sheet of the assessee as on 31-03-2011. It is, therefore, held to be the assessee's deemed income u/s 68 of the IT Act, 1961.

**(addition of Rs. 42,80,624/-)**

The undersigned is satisfied that the assessee has concealed particulars of his income by furnishing inaccurate particulars of his income. Hence, it is a fit case for initiation of penalty u/s 271(1)(c) of the IT Act, 1961. Penalty notice u/s 271(1)(c) of the IT Act, 1961 is issued, separately.

- 8.** It is noted that the assessee was required to furnish his balance sheet/ statement of affairs vide notice u/s 142(1) of the IT Act, 1961 issued on 25-02-2014 but the assessee did not furnish the same. The assessee attempted to play a trick on the undersigned by stating in the point no. 5 of his reply, dated 24-03-2014 which was furnished on 24-03-2014, as given below:

"Statement of affairs as on 31-03-2009, 31-03-2010 and 31-03-2011 is enclosed as annexure 3."

However, since the assessee did not file the same even on 24-03-2014 and it was seen through by the undersigned and the assessee was confronted with the same in the following



"He is apprised that he has not furnished the Statement of affairs as stated in point 5 of his reply."

**8.1** The hearing of the case was adjourned to 25-03-2014 and it is on 25-03-2014 that the assessee filed the above referred Statement of affairs. Thus, it is proved beyond doubt that the assessee's conduct was to withhold the above referred statement of affair from filing before the undersigned only to buy time for pushing the undersigned to the brink of the time barring limit for the completion of assessment which is involved on 31-03-2014 so that the undersigned cannot make enquiry in to the veracity of the statement of affairs submitted by the assessee. However, the assessee has not appreciated that the burden to prove the correctness of the contents of such statement of affairs rests with him only. It is evident that the capital of the assessee and the funds shown on the credit side of the same has a direct bearing on the total income of the assessee as shown in the assessee's return of income, the assessee vide mandate of the notice u/s 143(2) of the IT Act, 1961, was under the legal obligation to produce the evidence on which the assessee may rely in support of the return. The assessee has evidently failed to furnish/produce any evidence in support of the capital of the assessee shown at Rs.1,57,06,247.70 as on 31-03-2011 as against Rs. 84,76,885.68 as on 31-03-2010.

Similarly, the assessee has not furnished any details and evidence of liability of Rs.38,08,309/- owed by the assessee to Universe Holding Co. as on 31-03-2011 as against Rs. 23,08,309/- as on 31-03-2010. The assessee has not furnished any details and evidence of the liability of Rs. 30,81,000/- owed by him to Dalip Kumar as on 31-03-2011. Thus, there are no details filed by the assessee as to how the capital of the assessee has swelled up by Rs. 72,29,362.02 from 31-03-2010 to 31-03-2011 and the assessee has not furnished any evidence in support of the same . Similarly, there are no details filed by the assessee as to how the liability of Universe Holding Co. has swelled up by Rs. 15,00,000/- from 31-03-2010 to 31-03-2011 and the assessee has not furnished any evidence in support of the same. Further, there are no details filed by the assessee as to how the liability of the assessee of Rs. 30,81,000/- owed to Dalip Kumar has been created and no details of the identity of Dalip Kumar, no detail of his capacity to prove his credit worthiness and no details to prove the genuineness of the transaction with him have been furnished not to speak the evidence in support of the above noted components.

**8.2** The useful reliance is placed on the decision of The Hon'ble Income Tax Appellate Tribunal, Mumbai in the case of Income Tax Officer Vs. Janak U. Bhatt on 19 January, 2006 reported in (2006) 101 TTJ Mum 337, in which the Hon'ble Trivunal has analyzed the provisions of section 68 of the IT Act,1961, in detail. The relevant extract from the same are reproduced as given below;



" In Kale Khan Mohammed Hanif v. CIT (1963) 50 ITR 1 (SC), the Hon'ble Supreme Court considered the burden of proof in case of cash credits found recorded in the books of account of assessee. It held that "it is well established that onus of proving the source of a sum money found to have been received by the assessee is on him. If he disputes the liability of

tax, it is for him to show either that the receipt was not income or that if it was exempt from taxation under the provisions of IT Act. In the absence of such proof, the ITO is entitled to treat it as taxable income of the assessee."

16. In A. Govindarajulu Mudaliar Vs. CIT , the Hon'ble Supreme Court considered this question and held that where assessee failed to prove satisfactorily the source and nature of certain amount of cash received during the accounting year, the ITO is entitled to draw the inference that the receipts are of assessable nature. Following the decision of Hon'ble Supreme Court in the case of A. Govindarajulu Mudaliar (supra), the Hon'ble Punjab and Haryana High Court in Gumani Ram Siri Ram v. CIT held that onus of proving the source of sum of money found to have been credited in the accounts of the assessee is on him. It is for the assessee to prove that the third party, who is said to have advanced the money was in a position to lend such money and that he did and in fact money was lent to assessee.

17. In Shanker Industries Vs. CIT, the Hon'ble Calcutta High Court held that the burden of proof is on the assessee to prove the credit by proving the identity and creditworthiness of the creditor and genuineness of the transaction. Mere proof of identity of creditor or payment by account payee cheque or filing of confirmation letter is not sufficient to discharge the onus, as has been repeatedly held by various High Courts in the case of M.A. UnneeriKutty v. CIT ; CIT v. Precision Finance (P) Ltd. ;

Nizam Wool Agency v. CIT (1992) 193 ITR 318 (All); Nanak ChahdraLaxman Das v. CIT ; B. Tex Corp. v. ITO (1993) 46 TTJ (Bom)(TM) 668 : (1993) 202 ITR 17 (Bom)(TM)(AT). Further, Hon'ble Bombay High Court in VeljiDeoraj& Co. v. CIT held that (under 1922 Act) the assessee's duty to prove that an unexplained credit entry in his account books does not represent undisclosed income, is not discharged by merely showing that the entry appears in the account of a third party and that the party in whose name the amount is credited is not a fictitious party but a real party. He has to prove further that the entry made in the account books is a genuine entry.

18. The onus will shift on to the Department only when identity and creditworthiness of the creditor are established and there is prima facie material to show that transaction is genuine. Merely by making a request for issuance of summons to the creditor, the onus is not discharged from the assessee. Irrespective of the fact whether creditor responds to the summons or not the burden remains on the assessee till he is able to prove the identity and creditworthiness of the creditor and genuineness of the transaction. Issuance of summons to the creditor at the instance of the assessee is only to facilitate the process and to assist the assessee in discharging his burden. It does not lead to the conclusion that burden has been shifted from the assessee. It remains on him till it is discharged as laid down in Section 68. So far issuance of summons at the instance of assessee is concerned, we are of the view that before such extraordinary power is invoked by AO to facilitate the assessee in discharging his burden, the assessee must demonstrate successfully that he has taken reasonable steps for



ensuring attendance of the creditor; that he has complied with the rules laid down under Order 16 of CPC; that the creditor has practically become hostile and non-co-operative. The AO may not invoke his power if he is convinced that the assessee and creditor are acting in a collusive manner to defraud the Revenue."

It has been held by the Hon'ble Madhya Pradesh High Court in the case of VISP(P) Ltd. Vs. Commissioner Of Income Tax & Another (2004) 265 ITR 202 (MP) that the contention that section 68 can be invoked only when the books of account of the assessee show cash credit entry and not otherwise cannot be accepted. The Hon'ble Court has observed that if the liability shown in an account is found to be bogus and there is no plausible and reasonable explanation of the assessee, the amount can certainly be added towards the income of the assessee.

It has been observed by the Hon'ble Delhi High Court in the case of R Dalmia Vs. Commissioner of Income Tax (1978) 113 ITR 522 (Del.) that burden is on the assessee to establish the source and also to prove it was not income-for, when the receipt of money is admitted by the assessee, as it is when a credit entry is made in his books of account, that itself is evidence against the him, which unless is cogently rebutted, leads to an adverse inference.

It has been held by the Hon'ble ITAT, Delhi, in the case of Naushaba Rana Vs. ACIT (2007) 109 ITD 288 (Del.), that where the assessee prepares a statement of affairs, it is incorrect on the part of the assessee to contend that he is not maintaining books of account because a statement of affairs is nothing but a balance sheet of a person as on a particular date and such statement can be prepared only from the books of account.

**8.2** It is an undisputed fact that the assessee has not furnished any details of accretion to the source of funds of Rs. 1,23,10,362.02 (7729,362.02 + 15,00,000 + 30,81,000). However, it is analyzed whether any benefit of the alleged gift of "old gold jewellery" can be given to the assessee, in this regard. Evidently, if for a moment it is assumed that the happening of gift by the assessee's father was a reality, the capital account of the assessee would be credited by the cost of the assets received in gift. The cost of the so called gift of the old gold jewellery is stated to be Rs. 7,67,285/- (4,74,685 + 2,92,600). Hence, the credit to the extent of Rs. 7,67,285/- only can be allowed at the most in the capital of the assessee on account of such gift. As the addition on account of unexplained income with reference to the above referred gifts has already been made, benefit to the extent of Rs. 7,67,285/- is given to the assessee and the balance Rs. 1,15,43,077/- represents the unexplained cash credits in the hands of the assessee, which is held to be assessee's deemed income u/s 68 of the IT Act, 1961.

**(addition of Rs. 1,15,43,077/-)**

The undersigned is satisfied that the assessee has concealed particulars of his income by furnishing inaccurate particulars of his income. Hence, it is a fit case for initiation of penalty u/s 271(1)(c) of the IT Act, 1961. Penalty notice u/s 271(1)(c) of the IT Act, 1961 is issued, separately.



9. It is noted that the assessee is director in the M/s Gagandeep Impex Pvt. Ltd. Thus, the assessee is a person specified in section 2(22)(e) of the IT Act, 1961. The assessee has himself admitted that the above noted company had paid Rs. 10,00,000/-, on his behalf, to Nokia Corporation, vide cheque no. 214518, dated 10-01-2011. It is noted from the clause no. 18 of the Form no. 3CD of the audit report in the Form no. 3CB that section 40A(2)(b) of the IT Act, 1961 are not applicable to the assessee's case. Hence, the payment of Rs. 10,00,000/- is held to be deemed dividend received by the assessee from the above noted company within meaning of section 2(22)(e) of the IT Act, 1961 and it is added back to the total income of the assessee.

**(addition of Rs. 10,00,000/-)**

The undersigned is satisfied that the assessee has concealed particulars of his income by furnishing inaccurate particulars of his income. Hence, it is a fit case for initiation of penalty u/s 271(1)(c) of the IT Act, 1961. Penalty notice u/s 271(1)(c) of the IT Act, 1961 is issued, separately.

It is also noted that the credit balance of Rs. 32,57,525/- of M/s M/s Gagandeep Impex Pvt. Ltd. is also covered by provisions of section 2(22)(e) of the IT Act, 1961. It is noted from the clause no. 18 of the Form no. 3CD of the audit report in the Form no. 3CB that section 40A(2)(b) of the IT Act, 1961 are not applicable to the assessee's case. Hence, the debit balance of the assessee in the books of the above noted company is squarely covered by section 2(22)(e) of the IT Act, 1961, but no separate addition for the same is made as it is telescoped with the addition made u/s 68 of the IT Act, 1961 to the extent of Rs. 32,57,525/-.

Subject to the above noted discussion, the total income of the assessee is computed as given below:

<b>Income from Salary</b>	5,00,000 ✓
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**Income from business and profession**

Net profit as discussed in para 3 above	5,90,376.39	
Add as discussed in para 5 above	10,00,000	
Add as discussed in para 6 above	2,81,514	
Add as discussed in para 9 above	10,00,000	28,71,890.39

**Capital Gain**

Short term capital gain as shown by the assessee	11,13,018
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**Income from other sources**

As discussed in para 2 to 2.5 above	79,10,385
As discussed in para 4 above	10,95,230
As discussed in para 7 to 7.3 above	42,80,624



As discussed in para 8 to 8.2 above	1,15,43,077	2,48,29,316
	<b>Gross Total Income</b>	2,93,14,224.39
Less:		
Deduction under chapter VIA of the Act		1,00,000
	<b>Total Income</b>	<b>2,92,14,224.39</b>

Thus, the assessment is completed on total income of Rs. 2,92,14,224.39 or say after rounding off Rs. 2,92,14,220/- (Rupees two crore ninety two lac fourteen thousand two hundred twenty only). Charge interest u/s 243B, 234C and 234D of the IT Act, 1961. Issue notice of demand.

The undersigned is satisfied that the assessee has concealed particulars of his income by furnishing inaccurate particulars of his income. Hence, it is a fit case for initiation of penalty u/s 271(1)(c) of the IT Act, 1961. Penalty notice u/s 271(1)(c) of the IT Act, 1961 is issued, separately.

(B.2) Also, the relevant portion of the aforesaid impugned appellate order dated 31.03.2015 of the Ld. CIT(A) is reproduced as under:

"

The present appeal is directed against the assessment order passed u/s 143(3) of the Income tax Act, 1961 ('Act' for short) by the Assessing Officer (AO for short hereinafter) i.e the Jt. Commissioner of Income tax, (JCIT hereinafter for short), Range 30, New Delhi dated 28/03/14 determining the total income at Rs.2,92,14,220/- as against Rs.24,78,860/- declared by it on the following grounds:-

1. *That the Id. JCIT Range-30 New Delhi had passed the assessment order, without having territorial jurisdiction over the case of the assessee.*
2. *That the assessment order is bad on various factual & legal grounds.*
3. *That on the facts of the case and under the law, the Id. JCIT Range-30, New Delhi had erred in (i) holding that the amount of Rs.79,10,385/- [representing the sale proceeds of old gold ornaments, which had been acquired by the assessee by way of gift from his father who had acquired most of the items of such gold ornaments on the death of his wife on 21.02.1999] was the assessee's own money from undisclosed sources; and (ii) ultimately making addition of Rs.79,10,385/- in the hands of the assessee u/s 69 for A.Y.2011-12.*
4. *That on the facts of the case and under the law, the Id. JCIT Range-30, New Delhi had erred in treating the Capital Receipt [representing the sale proceeds of old gold ornaments, which had been acquired by the assessee by way of gift from his father who had acquired most of the items of such gold ornaments on the death of his wife in the year 29.05.2011] as income of the assessee from other sources for A.Y. 2011-12.*

5. That on the facts of the case and under the law the Id. JCIT Range-30, New Delhi had erred in working out the Business Income of the assessee at Rs.28,71,890/- as against declared by the assessee at Rs.9,65,839/-.
6. That on the facts of the case and under the law, the Id. JCIT Range-30, New Delhi had erred in excluding the Misc Income of Rs.10,95,230/- [credited to P & L A/c of M/s.Gagandeep Enterprises] to work out the Business Income for the year under consideration.
7. That on the facts of the case and under the law, the Id. JCIT Range 30, New Delhi had erred in applying net profit rate of 2% on total sales of Rs.2,30,49,244.60 [as disclosed in the Trading, P & L A/c] and thus recording his opinion that "The business of the assessee should post a profit of Rs.4,60,984.89".
8. That on the facts of the case and under the law, the Id. JCIT Range-30, New Delhi had erred in adding the negative figure of Rs.1,29,391/- [being the difference of Net Profit as per P & L A/c amounting to Rs.9,65,839/- and Misc Income as credited to P & L A/c amounting to Rs.10,95,230/-], to the amount of Rs.4,60,985/- (net profit estimated by applying n.p. rate of 2%) to workout the Business Income of the assessee.
9. That on the facts of the case and under the law the Id. JCIT Range-30, New Delhi had erred in making disallowance of Rs.10,00,000/-, which had been claimed by the assessee as "Legal Settlement Expenses".
10. That on the facts of the case and under the law the Id. JCIT Range-30, New Delhi had erred in making disallowance of Rs.2,81,514/-, which had been claimed by the assessee as 'Interest on Car Loan'.
11. That on the facts of the case and under the law the Id. JCIT Range-30, New Delhi had erred in making addition of Rs.42,80,624/- (as per details mentioned herebelow), out of total amount of Sundry Creditors at Rs.77,90,243.36:-
 

NAME OF CREDITOR	AMOUNT (in Rs.)
Gagandeep Impex (P) Ltd.	32,57,525
Universe Holding Co.	9,82,630
Sky Speed Frieight Forwarders 40,469 42.80.624	
12. That on the facts of the case and under the law, the Id. JCIT Range-30, New Delhi had erred in making addition of Rs.77,29,362/-, being the difference of Rs. 1,57,06,247.70 (Capital A/c balance as on 31.03.2011) and Rs.84,76,885.68 (Capital A/c balance as on 31.03.2010), more particularly when he had separately made an addition of Rs.79,10,385/-, (representing the entire sale proceeds of gold ornaments)
13. That on the facts of the case and under the law, the Id. JCIT Range-30, New Delhi had erred in making addition of Rs.15,00,000/-, being the amount of fresh credit from M/s Universe Holding Co.
14. That on the facts of the case and under the law, the Id. JCIT Range-30, New Delhi had erred in making addition of Rs.30,81,000/-, being the amount of cheques issued by the assessee (which were not cleared upto 31.03.2011) to Sh. Dalip Kumar towards purchase consideration of property.
15. That on the facts of the case and under the law, the Id. A.O. had erred in making addition of Rs.10,00,000/-, u/s 2(22)(e) in the hands of the assessee.
16. That on the facts of the case and under the law, the Id. A.O. had erred in making addition of Rs.10,95,230/-, being the amount credited to P & L A/c of M/s Gagandeep Enterprises "as "Misc Income", under the head "Income from Other Sources".
17. That the total income assessed by the Id. JCIT Range-30, New Delhi at Rs.2,92,14,220/- as well as the demand created at Rs.1,13,88,710/-, are arbitrary, unjust, illegal and without prejudice very excessive.
18. That on the facts of the case and under the law, charging o interest u/s 234B is arbitrary, unjust & illegal."

2. The incidental facts in brief are that the appellant, an individual, derived income from salary from M/s Gagandeep Impex Pvt Ltd and wholesale trade in mobile accessories as proprietor of M/s Gagandeep Enterprises capital gains on sale of immovable properties and sale of other capital asset (stated to be old gold jewellery). During the impugned assessment year the purchases of mobiles were purportedly made by the appellant from imports from

abroad as well as from Indian market.

The appellant filed its return of income declaring total income of Rs.24,78,860/- on 29/09/11 which was processed u/s 143(1) of the Act. Thereafter the case was picked up for scrutiny under CASS pursuant to which statutory notices u/s 143(2) and 142(1) were issued to the appellant. In response thereto Sh Arun Mehta, FCA of the appellant appeared from time to time and filed the details. The AO after having examined the details based on the audited books of account formed adverse views against the income declared by the appellant and made additions in respect of the following items:-

a) Sale proceeds of gold ornaments u/s 69 invested allegedly by the appellant in the purchase of property after taking the same in the personal capital account as shown in the statement of affairs by the appellant	:	Rs.79,10,385/-
b) Business income estimated by applying NP rate of 2% on sales of Rs.2,03,49,244.60 pertaining to the main trading activity -		Rs.5,90,376/-
c) Misc income treated as income from other sources forming part of total income of M/s Gagandeep Enterprises		Rs.10,95,230/-
d) Disallowance of legal settlement expenses out of court:		Rs.10,00,000/-
e) Disallowance u/s 40(a)(ia) for payment of interest to Kotak Mahindra Prime on car loan without TDS		Rs.2,81,514/-
f) Sundry Creditor – i) Gagandeep Impex Pvt Ltd	+	Rs.32,57,525/-
ii) Universe Holding Company	+	Rs.9,82,630/-
iii) Sky Speed Freight Forwarders	+	Rs.40,469/-
	Total	Rs.42,80,624/-
g) i) Difference between opening and closing capital balance as shown in the statement of affairs by the appellant :	+	Rs.77,29,362/-
ii) Increase in liability of Universe Holding Co.	+	Rs.15,00,000/-
iii) Liability of Dalip Kumar	+	Rs.30,81,000/-
	Sub-total =	Rs.1,23,10,362/-
Less: credit for cost of acquisition of jewellery acquired allowed		Rs.7,67,285/-
	Total =	Rs.1,15,43,077/-
Addition u/s 2(22)(e)		Rs.10,00,000/-

The total income finally assessed by the AO u/s 143(3) after allegedly conforming to the principles of natural justice is depicted below in a tabular form:-

<u>Salary</u>			500000
<u>Profits &amp; Gains from Business</u>			
M/s Gagandeep Enterprises			
Net profit as per P & L A/c		965839	
Less: Miscellaneous Income, to be considered separately		<u>1095230</u>	
Resultant Sum: Loss		129391	
Add: N.P. @ 2% on sales of Rs. 2,30,49,245/-		<u>460985</u>	
		590376	
Add: Legal Settlement Expenses disallowed		1000000	
Add: Interest paid to Kotak Mahindra Prime on car loan disallowed		281514	
Add: Addition u/s 2(22)(e)		<u>1000000</u>	2871890
<u>Capital Gains</u>			
Short Term Capital Gains, as declared			1113018
<u>Other Sources</u>			
Sale proceeds of gold ornaments		7910385	
Miscellaneous Income		1095230	
Part of Sundry Creditors			
Gagandeep Impex Pvt. Ltd.	3257525		
Universe Holding Co.	982630		
Sky Speed Foreign Freight Forwarders	40469		
	<u>4280624</u>	4280624	
Accretion to Capital A/c			
Closing Balance as on 31.03.2011			
Closing Balance as on 31.03.2010	15706247.70		
Difference	<u>8476885.68</u>		
	<u>7229362.02</u>		
Accretion to Loan A/c			
Closing Balances in the A/c of M/s Universe Holding Co. as on 31.03.2011	3808309.00		
Closing Balances in the A/c of M/s Universe Holding Co. as on 31.03.2010	<u>2308309.00</u>		
Difference	1500000.00		
Amount of uncleared cheques issued by assessee to Sh. Dalip Kumar from whom property was purchased during the year)	<u>3081000.00</u>		
Less: Cost of gold ornaments received by assessee by way of gift	12310362.02		
Net Amount	<u>767285.00</u>	11543077	24829316
	<u>11543077.02</u>		
<u>Gross Total Income</u>			29314224
Less: Deductions under chapter VIA			100000
<u>Total Income</u>			29214224
Say			29214220

3. Aggrieved by the action of the AO the appellant came up in appeal whereupon he was served with notices u/s 250 of the Act. In reply thereto, Sh. Chandra Shekhar Anand, Advocate and Authorised Representative (AR for short) for the appellant attended and argued the case. Written submissions were also filed by him. The submissions are reproduced chronologically hereunder:-

"It is respectfully submitted as under:-

1. That the assessee a resident of 30A/75 Punjabi Bagh West, New Delhi-26 and proprietor of M/s Gagandeep Enterprises, 5/58 WEA Saraswati Marg, Karol Bagh, New Delhi-05, had filed his return of income for A.Y.2011-12, declaring total income of Rs. 24,78,860/- on 29.09.2011, as under :-

<u>Salary</u>		500000
From M/s Gagandeep Impex Pvt. Ltd.		
<u>Profits &amp; Gains from Business</u>		
M/s Gagandeep Enterprises		
Net profit as per P & L A/c		965839
<u>Capital Gains:</u>		
Long Term Capital Gains on sale of old gold ornaments, after claiming exemption u/s 54F	NIL	
(Sale consideration: Rs.79,10,385/-)		
Short Term Capital Gains	1113018	1113018
Gross Total Income		2578857
Less: Deductions under chapter VIA		100000
Total Income		2478857
Rounded off		2478860

2. That during the course of assessment proceedings the assessee had furnished the required details, documents, information & explanation etc. to the Id. A.O. [JCIT Range-30, New Delhi], who had examined the same and had recorded statement of the assessee.
3. That the Id. A.O. had passed the assessment order u/s 143(3) dt. 28.03.2014, on total income of Rs. 2,92,14,224/-, thereby making various additions and disallowances. The details regarding the income assessed by the Id. JCIT, Range-30, New Delhi are summarized herebelow:-

<u>Salary</u>		500000
<u>Profits &amp; Gains from Business</u>		
M/s Gagandeep Enterprises		
Net profit as per P & L A/c	965839	
Less: Miscellaneous Income, to be considered separately	1095230	
Resultant Sum: Loss	129391	
Add: N.P. @ 2% on sales of Rs. 2,30,49,245/-	460985	
	590376	
Add: Legal Settlement Expenses	1000000	
disallowed		

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16/03/2015

Add: Interest paid to Kotak Mahindra Prime on car loan disallowed		281514 <u>1000000</u>	2871890
Add: Addition u/s 2(22)(e)			
<u>Capital Gains</u>			
Short Term Capital Gains, as declared			1113018
<u>Other Sources</u>			
Sale proceeds of gold ornaments		7910385	
Miscellaneous Income		1095230	
Part of Sundry Creditors			
Gagandeep Impex Pvt. Ltd.	3257525		
Universe Holding Co.	982630		
Sky Speed Freight Forwarders	40469		
	<u>4280624</u>	4280624	
Accretion to Capital A/c			
Closing Balance as on 31.03.2011			
Closing Balance as on 31.03.2010	15706247.70		
Difference	<u>8476885.68</u>		
	<u>7229362.02</u>		
Accretion to Loan A/c			
Closing Balances in the A/c of M/s Universe Holding Co. as on 31.03.2011	3808309.00		
Closing Balances in the A/c of M/s Universe Holding Co. as on 31.03.2010	<u>2308309.00</u>		
Difference	1500000.00		
Amount of uncleared cheques issued by assessee to Sh. Dalip Kumar from whom property was purchased during the year)	<u>3081000.00</u>		
	12310362.02		
Less: Cost of gold ornaments received by assessee by way of gift	<u>767285.00</u>	11543077	24829316
Net Amount	<u>11543077.02</u>		
Gross Total Income			29314224
Less: Deductions under chapter VIA			100000
Total Income			29214224
Say			29214220

To support the grounds of appeal, the assessee's respectful submissions are as under:-

**Ground of Appeal No. 1**

4. That the first notice dt. 03.08.2012 issued u/s 143(2) by the Id. ITO, Ward-30(4), New Delhi was bearing the address 208 Lajpat Rai Market, Delhi-06.

5. That the assessee had informed the Id. ITO, Ward-30(4) New Delhi that he is

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neither residing, nor maintaining his office (for carrying out his business

- activities) at 208 Lajpat Rai Market, Delhi-06. At the same point of time, the assessee had informed the Id. ITO, Ward-30(4), New Delhi that he has been carrying out his business activities at 5/58 WES Saraswati Marg, Karol Bagh, New Delhi and has been residing at 30A/75, Punjabi Bagh, New Delhi-26.
6. That instead of adopting the right path of transferring the case of the assessee to another Assessing Officer having territorial jurisdiction over the case of the assessee, the Id. ITO, Ward-30(4), New Delhi had issued notices u/s 143(2) and 142(1), which were bearing the address as 5/58 WES Saraswati Marg, Karol Bagh, New Delhi.
7. That the assessment proceedings had been concluded by the Id. JCIT, Range-30, New Delhi vide assessment order dt. 28.03.2014 u/s 143(3), while mentioning that "Later on, as per the Action Plan of the CBDT, New Delhi to the undersigned for completion of the assessment". The Id. A.O. [JCIT Range 30, New Delhi] had mentioned the name and address of the assessee, on the top of the impugned assessment order as under:-  
Sh. Manmohan Singh Sehgal  
5/58 W.E.A. Saraswati Marg  
Karol Bagh, Delhi-110005
8. That it is a well known fact that neither the area of Karol Bagh nor the area of Punjabi Bagh, falls in the territorial jurisdiction of the Id. A.O. Thus, it can not be said that the Id. A.O. was not aware of the fact that he had no territorial jurisdiction over the case of the assessee, yet he had passed the assessment order.
9. That since the Id. A.O. had no jurisdiction over the case of the assessee, the impugned assessment order, being illegal, deserved to be quashed.

**Ground of Appeal No. 2**

10. That after getting the impugned assessment order, the assessee had come to know that the Id. A.O. had made few additions on the ground that the assessee had not furnished certain supporting documents. In this context, it is respectfully brought on record that during the course of assessment proceedings, the Id. A.O. had not (i) raised specific query; (ii) directed the assessee to furnish supporting documents; and (iii) issued show cause notice.
11. That since natural justice had been denied by the Id. A.O. the impugned assessment order deserves to be quashed.

**Ground of Appeal No. 3 and 4**

12. That during the year under consideration, the assessee had sold old gold jewellery (originally belonging to his parents) on different dates to 3 different jewelers (all holding TIN allotted by Delhi Govt.) for Rs. 79,10,385/-, as per the details mentioned herebelow:-

Date	Name of Jeweller	TIN of Jeweller	Net Weight (in Gms)	Amount (in Rs.)
02.07.2010	Ginni Gold Limited	0747033656	1510.01	2471250
06.07.2010	P.K. Jewellers	07130272437	1562.40	2469135
28.01.2011	Harnam Jewellers	07450261009	2200.00	2970000

13. That during the course of assessment proceedings, the assessee had furnished photocopies of all the sale bills.
14. That the assessee had explained to the Id. A.O. that (i) his mother -Smt. Harbhajan Kaur had expired on 21.02.1999 leaving behind her old gold jewellery weighing 4971.15 grams, (ii) thereafter his ailing father -Sh. Darshan Singh Sehgal [who subsequently died on 29.05.2011 i.e. much prior to the date, when the case of the assessee had been selected for scrutiny] had gifted old gold jewellery weighing 5471.76 grams [Old Gold Jewellery weighing 4971.15 grams acquired from his wife + Old Gold Jewellery weighing 500.61 grams of his own] to the assessee; and (iii) he had sold such jewellery on different dates to few jewelers for total consideration of Rs. 79,10,385/-.

15. That the Id. A.O. had issued summons u/s 131 to the assessee and had recorded his statement.
16. That on getting the impugned assessment order, the assessee had come to know that the Id. A.O. had made an addition of Rs. 79,10,385/- (being the total amount of sale proceeds of gold jewellery), while mentioning that "**it is proved that the existence of old gold jewellery and its stated sale is an after thought, stage managed and is fictitious. No such jewellery infact belonged to the assessee during the F.Y. 2010-11". Accordingly, the Id. A.O. had concluded that "Infact, it is assessee's own money from undisclosed sources, which has been utilized by him by investing into the purchase of residential house. It is, therefore held to be from the undisclosed sources and it is held to be the assessee's deemed income within meaning of section 69 of the I.T. Act 1961."**
17. That the Id. A.O. had reached to such a conclusion, while making certain comments. The Id. A.O.'s such comments and the assessee's counter comments are as under:-

**Ld. A.O.'s Comment**

The authenticity of the documents furnished can not be said to be proved by the assessee, because the originals have not been produced.

**Assessee's Counter Comment**

The Id. A.O. had not asked the assessee to produce the originals.

**Ld. A.O.'s Comment**

In the Will of Smt. Harbhajan Kaur, description & details of the jewellery is not mentioned.

**Assessee's Counter Comment**

The old lady has mentioned the weight of her old gold jewellery in her Will. Since the said old lady was not a expert in drafting a Will, but was a homely lady, she had not mentioned in her Will whatever was in her mind at the time of executing her Will.

**Ld. A.O.'s Comment**

The capacity of Sh. Darshan Singh Sehgal (father) who made the gift of jewellery to the assessee and the bequeathing of the old gold jewellery by Smt. Harbhajan Kaur to Sh. Darshan Singh Sehgal is not proved, because no Wealth Tax Return was ever filed by Late Sh. Darshan Singh.

**Assessee's Counter Comment**

The assessee was not liable to file wealth tax return. Non filing of wealth tax return by Sh. Darshan Singh cannot be a ground for doubting the jewellery sold by the assessee.

**Ld. A.O.'s Comment**

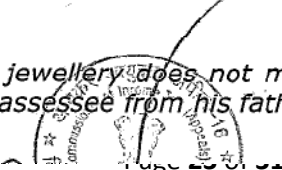
The description and details of the jewellery purchased by the jewelers is not mentioned on the bills.

**Assessee's Counter Comment**

The assessee cannot be held answerable for this, because it was the jewelers only who prepared the Bill at the time of purchasing old jewellery from the assessee. The Jewellers generally mentions "Old Gold Jewellery" in the purchase bills, perhaps because they do not sell such old items as it is but they do the melting of old items to convert it into a piece of gold for issuing the same to goldsmiths for making new items.

**Ld. A.O.'s Comment**

The weight of the sold gold jewellery does not match with the weight of the jewellery stated to be acquired by the assessee from his father.



**Assessee's Counter Comment**

It appears that the Id A.O. had got confused with the weight of old gold jewellery (4971.15 grams), which had been acquired by the assessee's father – Sh. Darshan Singh from his wife- Smt. Harbhajan Kaur. Otherwise there was no difference in the weight of the old gold ornaments, in as much as the assessee had clarified that besides old gold jewellery weighing 4971.15 gms, the assessee's father was also owning his personal old gold jewellery weighing 500.61 grams. As such the total weight of the old gold jewellery held / possessed by the assessee at one point of time worked out at 5471.76 grams, which had been sold by the assessee during the year under consideration.

**Ld. A.O.'s Comment**

The bill has not been signed by anyone on behalf of the purchaser being M/s PK Jewellers.

**Assessee's Counter Comment**

The Bill was duly signed. However, since atb that point of time, the said Bill was not readily traceable. The assessee had visited the office of the said M/s P.K. Jewellers and obtained a print out of the said Bill.

**Ld. A.O.'s Comment**

The date of making gift of jewellery was 26.06.2010, while the valuation report was made on 30.06.2010 in the name of Sh. Darshan Singh.

**Assessee's Counter Comment**

At the time of making gift of old gold jewellery to his son – Manmohan Singh Sehgal (the assessee) on 26.06.2010, the said Sh. Darshan Singh had got the valuation done from the Valuer on 26.06.2010, but the valuer had given his report on 30.06.2010.

18. That apropos the Id. A.O.'s comment that 'it is proved that the existence of old gold jewellery and its stated sale is an after thought, stage managed and is fictitious', it is respectfully stated that the assessee had sold such old jewellery to different jewelers (as per the details mentioned in the table below point no. 12) and had received payment through cheques issued by such jewelers in the month of July 2010 and Jan 2011 is much prior to the date of commencement of assessment proceedings. This fact alone establishes that sale cannot be an after thought. The Id. A.O. could not appreciate that if those jewelers would not had in fact purchased old jewellery from the assessee, then they would not had raised bills and issued cheques to the assessee. If the Id. A.O. had any doubt as to whether the credit entries covering total amount of Rs. 79,10,385/- appearing in the bank account of the assessee on different dates, represented the proceeds of the cheques issued by the various jewelers, or as to whether the bills furnished by the assessee (to support his claim of sale of old gold jewellery) were actually raised by those jewelers, he could had made direct enquiries from the jewelers and recorded his such contrary findings in the body of the assessment order.
19. That the Id. A.O. had invoked the provision of section 69 of the IT Act 1961 for making addition of Rs. 79,10,385/-. In this context your honour's kind attention is hereby invited towards the section 69 of the IT Act 1961. A perusal of the same reveals that where in the financial year immediately preceding the assessment year the assessee has made investment which are not recorded in the books of account, if any maintained by him for any sources of income, and the assessee offers no explanation about the nature & source of the investments or the explanation offered by him is not, in the opinion of the A.O., satisfactory, the value of the investment may be deemed to be the income of the assessee of such financial year. Your honour will appreciate that the said amount of Rs.79,10,385/- represented the sale proceeds of old gold jewellery, and the assessee had not

only explained the facts relating thereto but also had furnished supporting documents.

20. That in view of the above stated facts, your honour is requested to kindly delete the addition of Rs. 79,10,385/- made u/s 69.

**Ground of Appeal No. 5, 6, 7, 8, 9, 10 & 11**

21. That on going through the P & L A/c of M/s Gagandeep Enterprises (a sole proprietary concern of the assessee), the Id. AO. had noticed that there was net profit of Rs. 9,65,838.85 and also that there was miscellaneous income of Rs. 10,95,230/-. The Id. A.O. had asked the assessee to explain such miscellaneous income and also to file ledger a/c of the same. The assessee had explained that various customers (mostly from other states) used to visit the office of the assessee which is located in the prime area of Saraswati Marg ( known as Gaffar Market (a hub for mobile accessories etc. for purchasing mobile phones & mobile accessories etc.), from a reliable dealer. The assessee had given standing instructions to its staff/employees that if the desired goods are not available with them, then they should tell such customers that they can arrange the desired goods from other shops/ dealers at competitive price while assuring them that they shall arrange good quality b& genuine products for them. If such customers ultimately bought the goods from others shops/dealers, through the staff / employees of the assessee, the made money out of such activities.
22. That the assessee had furnished the details of such miscellaneous income of Rs. 10,95,230/-, besides other details pertaining to P & L A/c. It may be worth mentioning here that earning such income categorized as miscellaneous income, was not a solitary transaction but was a regular feature throughout the whole year.
23. That on getting the assessment order, the assessee had come to know that the Id. A.O. had worked out the business income at Rs. 28,71,890.39, as under:-

Net profit @ 2% on sale of Rs. 2,30,49,244.60	460984.89	
Difference between Misc Income of Rs. 10,95,230/- and Net profit of Rs. 9,65,838.85 as per P & L A/c	129391.50	590376.39
Disallowance of Legal Settlement Expenses		1000000.00
Disallowance u/s 40(a)(ia)		281514.00
Addition u/s 2(22)(e)		1000000.00
		2871890.39

24. That apropos the amount of Rs. 5,90,376.39, it may be worth bringing on record that (i) the Id. A.O. could not point out any discrepancy or defect in the books of account of the assessee; (ii) the Id. A.O. had not raised any specific query as to why the books of account be not rejected and net profit rate of 2% be applied on total sales made; (iii) the Id. A.O. had not rejected the books of account; (iv) the Id. A.O. had not given any justification for application of net profit rate of 2% on the sales made; and (v) the Id. A.O. had added an amount of Rs. 1,29,391.50 towards the said amount of Rs. 4,60,984.89, without raising any specific query and without giving any justification for the same.

Note: The Id. A.O. had treated the "Miscellaneous income of Rs. 10,95,230/-" addition of Rs. 10,95,230/- vide para 4 of the impugned assessment order.

25. That apropos the disallowance of Rs. 10,00,000/-, it may be worth bringing on record that some counterfeit and infringing products bearing Nokia Trade Mark,

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were lying in a vehicle, which was standing in the premises bearing no. 5/55-57 WEA Market, Karol Bagh, New Delhi. On the persuasion of Nokia Corporation, such counterfeit / infringing products were seized. Accordingly, Nokia Corporation had filed a complaint / FIR with the police on 12.12.2010. The assessee being the proprietor of M/s Gagandeep Enterprises, director of M/s Gagandeep Impex Pvt. Ltd. and father of proprietor of Universe Holding Company, arrived at a understanding with Nokia Corporation, vide MOU dt. 10.01.2011. It had been settled with Nokia Corporation that a total amount of R. 30,00,000/- will be paid to it. Simultaneously, it had been mutually agreed by & between the assessee (M/s Gagandeep Enterprises), M/s Gagandeep Impex Pvt. Ltd. and M/s Universe Holding Company that each of them will bear Rs. 10,00,000/- each. In the light of the said MOU, all the three parties namely M/s Gagandeep Enterprises, M/s Gagandeep Impex Pvt. Ltd. and M/s Universe Holding Company (all of them were in the same trade), had borne & paid an amount of Rs. 10,00,000/- each to Nokia Corporation on 10.01.2011 (as per the details mentioned herebelow), with a view to settle the matter out of court. Accordingly, the assessee had debited the said amount of Rs. 10,00,000/- to its P & L A/c under the head Legal Settlement Expenses.

**Details of payment made to M/s Nokia Corporaion**

Party's Name	Cheque Amount	Cheque Details
Gagandeep Enterprises	1000000	Ch. No. 181028 Dated 10.01.2011
Gagandeep Impex Pvt. Ltd.	1000000	Ch. No. 214518 Dated 10.01.2011
Universe Holding Co.	1000000	Ch. No. 148594 Dated 10.01.2011
	3000000	

Note: All these 3 parties had claimed deduction of Rs. 10,00,000/- each on a/c of such expenditure, vide their P & L A/c.

26. That during the course of assessment proceedings, the Id. A.O. had asked the assessee to explain as to why such claim of Rs. 10,00,000/- made for the year ending 31.03.2011 may not be disallowed (i) as the same is found to be for the infringement of Trademarks Act 1999 and the out of court settlement was arrived at by you after the FIR was lodged against you; and (ii) in para 5 of the MOU dt. 10.01.2011, the date of demand draft no. 049604 is stated to be 10.01.2010 (pertaining to A.Y. 2010-11).
27. That in response to such query, the assessee had explained that (i) he had incurred such expense for the purpose of his business only i.e. to save his business of mobile accessories etc.; and (ii) due to typographical error, the date of draft is typed as 10.01.2010, while the correct date was 10.01.2011.
28. That on getting the assessment order, the assessee had come to know that the Id. A.O. had disallowed such claim of the assessee by stating that it is covered by the explanation to section 37(1) of the I.T. Act 1961.
29. That in this context, it is respectfully clarified that the assessee had incurred such expense for the purpose of his business only. The assessee had paid such amount of Rs.10,00,000/- to Nokia Corporation, to save his business of mobile accessories etc. Had the assessee not settled the matter with Nokia Corporation, the assessee may have to close down his business of mobile accessories etc. or may have to incur a lot of expenses on litigation. As such, the purpose of incurring such expense was business only.
30. That apropos the disallowance of Rs. 2,81,514/-, it may be worth bringing on record that the assessee had got financed a vehicle from Kotak Mahindra Prime. The said Kotak Mahindra Prime had taken few post dated cheques of Rs. 86,670/-

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(wherein principal amount as well as interest amount was included) from the assessee in the beginning itself. As such, the assessee was not in a position to deduct tax at source out of the interest component charged by the Kotak Mahindra Prime.

31. That the Id. A.O. had made addition of Rs. 10,00,000/- in the hands of the assessee u/s 2(22)(e) by stating that the said M/s Gagandeep Impex Pvt. Ltd. had paid Rs. 10,00,000/-, on behalf of the appellant to Nokia Corporation, vide cheque No. 214518 dt. 10.01.2011.
32. That in this context, it may be worth bringing on record that in the light of the mutual agreement by & between M/s Gagandeep Enterprises, M/s Gagandeep Impex Pvt. Ltd. and M/s Universe Holding Company, the said M/s Gagandeep Impex Pvt. Ltd. had issued a cheque no. 214518 dt. 10.01.2011 to Nokia Corporation.
33. That the Id. A.O. had misunderstood the facts and under such misconception, the Id. A.O. had formed a view that that the payment of Rs. 10,00,000/- paid by M/s Gagandeep Impex Pvt. Ltd. to Nokia Corporation is hit by the provision of section 2(22)(e). Consequently the Id. A.O. had made an addition of Rs. 10,00,000/- in the hands of the assessee u/s 2(22)(e).
34. That after making such addition of Rs. 10,00,000/- u/s 2(22)(e), the Id. A.O. had mentioned that the credit balance of Rs. 32,57,525/- of M/s Gagandeep Impex Pvt. Ltd. is also covered by provisions of section 2(22)(e). The Id. A.O. had further mentioned that "but no separate addition for the same is made as it is telescoped with the addition made u/s 68 of the I.T. Act 1961 to the extent of Rs. 32,57,525/-".
35. That the transactions between the assessee / M/s Gagandeep Enterprises and M/s Gagandeep Impex (P) Ltd. were business transactions, in as much as during the year under consideration, the assessee / M/s Gagandeep Enterprises had purchased goods of Rs. 94,50,000/- from the said M/s Gagandeep Impex (P) Ltd.
36. That as per the Balance Sheet of M/s Gagandeep Enterprises as on 31.03.2011, the total amount of creditors as on 31.03.2011 was Rs. 77,90,243/-. The party wise details of the said amount of Rs. 77,90,243/- is summarized herewbelow:

Name of Creditor	Amount as on 31.03.2011
Gagandeep Impex Pvt. Ltd.	3257525
Great Asian Exports	3509619.19
Sky Speed Freight Forwarders	40469
Universe Holding Company	982630.20
	7790243.39

37. That after getting the assessment order, the assessee had come to know that the Id. A.O. had made addition of Rs. 42,80,624/- u/s 68 on account of alleged unexplained creditors namely M/s Gagandeep Impex Pvt. Ltd. (Rs. 32,57,525/-), M/s Sky Speed Freight Forwarders (Rs. 40,469/-) and M/s Universe Holding Company (Rs. 9,82,630/-), while stating that in respect of the amount of Rs. 42,80,624/-, the assessee has failed to furnish any satisfactory explanation.
38. That during the course of assessment proceedings, the assessee had furnished (i) confirmations from M/s Gagandeep Impex Pvt. Ltd. and M/s Universe Holding Company; and (ii) details of payment made to M/s Great Asian Exports (Hongkong) in the succeeding financial year.
39. That the Id. A.O. had not specified as on what basis, he is making allegation that the assessee has failed to furnish any satisfactory explanation, particularly when the assessee had furnished the confirmations of M/s Gagandeep Impex Pvt. Ltd. and M/s Universe Holding Company, while providing their PAN.

**Ground of Appeal Nos. 12, 13 and 14**

40. That during the course of assessment proceedings, the Id. A.O. had asked the assessee to furnish his personal statement of affairs and in compliance thereto, the assessee had furnished his personal statement of affairs for the year under consideration as well as the earlier year.
41. That on getting the assessment order, the assessee had come to know that the Id. A.O. had made addition of Rs. 1,15,43,077/- on the basis of such personal statement of affairs, by stating that the assessee has not furnished any details of accretion to the source of funds of Rs. 1,23,10,362/-. A perusal of para 8.2 of the impugned assessment order reveals that the Id. A.O. had given bifurcation of the said amount of Rs. 1,23,10,362/- as under:-

Amount	Particulars
7729362	Being the difference of the capital as on 31.03.2011 [Rs. 1,57,06,247/-] and 31.03.2010 [Rs. 84,76,885/-]
1500000	Being the difference of the amount due to M/s Universe Holding Company as on 31.03.2011 [Rs. 38,08,309/-] and 31.03.2010 [Rs. 23,08,309/-]
3081000	Being the amount due to Sh. Dilip Kumar as on 31.03.2011
12310362	

Note: The Id. A.O. had given credit of Rs. 7,67,285/- [Rs. 4,74,685/- + Rs.2,92,600/-] on account of cost of the old gold jewellery, which had been sold by the assessee during the year under consideration.

42. That apropos the amount of Rs. 77,29,362/-, it is clarified that
- the Id. A.O. had miscalculated the difference between the amount of capital as on 31.03.2011 [Rs. 1,57,06,247/-] & the amount of capital as on 31.03.2010 [Rs. 84,76,885/-] at Rs. 77,29,362/-, while the difference is worked out at Rs. 72,29,362/-; and
  - the Id. A.O. had failed miserably to appreciate that the difference the capital as on 31.03.2010 & 31.03.2011 was mainly due to sale proceeds of old gold jewellery amounting to Rs. 79,10,385/-, which had been credited to the capital account for the year under consideration.

Note: The Id. AO. had separately made an addition of the said amount of Rs. 79,10,385/-, thereby disbelieving the fact relating to sale of old gold jewellery.

(B.3) In the course of appellate proceedings in Income Tax Appellate Tribunal ("ITAT", for short), a Paper Book was filed from assessee's side containing the following particulars:

1. Photocopy of Application dt. 23.01.2015 moved by the assessee U/r 46A before the Id. CIT(A).
2. Photocopy of Paper Book Index with It's enclosures containing 123 pages, which were filed by the assessee alongwith application dt. 23.01.2015

*moved u/r 46A before the Id. CIT(A).*

*3. Photocopy of written submissions dt. 23.01.2015 filed by the assessee with the Id. CIT(A).*

*4. Photocopy of Paper Book Index with it's enclosures containing 9 pages, which were filed alongwith application dt. 23.01.2015 with the Id. CIT(A).*

*5. Photocopy of assessee's letter dt. 25.02.2015 with it's enclosures filed by the assessee with the Id. A.O. during remand proceedings.*

*6. Photocopy of Ld. A.O.'s Remand Report dt. 09.03.2015*

*7. Photocopy of the assessee's Rejoinder vide letter dt. 23.03.2015.*

(C) At the time of hearing before us, the learned Departmental Representative ("Ld. DR", for short) relied on the order of the AO. The Ld. Counsel for the assessee, on the other side, relied on the aforesaid impugned appellate order dated 31.03.2015 of the Ld. CIT(A). He also relied on the aforesaid Paper Book to support the order of the Ld. CIT(A).

(C.1) We have heard both sides carefully. We have also perused the materials available on records. We are of the view that the order of the Ld. CIT(A) is in accordance with law in facts and circumstances of the case. Relevant portion of the order of the Ld. CIT(A) has already been reproduced in foregoing paragraph (B.2) of this order. He has passed a speaking order in detail and we find no infirmity in the order of the Ld. CIT(A). We find no reason to interfere with the order of the Ld. CIT(A). No materials were brought for our consideration by either side to warrant a view different from the view already taken by Ld. CIT(A) on the merits of the addition.

Therefore, the appeal of the Revenue is dismissed.

Order is pronounced in the Open Court on 28/11/2019.

Sd/-  
**(AMIT SHUKLA)**  
**JUDICIAL MEMBER**

Sd/-  
**(ANADEE NATH MISSHRA)**  
**ACCOUNTANT MEMBER**

Dated: 28/11/2019  
Pooja/-

Copy forwarded to:

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

ASSISTANT REGISTRAR  
ITAT NEW DELHI

Date of dictation	
Date on which the typed draft is placed before the dictating Member	
Date on which the typed draft is placed before the Other Member	
Date on which the approved draft comes to the Sr. PS/PS	
Date on which the fair order is placed before the Dictating Member for pronouncement	
Date on which the fair order comes back to the Sr. PS/PS	
Date on which the final order is uploaded on the website of ITAT	
Date on which the file goes to the Bench Clerk	
Date on which the file goes to the Head Clerk	
The date on which the file goes to the Assistant Registrar for signature on the order	
Date of dispatch of the Order	