आयकर अपीलीय अधिकरण, जयपुर न्यायपीठ, जयपुर

IN THE INCOME TAX APPELLATE TRIBUNAL, JAIPUR BENCHES "A", JAIPUR

श्री संदीप गोसाईं, न्यायिक सदस्य एवं श्री विक्रम सिंह यादव, लेखा सदस्य के समक्ष

BEFORE SHRI SANDEEP GOSAIN, JM & SHRI VIKRAM SINGH YADAV, AM

आयकर अपील सं./ITA No. 49/JP/2018

निर्धारण वर्ष/Assessment Year :2011-12

Shri Gulab Chand Meena, Village- Dantali, Tehsil-Sanganer, Jaipur.	बनाम Vs.	A.C.I.T.(OSD), Range-7, Jaipur.
स्थायी लेखा सं./जीआईआर सं./PAN/GIR No.: ABUPM 2026 R		
अपीलार्थी/Appellant		प्रत्यर्थी/Respondent

निर्धारिती की ओर से/ Assessee by : Shri Manish Agarwal (CA)

राजस्व की ओर से/ Revenue by : Smt. Monisha Choudhary (Addl.CIT)

सुनवाई की तारीख/ Date of Hearing : 11/01/2021

उदघोषणा की तारीख/ Date of Pronouncement : 28/01/2021

आदेश/ ORDER

PER: SANDEEP GOSAIN, J.M.

This is an appeal filed by the assessee against the order of ld.CIT(A)-3, Jaipur dated 06/12/2017 for the A.Y. 2011-12 in the matter of order passed U/s 143(3) read with Section 147 of the Income Tax Act, 1961 (in short, the Act), wherein following grounds have been taken.

"1. On the facts and the circumstances of the case the Ld. CIT(A) erred in confirming the disallowance of deduction u/s 54F of Rs. 5,78,571/- made by ld.AO arbitrarily and accordingly treating it as a long term capital gain when all the conditions prescribed u/s 54F were fulfilled by assessee.

1.1. That the Ld. CIT(A) has further erred in not considering the fact that assessee had submitted the valuation report in support of his claim of

deduction which itself is a substantial evidence to claim the deduction u/s 54F, thus the claim so disallowed deserves to be deleted.

2. On the facts and the circumstances of the case ld. CIT(A) has grossly erred in confirming the addition of Rs. 11,38,750/- made by ld.AO on the allegation that assessee had earned from the undisclosed sources without considering the submission made and evidence adduced, thus addition so made of Rs. 11,38,750 deserves to be deleted.

2.1 That the Ld. CIT(A) has further erred in confirming the addition by ignoring the explanation of assessee that these deposits were received by assessee on behalf his mother as a gift duly supported by necessary document such as gift deed etc., thus addition so made deserves to be deleted.

3. That the appellant craves the right to add, delete, amend or abandon any of the grounds of appeal either before or at the time of hearing of appeal."

2. Rival contentions have been heard and record perused. Brief facts of the case are that assessee is an individual and for the year under appeal had income below basic exemption limit and therefore no return of income was filed u/s 139(1) of the Income Tax Act,1961 (the Act). Case of assessee was reopened vide issuance of notice u/s 148 of the Act. In response to such notice, assessee filed return of income declaring total income at Rs.1,51,660/-, which inter alia included capital gain earned by the assessee and claimed deduction u/s 54F. During the course of assessment, the A.O. made following additions:

Long Term Capital Gain (by disallowing deduction u/s 54F)	Rs. 5,75,691.00
Cash deposits in bank account alleged	Rs.11,38,750.00

as unexplained

Interest Income Rs. 2,924.00

Also, deduction claimed by assessee u/s VIA to the tune of Rs.1,00,000/- was not given. By the impugned order, the ld. CIT(A) confirmed the action of the A.O. against which the assessee is in further appeal before the ITAT.

3. The ground No. 1 and 1.1 of the appeal raised by the assessee relates to challenging the order of the ld. CIT(A) in confirming the disallowance of deduction U/s 54F of the Act. In this regard, the ld AR appearing on behalf of the assessee has reiterated the same arguments as were raised before the ld. CIT(A) and also relied upon the written submissions filed before the Bench and the contents made in the written submissions of the assessee are as under:

> *"In these grounds of appeal, assessee has challenged the action of ld.CIT(A) in confirming the addition of Rs. 5,78,571/- made by ld.AO by denying deduction claimed by assessee u/s 54F of the Act.*
>
> *Facts pertaining to the grounds of appeal are that during the year under appeal on 01.12.2010, assessee alongwith 4 other family members sold a piece of land situated at Village Dantali, Patwar-Dantali, Tehsil-Sanganer, Jaipur for a total consideration of Rs.40,50,000/-, (copy of sale deed at APB 15-16) of which assessee's share was Rs.5,78,571/-. Out of the sale consideration received assessee had invested in construction of house property and accordingly claimed deduction u/s 54F of the Act. These facts were disclosed in return of income filed in response to notice u/s*

148. However, subsequently, it was realised by assessee that cost of acquisition was omitted to be claimed in return of income, thus assessee vide letter dated 27.02.2015 claimed the cost of acquisition of Rs.20,000/- (FMV on 01.04.1981) and after claiming indexed cost of the same worked out LTCG at Rs.4,36,371/- on which deduction was claimed u/s 54F. Assessee also furnished a copy of Valuation Report of Registered Valuer in support cost of Construction in house property carried out by it. However, Ld. AO recomputed the cost of acquisition claimed by assessee and also disallowed the exemption claimed by assessee by alleging as under:

(1) Cost of acquisition was not claimed by assessee while computing capital gain at the time of filing return of income- In this regard, it is submitted that cost could not be claimed in computation by mistake as even otherwise, there was no income chargeable to tax under the head "Capital Gains", since assessee had already invested entire capital gain amount in construction of new property. Subsequently a letter was filed claiming cost of acquisition (APB 13-14).

Your honours would appreciate that cost of acquisition has to be allowed in all cases where asset was purchased by assessee for consideration, therefore non-claiming of cost in computation cannot be viewed adversely. Moreover, ld. AO rejected the cost claimed by assessee without providing any reason. Further, ld. AO estimated the cost of land at Rs.2880/- on the basis of information regarding land rates, sought by him from DG (Stamps) in some other case where land was not situated in the village of assessee. It is noteworthy here that land sold by assessee was located in village Dantali, Patwar, Tehsil Sanganer whereas Ld. AO applied rates of land located at Bagru, Khurd which were not at all comparable. In fact, ld.AO did not mention as to how the rates obtained by him in some other case were applicable to assessee's case.

It is thus submitted that cost of acquisition claimed by assessee deserves to be allowed.

(2) Valuation Report furnished by assessee is dated 25.02.2015 (APB 20-30): In this regard, it is submitted that exemption u/s 54F was claimed by assessee towards cost of construction of house property and in support of claim of expenditure being incurred, assessee furnished Valuation report from registered valuer, according to which value of construction was shown at Rs.4,03,920/-. However, ld.AO by alleging that such report is dated 25.02.2015 and also the valuer has visited the property in 2015 disregarded the same and directed the assessee to produce the contractor who constructed the house. Assessee tried his best but since has no control over the contractor failed to produce him and ld. AO disallowed the exemption claimed by assessee u/s 54F.

In this regard, it is submitted that non appearance of contractor before AO should not lead to adverse inference in the case of assessee as, it is a well known fact that a common man always hesitates in appearing before Income Tax Department due to fear of being interrogated and getting into unwanted and prolonged litigation.

It is further submitted that undoubtedly, valuation as carried out by the registered valuer on 25.02.2015 was as per the construction rates in force in 2011, as the construction work was complete in the year 2011 itself, which fact is mentioned in Valuation report itself and is overlooked by ld. AO as well as ld. CIT(A). The valuer has determined the cost of construction for30.7.2011 (APB 20) and year of construction was certified by the valuer as 2010-11 (APB 22). Your honours would appreciate that it was only for the reason that assessee had to give proof in support of construction work, valuation was carried out, otherwise there was no need to get it valued. Further, the fact of construction being carried out is not doubted by lower authorities, thus so far as assessee has invested capital

gain for construction, within the time limit prescribed and the said fact is confirmed by registered valuer, there is no reason to not consider the same. Had there been any doubts about the authenticity of the valuation report, the ld.AO could have summoned the registered valuer else referred the matter to the DVO for valuation but without having any authority to comment upon the technical matter, ld. AO has made observations on the valuation report submitted by the assessee. It is settled law that once the valuation report of the registered valuer is submitted and AO has not referred, such report should be accepted.

Further, with regards to allegation that assessee has withdrawn cash to the tune of Rs.4,00,000/- only till 31.07.2011, which was not invested in construction by that date and nor was deposited in bank account notified under Capital Gain Account Scheme. In this regard, it is submitted that section 54(1) provides that if capital gain earned by assessee is invested within a period of one year before or two years after the date on which the transfer took place, purchased or has within a period of three years after that date, constructed one residential house in India, then exemption u/s 54 shall be available in respect of capital gain in accordance with clause (i) and (ii) thereof.

Further, provisions of section 54(2) provide as under:

Profit on sale of property used for residence.

54.(2) *"The amount of the capital gain which is not appropriated by the assessee towards the purchase of the new asset made within one year before the date on which the transfer of the original asset took place, or which is not utilised by him for the purchase or construction of the new asset before the date of furnishing the return of income under section 139, shall be deposited by him before furnishing such return [such deposit being made in any case not later than the due date applicable in the case*

of the assessee for furnishing the return of income under sub-section (1) of section 139] in an account in any such bank or institution as may be specified in, and utilised in accordance with, any scheme[30] which the Central Government may, by notification in the Official Gazette, frame in this behalf and such return shall be accompanied by proof of such deposit; and, for the purposes of sub-section (1), the amount, if any, already utilised by the assessee for the purchase or construction of the new asset together with the amount so deposited shall be deemed to be the cost of the new asset."

On perusal of above, it is evident that to be eligible for claiming exemption u/s 54:

(1) Full amount of the capital gain has to be invested by assessee in purchase/ construction of new residential house property within the time limit prescribed u/s 54(1);

(2) If assessee has not invested full amount of capital gain within one year before the date of transfer and not even upto the due date of filing return, the same is to be deposited in accordance with Capital Gain Accounts Scheme within time limit u/s 139(1), which can be subsequently utilized within 2 years for purchase or within 3 years for construction of new house property.

(3) Further, assessee can also claim exemption, if the capital gain is utilized within the time limit u/s 139(4) even though nothing is deposited in the capital gain account within time limit u/s 139(1) as first limb of section 54(2) states merely section 139 and does not specify any sub section thereof.

This conclusion can be validly drawn for the reason that two sections are referred u/s 54(2), viz. 139 and 139(1) in two different sentences. In the first sentence with reference to appropriation of un-utilised amount of

capital gain, section 139 is referred without mentioning any sub section. While in the second sentence with reference to deposition of amount in capital gain account, section 139(1) is specifically mentioned, which means that even when nothing in deposited in capital gain account, exemption u/s 54 can be availed if the full amount of capital gain is utilized within time limit u/s 139(4) as section 139 mentioned in the act for that purpose includes all subsections. However, if the amount is not actually utilized within the time limit, exemption can't be claimed by depositing the amount after due date mentioned u/s 139(1). If the assessee wants to deposit the amount in capital gain account, the deposition has to be within the time limit mentioned u/s 139(1). Reliance is placed on the following judicial pronouncements:

(i) CIT vs Jagriti Agarwal (2011) 203 Taxman 203 (P& H)

(ii) Kishore H. Galiya v. ITO ITA No.7326/ Mum/2010

(iii) ACIT Vs. Maya Devi Sharma in ITA No. 71/JP/15 dated 25.07.2017 (relevant Para 5.4 at page 24 of the order)

(iv) Shri Arvind Jain Vs. ITO in ITA No. 825/JP/2016 dated 20.06.2018

In view of above, it is humbly prayed that since assessee has made investment in construction of house property within the specified period, assessee may please be allowed exemption u/s 54F."

4. On the other hand, the ld DR has relied on the orders of the authorities below.

5. We have considered the rival contentions and carefully gone through the orders of the authorities below. With regard to denial of deduction U/s 54F we found that during the year under appeal on 01.12.2010, assessee

alongwith 4 other family members sold a piece of land situated at Village Dantali, Patwar-Dantali, Tehsil-Sanganer, Jaipur for a total consideration of Rs.40,50,000/-, of which assessee's share was Rs.5,78,571/-. Out of the sale consideration received assessee had invested in construction of house property and accordingly claimed deduction u/s 54F of the Act. These facts were disclosed in return of income filed in response to notice u/s 148. However, subsequently, it was realised by assessee that cost of acquisition was omitted to be claimed in return of income, thus assessee vide letter dated 27.02.2015 claimed the cost of acquisition of Rs.20,000/- (FMV on 01.04.1981) and after claiming indexed cost of the same worked out LTCG at Rs.4,36,371/- on which deduction was claimed u/s 54F on the plea that sale proceed. Assessee also furnished a copy of Valuation Report of Registered Valuer in support cost of Construction in house property carried out by it. However, the AO recomputed the cost of acquisition claimed by assessee and also disallowed the exemption claimed by assessee U/s 54F of the Act.

6. After having gone through the facts of the present case, we also noticed that the claim of the assessee for seeking exemption U/s 54F of the Act was rejected by the Revenue merely on the ground that the report of valuation submitted by the assessee cannot be considered as evidence for verification of claim U/s 54F of the Act on the grounds that valuation was

made by the valuer on 25/02/2015 instead of year 2011 and the contractor from whom the construction of house was gone done was not produced. It was also held by the Revenue that the source of investment in the house property was not explained or proved by the assessee. However, in this respect, we noticed that the valuation report furnished by the assessee on 25/02/2015 which is at page No. 20-30 of the paper book and in this regard, it was submitted by the assessee that the exemption U/s 54F of the Act was claimed by the assessee towards cost of construction of house property and in support of claim of expenditure being incurred, the assessee had furnished valuation report from the registered valuer and according to which the value of construction was shown at Rs. 4,03,920/-. Undoubtedly, according to the said report, it was clearly mentioned that the valuation was carried out by the registered valuer on 25/02/2015 but the same was prepared as per the construction rates prevailing in the year 2011 as the construction work was completed in the year 2011 itself. The said fact is clearly mentioned in the valuation report itself but the same was overlooked by both the revenue authorities. The valuer has determined the cost of construction on 30/07/2011 which is at page No. 20 of the paper book and the year of construction was certified by the valuer as 2010-11 which is mentioned at page No. 22 of the paper book. The fact of construction being carried out has not been doubted by the lower authorities, thus, so far as

the assessee has invested capital gain for construction within the time limit prescribed and the said fact has also been confirmed by the registered valuer, therefore, there was no reason to not consider the same. Had there been any doubts about the authenticity of the valuation report, then in that eventuality, the A.O. could have summoned the registered valuer or could have referred the matter to the DVO. Therefore, when once the valuation report of the registered valuer is submitted and the A.O. has not referred the same to the DVO then in that eventuality, the said report ought to have accepted by the A.O.

7. With regard to non-appearance of the contractor before the A.O. is concerned, in this regard, we are of the view that the A.O. should not have taken an adverse inference merely on account of non-appearance of the contractor as practicably it is a common fact that a common man always hesitates in appearing before the Income Tax Department due to fear of being interrogated and getting into unwanted and prolonged litigation. As far as the allegation of the Revenue that the assessee has withdrawn cash to the tune of Rs. 4.00 lacs only till 31/07/2011 which was not invested in construction by that date nor deposited in the bank account notified under capital gain account scheme is concerned. In this regard, we noticed that Section 54(1) of the Act provides that if capital gain earned by assessee is invested within a period of one year before or two years after the date on

which the transfer took place, purchased or has within a period of three years after that date, constructed one residential house in India, then exemption u/s 54 shall be available in respect of capital gain in accordance with clause (i) and (ii) thereof. Further, provisions of section 54(2) of the Act provides as under:

Profit on sale of property used for residence.

54.(2) "The amount of the capital gain which is not appropriated by the assessee towards the purchase of the new asset made within one year before the date on which the transfer of the original asset took place, or which is not utilised by him for the purchase or construction of the new asset before the date of furnishing the return of income under section 139, shall be deposited by him before furnishing such return [such deposit being made in any case not later than the due date applicable in the case of the assessee for furnishing the return of income under sub-section (1) of section 139] in an account in any such bank or institution as may be specified in, and utilised in accordance with, any scheme[30] which the Central Government may, by notification in the Official Gazette, frame in this behalf and such return shall be accompanied by proof of such deposit; and, for the purposes of sub-section (1), the amount, if any, already utilised by the assessee for the purchase or construction of the new asset together with the amount so deposited shall be deemed to be the cost of the new asset."

On perusal of above, it is evident that to be eligible for claiming exemption u/s 54:

(1) Full amount of the capital gain has to be invested by assessee in purchase/ construction of new residential house property within the time limit prescribed u/s 54(1);

(2) If assessee has not invested full amount of capital gain within one year before the date of transfer and not even upto the due date of filing return, the same is to be deposited in accordance with Capital Gain Accounts Scheme within time limit u/s 139(1), which can be subsequently utilized within 2 years for purchase or within 3 years for construction of new house property.

(3) Further, assessee can also claim exemption, if the capital gain is utilized within the time limit u/s 139(4) even though nothing is deposited in the capital gain account within time limit u/s 139(1) as first limb of section 54(2) states merely section 139 and does not specify any sub section thereof.

From the above details, it can very well be concluded that two sections are referred u/s 54(2), viz. 139 and 139(1) in two different sentences. In the first sentence with reference to appropriation of un-utilised amount of capital gain, section 139 is referred without mentioning any sub section. While in the second sentence with reference to deposition of amount in capital gain account, section 139(1) is specifically mentioned, which means that even when nothing in deposited in capital gain account, exemption u/s 54 can be availed if the full amount of capital gain is utilized within time limit u/s 139(4) as section 139 mentioned in the act for that purpose includes all subsections. However, if the amount is not actually utilized within the time limit, exemption can’t be claimed by depositing the amount after due date mentioned u/s 139(1). If the assessee wants to deposit the

amount in capital gain account, the deposition has to be within the time limit mentioned u/s 139(1) of the Act. In this regard, we draw strength from the of the Hon'ble Gauhati High court in the case of **CIT v. Rajesh Kumar Jalan (2006)**, wherein Hon'ble Court took the view that *the section mentioned in the section 54(2) above refers time limit of section 139 and not the 139(1) alone. Section 139 includes section 139(4) wherein time limit for filing belated return is one year from the end of assessment year or completion of assessment whichever is earlier. While concluding so, Court has observed that "Section 54 of the Income-tax Act, 1961, is a beneficial provision of the Income-tax Act, 1961 for the assessee in the matter relating with the sale of properties used for residence, it appears, for the constitutional goal of providing residence to the citizen of India. It is fairly well-settled that in construing a beneficial enactment, the view that advances the object of the beneficial enactment and serves its purpose must be preferred to the one which obstructs the objects and paralyses the purpose of the beneficial enactment. In this regard, we may refer to the decision of the apex court in* ***Kunal Singh v. Union of India****."* The court also referred the judgement of **State of Maharashtra v. Santosh Shankar charyato** discuss the well-known principle of construction of statutes that the Legislature engrafted every part of the statute for a purpose. The legislative intention is that every part of the statute should be

given effect. The Legislature is deemed not to waste its words or to say anything in vain and a construction which attributes redundancy to the Legislature will not be accepted except for compelling reasons. Further, Hon'ble Court referred judgement of Apex court in the case of **Bhavnagar University v. Palitana Sugar Mill P. Ltd.** wherein it is held that *it is the basic principle of construction of statute that statutory enactment must ordinarily be construed according to their plain meaning and no words should be added, altered or modified unless it is plainly necessary to do so to prevent a provision from being unintelligible, absurd, unreasonable, unworkable or totally irreconcilable with the rest of the statute. Paras 24 and 25 of the Bhavnagar University v. Palitana Sugar Mill P. Ltd. are as follows:*

24. True meaning of a provision of law has to be determined on the basis of what it provides by its clear language, with due regard to the scheme of law.

25. Scope of the legislation on the intention of the Legislature cannot be enlarged when the language of the provision is plain and unambiguous. In other words, statutory enactments must ordinarily be construed according to its plain meaning and no words shall be added, altered or modified unless it is plainly necessary to do so to prevent a provision from being unintelligible, absurd, unreasonable, unworkable or totally irreconcilable with the rest of the statute.

8. We also draw strength from the decision of Hon'ble Punjab & Haryana High Court in the case of **CIT vs Jagriti Agarwal (2011) 203 Taxman 203 (P& H),** wherein the Hon'ble Court has held that *provision of section*

139(4) is not an independent provision, but is related to time contemplated under the provision of section 139(4) of the Act. Accordingly, section 139(4) had to be read alongwith sub section (1) of section 139 and the due date for furnishing the return of income u/s 139(1) is subject to the extended period provided u/s 139(4). Hence, extended period u/s 139(4) has to be considered for the purpose of utilisation of the capital gain amount. The Coordinate Bench of ITAT Mumbai Benches of the Tribunal in the case of Kishore **H. Galiya v. ITO in ITA No.7326/ Mum/2010,** has held that *when the assessee had utilised the amount which was more than the capital gain earned towards consideration of new residential house within extended period u/s 139(4) of the Act, the claim made by assessee for exemption u/s 54F of the Act could not be denied.*

The Coordinate Bench of the ITAT Jaipur in the case of **ACIT Vs. Maya Devi Sharma in ITA No. 71/JP/15 dated 25.07.2017 (relevant Para 5.4 at page 24 of the order)** wherein it was observed as under: "*Regarding the allowability of claim u/s 54F for belated return filed u/s 153A, it is submitted that sub-section 4 of section 54F provides that the amount of sale consideration has to be appropriated before the date of furnishing return under section 139 of the Act. According to ld. AR of the assessee, the investment was made before of 31.03.2009 i.e. the time limit*

provided u/s 139(4), the claim of the assessee u/s 54F was rightly allowed by the Id. CIT(A)".

The Coordinate Bench of the ITAT Jaipur also in the case of **Shri Arvind Jain Vs. ITO in ITA No. 825/JP/2016 dated 20.06.2018, wherein it was observed as follows:** "*Following the decision of Hon'ble Punjab and Haryana High Court in case of CIT vs. Ms. Jaggruti Agarwal (supra), decision of Hon'ble Gauhati High Court in case of CIT vs. Rajesh Kumar Jalan (supra) as well as the decision of the Coordinate Bench of this Tribunal in case of Virendra Singh vs. ITO(supra), we hold that when the assessee has acquired the new asset being residential house before the due date of filing the return of income U/s 139(4) of the Act then the substantial condition of acquiring the new asset within the stipulated period of 2 year /3 years from the date of transfer of the existing asset has been complied with and accordingly, the assessee is eligible for deduction U/s 54 of the Act. The addition made by the AO on this account is deleted. In the result, the appeal of the assessee is allowed."*

Keeping in view the facts and circumstances of the case, we are of the view that the assessee has made investment in construction of house property within the specified time, therefore, we direct the A.O. to allow exemption U/s 54F of the Act to the assessee. We direct accordingly.

9. The next ground raised by the assessee relates to challenging the order of the ld. CIT(A) for upholding the addition of Rs. 11,38,750/- on account of cash deposits made in the bank account of the assessee.

10. The ld AR appearing on behalf of the assessee has reiterated the same arguments as were raised before the ld. CIT(A) and also relied upon the written submissions filed before the bench and the contents of the written submissions regarding the issue involved are as under:

> *"In these grounds of appeal, assessee has challenged the addition of Rs.11,38,750/- made by AO, being cash deposits made in bank account of assessee.*
>
> *Facts pertaining to the ground of appeal are that assessee had deposited a sum of Rs.3,08,750/- and Rs.8,30,000/- in his bank account maintained with Canara Bank, Malviya Nagar, Account No.2550101004657 on 14.03.2011(APB 35-36).*
>
> *During the course of assessment proceedings, ld.AO sought explanation regarding source of such deposits. In this regard, vide reply dated 23.02.2015 (APB 13-14), it was explained that such sum was received by assessee as gift from his mother. In support of such claim, assessee furnished copy of bank pass book of his mother, wherein a sum of Rs.12,35,000/- was reflecting in "withdrawals" on the same day (APB 32-34) and also submitted a declaration of gift of his mother (APB 31). However, ld. AO completely disregarded the same for the sole reason that she could not be produced for examination. Since mother of assessee is very old and was not keeping well, assessee could not produce her.*

At this juncture, it is submitted that assessee has discharged his onus by furnishing vital evidences in the shape of bank statements of her mother and declaration of gift. Further, if at all AO had any reservations in accepting the same, he should have brought some cogent material on record to prove the same wrong, whereas in the instant case no discrepancy has been pointed by AO as well as ld.CIT(A) and submission of assessee has been rejected without providing any reasons.

It is a settled law that whenever any sum is credited in books of accounts of assessee, in order to prove the same as genuine, following three things have to be proved in respect of investors of money:

(i) Identity of persons who have advanced the money: The same is proved beyond doubt as money has been received by assessee from his mother and no outsider.

(ii) Genuineness of transactions: Once identity is proved, genuineness is said to be proved if transaction has taken place through banking channels, confirmations have been furnished wherein investors accept lending money and no other corroborative material has been brought on record by AO to prove that transaction is not genuine.

(iii) Creditworthiness of investors: This is proved if on the basis of financial capacity of investors and further evidenced by acceptance of advancing money by them.

Your goodself would appreciate that in the instant case, assessee has proved all the three conditions, i.e. (i) Identity (ii) Genuineness and (iii) creditworthiness of person from whom cash is explained to have been received. He relied on the following decisions:

(i) <u>Nek Kumar vs. Assistant Commissioner of Income Tax</u> reported in 274 ITR 575

(ii) of M/s Lovely Exports Pvt. Ltd. reported in 216 CTR 195

(iii) 283 ITR 377 (Raj.) Barkha Synthetics Ltd. Vs. ACIT

(iv) 159 ITR 78 (SC) Orissa Corpn. (P) Ltd

11. On the other hand, the ld DR has relied on the order of the ld. CIT(A).

12. We have considered the rival contentions and carefully gone through the orders of the authorities below. From the record we noticed that the assessee had deposited a sum of Rs. 3,08,750/- and Rs. 8,30,000/- in his bank account maintained with Canara Bank on 14/03/2011. During the course of assessment proceedings, the AO sought explanation regarding source of such deposits which was duly replied by the assessee vide reply dated 23.02.2015 which is at page No. 13 and 14 of the paper book wherein it was categorically explained by the assessee that such sum was received by assessee as gift from his mother. In support of such claim, assessee furnished copy of bank pass book of his mother, wherein a sum of Rs.12,35,000/- was reflecting as "withdrawals" on the same day. Copy of passbook showing withdrawals of the said amount has also been placed on record at page No. 32-34 of the paper book. Apart from this, the assessee had also submitted a declaration of gift of his mother which is at page No. 31 of the paper book. However, the AO completely disregarded the same

for the sole reason that the mother of the assessee is very old and assessee had discharged his onus by furnishing vital evidences in the shape of bank statement of his mother and declaration of gift. On the contrary, the A.O. could not place on record any cogent material to prove that the documents placed on record by the assessee are not reliable. Further, the A.O. also could not point out any discrepancy in the documents placed on record relied upon by the assessee. It is a settled law that whenever any sum is credited in books of accounts of assessee, in order to prove the same as genuine, three things have to be proved in respect of investors of money:

(i) Identity of persons who have advanced the money: The same is proved beyond doubt as money has been received by assessee from his mother and no outsider.

(ii) Genuineness of transactions: Once identity is proved, genuineness is said to be proved if transaction has taken place through banking channels, confirmations have been furnished wherein investors accept lending money and no other corroborative material has been brought on record by AO to prove that transaction is not genuine.

(iii) Creditworthiness of investors: This is proved if on the basis of financial capacity of investors and further evidenced by acceptance of advancing money by them.

Considering the totality of facts and circumstances of the case, we are of the view that the assessee has proved all the three conditions, i.e. (i)

Identity (ii) Genuineness and (iii) creditworthiness of person from whom cash is explained to have been received. For reaching to the above conclusion, we draw strength from the decision of the Hon'ble Jurisdictional High Court in the case of **Nek Kumar vs. Assistant Commissioner of Income Tax reported in 274 ITR 575,** wherein the Hon'ble High Court has held as under:-

> *Donor having given an affidavit and also filed a declaration that she has given the gift to the assessee and there being no material evidence whatsoever to show that the money was deposited by the assessee or by any relative in the bank from where it came back to the assessee, the gift cannot be treated as non-genuine and, therefore, addition was not justified.*

The decision of Hon'ble Supreme Court in the case of **M/s Lovely Exports Pvt. Ltd.** reported in **216 CTR 195** which is squarely applicable in the present case as the assessee has filed the necessary copy of bank pass book of mother and affidavit furnished by her in confirmation of the fact that she has given sum of Rs.12,35,000/- to her. In the case of **Barkha Synthetics Ltd. Vs. ACIT 283 ITR 377 (Raj.), the Hon'ble Court has held as under:**

> *Held: The principle relating to burden of proof concerning the assessee is that where the matter concerns the money receipts by way of share application from investors through banking channel, the assessee has to prove existence of person in whose name share application is received. Once the existence of investor is proved, it is no further burden of assessee to*

prove whether that person itself has invested said money or some other person had made investment in the name of that person. The burden then shifts on Revenue to establish that such investment has come from assessee-company itself. – CIT Vs. Shree Barkha Synthetics Ltd. (2003) 270 ITR (Raj.) 477 followed.

In the case of **Orissa Corpn. (P) Ltd 159 ITR 78 (SC),** the Hon'ble Supreme Court has held that *"When the assessee furnishes names and addresses of the alleged creditors, the burden shifts to the department to establish the Revenue's case and in order to sustain the addition the Revenue has to pursue the inquiry and to establish the lack of creditworthiness and the mere issue of notice u/s 131 is not sufficient. Thus, the Appellant has discharged the primary burden of establishing the identity and genuineness of the creditor."* In view of the above facts and circumstances we find merit in the contention of the ld AR and we direct the A.O. to delete the addition so made qua this issue.

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

Order pronounced in the open court on 28th January, 2021.

Sd/-	Sd/-
(विक्रम सिंह यादव)	(संदीप गोसाईं)
(VIKRAM SINGH YADAV)	(SANDEEP GOSAIN)
लेखा सदस्य / Accountant Member	न्यायिक सदस्य / Judicial Member

जयपुर / Jaipur
दिनांक / Dated:- 28/01/2021
*Ranjan

आदेश की प्रतिलिपि अग्रेषित/Copy of the order forwarded to:

1. अपीलार्थी/The Appellant- Shri Gulab Chand Meena, Jaipur.
2. प्रत्यर्थी/ The Respondent- The A.C.I.T.(OSD), Range-7, Jaipur.
3. आयकर आयुक्त/ CIT
4. आयकर आयुक्त(अपील)/The CIT(A)
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, जयपुर/DR, ITAT, Jaipur
6. गार्ड फाईल/ Guard File (ITA No. 49/JP/2018)

आदेशानुसार/ By order,

सहायक पंजीकार/Asst. Registrar