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. 173/JP/2019
निर्धारण वर्ष/Assessment Year :2014-15

<table>
<tr><td>Shri Kailash Chand Yadav,
S/o-Shri Chhotu Ram Yadav,
Dhani Amar Singh Wali Mundru,
Tehsil-Srimadhopur, Sikar.</td><td>बनाम
Vs.</td><td>I.T.O.,
Ward-Neemkathana</td></tr>
<tr><td colspan="3">स्थायी लेखा सं./जीआईआर सं./PAN/GIR No.: AIUPY 2977 J</td></tr>
<tr><td>Appellant</td><td></td><td>Respondent</td></tr>
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निर्धारिती की ओर से/ Assessee by: Shri Shravan Kr. Gupta (Adv)
राजस्व की ओर से/ Revenue by: Smt. Monisha Choudhary(Addl.CIT)

सुनवाई की तारीख/ Date of Hearing : 25/06/2021
उदघोषणा की तारीख/ Date of Pronouncement : 30/06/2021

आदेश/ ORDER

PER: SANDEEP GOSAIN, J.M.

This is the appeal filed by the assessee against the order of the ld. CIT(A)-3, Jaipur dated 23/01/2019 for the A.Y. 2014-15. The grounds taken by the assessee are as under:

> *"1. The impugned assessment order u/s 143(3) rws 147 dated 19/12/2017 as well as the action taken u/s 147/148 by the ld. AO are bad in law, invalid, illegal and on facts of the case, for want of jurisdiction, barred by limitation and various other reasons and hence the same may kindly be quashed.*
>
> *2. Rs.13,00,000/-: The ld. CIT(A) has grossly erred in law as well as on the facts of the case in confirming the addition of Rs. 13,00,000/- made by the ld. AO on account of cash deposit without invoking any provision of the IT Act and by ignoring the material evidences on assumption or suspicion. Hence the addition so made by the ld. AO and sustained by*

the ld. CIT(A) is being totally contrary to the provisions of law and facts on the record and hence the penalty may kindly be deleted in full.

3. *The ld. AO has grossly erred in law as well as on the facts of the case in charging interest u/s 234 A,B,C. The appellant totally denies it liability of charging of any such interest. The interest, so charged, being contrary to the provisions of law and facts, may kindly be deleted in full.*

4. *The appellant prays your honors indulgence to add, amend or alter all or any of the grounds of the appeal on or before the date of hearing."*

2. The hearing of the appeal was concluded through video conference in view of the prevailing situation of Covid-19 Pandemic.

3. The main grievance of the assessee in this appeal relates to confirming the addition of Rs. 13,00,000/- by the ld. CIT(A). The brief facts of the case are that the assessee is having income from milk sale or dairy. The Assessing Officer issued notice u/s 148 of the Income Tax Act, 1961 (in short, the Act) dated 27.09.2016 on the reason that as per information during the F.Y. 2013-14, the assessee has deposited cash amount of Rs.26,00,000/- in the savings bank account maintained with Punjab National Bank Housing Finance, Reengus. The assessee has not filed the return of income for the year under consideration. The maximum limit of the total income not chargeable to tax for A.Y. 2014-15 was Rs.2,00,000/- while the volume of cash deposit in the bank account is much higher and was not in consonance with the income of the assessee. Hence looking to these facts income to the extent of Rs.26,00,000/- has escaped. In response to the notice u/s 148 of the Act, the assessee has

filed his return of income on 17.07.2017 declaring total income of Rs.1,93,250/-. During the course of assessment proceedings, the Assessing Officer asked the assessee to explain the immediate source of cash deposit of Rs. 26 lakhs. In response thereto the assessee submitted that the cash deposit was only of Rs. 13.00 lakhs not of Rs.26.00, in support of which, the assessee filed bank statement which has not been denied by the Assessing Officer. Regarding this cash deposits assessee stated that he had received cash gift of Rs.13,00,000/- from his father Sh. Chhotu Ram Yadav. Thereafter, Assessing Officer asked the assessee to furnish the evidence of creditworthiness of the Sh. Chhotu Ram Yadav, father of the assessee, for making such gift and also for Gift deed and also asked to produce Sh. Chhotu Ram Yadav in person for examination. In response to the query of the Assessing Officer, assessee filed an affidavit of Sh. Chhotu Ram Yadav on dated 31.08.2017, which is placed at PB 13-15 regarding the Gift made by him to the assessee. Wherein he has stated that he has sold his agriculture land on 25.07.2013 and out of that sale proceed he had given Rs.13,00,0000/- to his son Sh. Kailash Chand Yadav (assessee). On the very same date i.e on 31.08.2017 the assessee has also produced Sh. Chhoturam Yadav before Assessing Officer for examination, who recorded the statement of Sh. Chhoturam Yadav on 31.08.2017, which is placed at paper book page Nos. 16-18. In

his statement he stated that he had given Rs.13.00 lakhs in cash to his son Sh. Kailash Chand Yadav in July 2013 as gift out of sale of his 4 bhigas of Agriculture land about of Rs.20.00 lakhs and regarding the document of Gift he has stated that he is a farmer not much literate and don't know about the written documents but he had given the Affidavit on stamp of Rs.100/- regarding the gift given of the assessee. The Assessing officer asked Sh. Chhoturam Yadav regarding the difference between the sale consideration received Rs.20.00 Lakhs and mentioned in the sale deed of Rs.4,85,651/-. In thereto he has stated that it is correct that the sale consideration of Rs. 4,85,651/- is mentioned in the sale deed but he had received about Rs. 20.00 Lakhs against this land sold. On the question regarding the sale agreement with Sh. Kailash Chand Saini and Sale deed registered in the name of Sh. Ram Sahai Saini, Sh. Chhoturam submitted that Sh. Kailsah Chand Saini is the son of Sh. Ram Sahai Saini, the sale agreement of land was done by Sh. Kailsah Chand Saini but registry has been executed in the name of his father Sh. Ramsahai Saini. The Assessing Officer stated that he has issued summon to Sh. Kailash Chand Saini, which has returned back with the remark "Unclaimed", Due to this Assessing Officer has stated that agreement entered between Sh. Chhoturam Yadav and Kailsah Chand Saini seems to be bogus and fabricated documents because Sh. Kailash Chand Saini has not appeared

before him after issue the summon with the malafide intention did not receive the said summon to avoid his presence. Thus the Assessing Officer made the addition of entire amount of Rs.13,00,000/- as income from undisclosed source.

4. Being aggrieved by the order of the A.O., the assessee carried the matter before the ld. CIT(A), who after considering the submissions of both the parties and material placed on record, confirmed the action made by the Assessing Officer vide para 4.3 of the impugned order. Wherein the ld. CIT(A) has stated that (i) the affidavit filed by his father was without any date also not mentioned the amount of sale consideration of land and in the affidavit (ii) in the sale deed dated 21.08.2013 the sale consideration was mentioned of Rs.4,85,651/- from the Ram Sahay and there was no mentioned of the sale of agreement dated 25.07.2013, whereas the sale agreement was made in the name of Sh. Kailash Chand Saini and sale deed in the name of Sh. Ram Sahay. That is why sale agreement is not reliable.

5. Now the assessee is in appeal before the ITAT on the grounds mentioned above. 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 same is reproduced below:

"1. Correct facts and surrounding circumstances:

1.1 At the very outset it is submitted that correct facts which either not considered by the lower authorities or if considered ignored the same despite available before them. As the appellant-assessee is belongs to a very rural area a small dhani in Srimadhopur Tehsil District Sikar and not much literate and doing the business of milk sale or Diary and belongs to a farmer family. And during the year the assessee had deposited the cash of Rs.13.00 Lakhs in his bank account on dt. 27.07.2013 on being asked by the ld. AO assessee had explained that he had received cash gift of Rs.13,00,000/- from his father Sh. Chhotu Ram Yadav. In support assessee filed an affidavit (PB13-15) on 31.08.2017 regarding the Gift made. Wherein his father has stated that he has sold his agriculture land on 25.07.2013 and out of that sale proceed he has given Rs.13,00,0000/- to his son Sh. Kailash Chand Yadav(assessee).

1.2 Further it is very important to note that for sale of agriculture land Sh. Chhoturam has executed an agreement with Sh. Kailash Chand Saini S/o Sh. Ram Sahay Sain on 25.06.2013, in which it is clearly mentioned the rate of Rs.5,11,000/- per bhigha for 4 bhiga agriculture land and he has received advance of Rs.5,11,000/- and decided to get the registry on dt. 25.07.2013 copy of the same is enclosed (PB19-21)on the stamp and duly notarized with witness and decided to give the rest amount on 25.07.2013. However when on 25.07.2013 the registry could not be executed due to some strike in registry office, both the part has again executed an sale agreement on 25.07.2013 because on 25.07.2013 the purchaser had given the rest due amount of Rs.15,23,000/- to Sh. Chhhoturam Yadav and Sh. Chhoturam Yadav had given the physical possession to the purchaser on dt. 25.07.2013(PB22-24), hence it was necessary to make a new agreement for both the parties. And there was no difference regarding the contents and terms and condition of the both the agreements. Except some later development as receiving whole sale consideration and hand over of possession to the purchaser. This affidavit is also on stamp and duly notarized and registered with the register of Notary Public. We are producing the certified copy of entry of agreement dt. 25.07.2013 in the Notary Register. Thus how the agreement can be said bogus and fabricated without proving the same. And after less than one month the registry of the land has been executed.

1.3 Further it is also important evidence taken by the ld. AO himself on date 31.08.2017 the assessee has also produced to Sh. Chhoturam Yadav before the ld. AO for examination. The ld. AO has recorded the statement of Sh. Chhoturam Yadav on 31.08.2017(PB16-18). In the statement Sh. Chooturam Yadav has clearly stated all the real facts as in Ans to Q-6 that he had given Rs. 13.00 lakhs in cash to his son Sh. Kailash Chand Yadav in July 2013 as gift (PB17). In Ans to Q7 his explained the source of cash gift of Rs.13.00 that he has sold his 4 bhiga Agriculture land about of Rs.20.00 lakhs out of which he has given Rs.13.00 to his son as gift. In Ans to Q 8 regarding the document of Gift he has stated that I am farmer not much literate and don't know about the written documents but regarding of gift I am giving my Affidavit on stamp of Rs.100/-. In Ans to Q-9 regarding the difference between Sale consideration of Rs.20.00 lakhs and consideration of Rs.4,85,651/- mentioned in the sale deed. Sh. Chhoturam has clearly stated that it is correct that the sale consideration of Rs. 4,85,651/- is mentioned in the sale deed but I have received about Rs. 20.00 Lakhs against this land sold. In Ans to Q-10 regarding the sale agreement with Sh. Kailash Chand Saini and Sale deed registered in the name of Sh. Ram Sahai Saini, Sh. Chhoturam clearly state that Sh. Kailsah Chand Saini is the son of Sh. Ram Sahai Saini, The sale agreement of land was done by Sh. Kailsah Chand Saini but registry has been executed in the name of his father Sh. Ramsahai Saini.

1.4. Only due to the reason that the Sh. Kailash Chand Saini has not appeared in response to the summon the truth cannot be denied. The ld. AO himself has stated that the summon issued to Sh. Kailash Chand Saini has return with the remark "Unclaimed", Sh. Kailash Chand Saini with the melafide intention did not receive the said summon to avoid his presence. If he appeared before the ld. AO the real state of affairs in this could be come out. As the purchasers was known that the department can be asked regarding the source of remaining amount of Rs.15,48,349/-(511000+1523000-485651) and may issue a notice to him and addition can be made in his hands. Hence to avoid these litigation he knowingly appeared and respond to the summon and he does not want to come before income tax department or to save himself from to be exposed and there may be various other reasons which are not in the hands of the assessee. It is not case of the department that any statements have been recorded of Sh. Kailash Chand Siani or his father and he denied or has stated that he has not done any transaction with

the assessee. Only for the reason that on the date he has not appeared, the true transaction supported with the vital evidences cannot be denied in absence of any contrary evidences. If the person has not appeared u/s 131 why not the ld. AO imposed penalty on the person when power of imposition of penalty provided in the Act to the AO on the person for not appearing in response to any notice or summon. Then why the ld. AO has not imposed any penalty on Sh. Kailsah Chand Yadav, when he has denied to take the notice.

2. Further the ld. AO has issued only one single summon he has not tried to issue the same again and he could have tried to serve the summon by other modes as the department generally do in serving the notice on the assessee by all of mode of service, as by psot by notice server by affixture and in the present case it was necessary on the part of the ld. AO to disprove the contention of the assessee. Hence on the failure on the part a poor assessee cannot be penalized.

3. Further date of deposits i.e. 27.07.2013 in the bank account is supported by the sale agreement dt. 25.07.2013 bank statement of the assessee and also by the affidavit of his father and statements of his father. The lower authorities have denied various vital evidences as two sale agreements dt. 25.06.2013, 25.07.2013, affidavit, statements of father recorded by the ld. AO himself, which cannot be said self serving evidences and the ld. AO nowhere found any contradiction in these evidences. He has only relied the sale deed get executed by the purchaser in the name of his father. The ld. AO could have issued the summon to his father but he did not do so. These vital evidences and details cannot be ignored where there is no any material and evidences to rebut the same. And the lower authorities have not rebutted the same by any of material and evidences. There is no evidence on record that the assessee has received the said Rs. 13.00 cash from any other source than to this sale consideration/gift.

4. Further the contention made in the letter of affidavit should be accepted as truth unless rebutted. Because these affidavits have not been rebutted by lower authority by bring any contrary evidence or without examining. It is very settled legal position that in the cases where affidavit has been filed yet the contents thereof have not been rebutted by the AO/authority, the facts mentioned therein have to be read as the facts binding upon the Income Tax authorities.

He relied on the following judicial pronouncements:

i. Mehta Pareek & Co. 30 ITR 181 (SC),
ii. ITO v. Dr. Tejgopal Bhatnagar 20 TW 368 (Jp)
iii. Paras Cotton Company vs. CIT (2003) 30 TW 168 (JD).,
iv. CIT v/s Lunard Dimond Ltd. 281 ITR 1 (Del).

Recently in CIT v/s Bhawani Oil Mills (P) Ltd 239 CTR 445/49 DTR 212(Raj.)- It has been held that contents of affidavit could not be treated as of a lesser importance than the statement given by the creditor before the AO.

And in the present case in support the assessee had filed the affidavit of his father who has given the money to the assessee and when the same has been confirmed in the statements taken by the ld. AO and the ld. AO has not rebutted the contents of the affidavit even he examined to the person it mean either he was satisfied or he has no material to disprove the same. If the AO has failed to give any comments thereon, then in-absence of the same how the ld. CIT(A) can some comments on the same without asking any question from the assessee for clarifications if any in the amount. An affidavit is the important piece of evidence, should not be taken in light and if there is any wrong affidavit is given by any of the party or person the same is offence and may be punished under the law. In absence of the same the same cannot be discarded but is the evidence of the acceptance. The affidavits are evidence until and unless not disproved by the authority who alleging the same.

As Section 191 of the Indian Penal Code stipulates:

"Whoever being legally bound by an oath or by an express provision of law to state the truth, or being bound by law to make a declaration upon any subject, makes a statement which is false, and which he either knows or believes to be false or does not believe it to be true, is said to give a false affidavit"

Section 193 of the Indian Penal Code, 1860 lays down the punishment for false evidence- whosoever intentionally gives a false evidence for the purpose of being used in a judicial proceeding, shall be punished with imprisonment which may extend up to 7 years and shall also be liable for payment of fine.

In light of the above, it can be concluded that an affidavit is a document of extreme importance and value. Although, it can be signed by Principal Officers as well as their authorized representatives, it is expected that it is signed only by persons who are fully aware of the facts and

circumstances of the case. Affidavit is treated as "evidence" within the meaning of Section 3 of The Evidence Act.

In the case of Prashant Vs. Muncipal Council Bhadravat AIR 2009 BOM 144 it has been held The provisions of Civil Manual, Chapter XXVI, para 506 read thus - 506. The person who may administer oaths to deponents must be duly authorised under Section 139 of the Civil Procedure Code to do so. It would thus mean that the persons who may administer oath to the deponents are to be the persons who are authorized under Section 139 of C.P.C. to do so. Therefore, the result is obvious that the Notaries are authorized to administer oath to the deponents.11 The affidavits which are to be under the Code, can be sworn by on administering the oath to the deponents by any Notary appointed under the Notaries Act and under Order 18, Rule 4 of the C.P.C., there is no bar requiring to exclude the affidavits sworn before the Notaries for taking them on record as an examination in chief. Thus, such affidavits sworn before Notaries can be accepted as evidence by the Civil Court. The cumulative sequel would render the impugned order to be incorrect and illegal at law. As such liable to be quashed and set aside.

5. Statements has not been stated bogus: Further the lower authorities has not stated that the statements of Sh. Chhoturam Yadav are bogus and has not stated that he has concealed any facts and there is no contradiction in the statements and affidavits, agreements etc. When the department can do the addition on the basis of statements, then why the true transaction cannot be accepted by the revenue.

6. If the lower authorities was having any doubt regarding the rate of agriculture land in that area they could have gathered the market rate in that area of the agriculture lands. And in most of the case it is happened that the market or actual arte is very high then to the DLC rate and if a person (purchaser) get registry on the DLC rate to save the stamp duty, the same is beyond to the seller because it was the purchaser who to pay the stamp duty not by the seller. If the purchaser do anything wrong to save the stamp duty then the punishment must be given to him not to a poor seller. In this regard, the ld. AR has relied on the decision in the case of CIT vs. INTEZAR ALI 372 ITR 0651 (All)

As Sh. Chhoturam is a farmers belongs to a Dhani not much literate person. He does not the complexity of Income Tax Laws. He done his signature on the sale deed, he has not seen that what amount is mentioned in the sale deed. As he knows that he has received the full

payment and given the possession, hence there is no wrong or cheating. And it is the matter of the purchaser in whose name he get the document registered.

7. What is a apparent is real: The law settled long back that what is apparent is real unless contrary is proved and it is for the person to prove, who says that what is apparent is not real. Kindly refer Daulat Ram Rawat Mal 87 ITR 349 (SC), CIT v/s Bedi & Co. P Ltd 230 ITR 580 (SC) whatsoever in support of his decision that what is apparent is not real.

8. However the ld. AO and CIT(A) have blindly ignored these very vital facts of the case and proceeded on their own guess work, assumption, presumption and suspicion and it is the settled legal position that no addition can be the basis of suspicion, assumptions' and presumption. An allegation remains a mere allegation unless proved. Suspicion may be strong however cannot take the place of reality, are the settled principleskindly refer Dhakeshwari Cotton Mills 26 ITR 775 (SC) also refer R.B.N.J. Naidu v/s CIT 29 ITR 194 (Nag), Kanpur Steel Co. Ltd. v/s CIT 32 ITR 56 (All).Also refer CIT v/s KulwantRai 291 ITR 36(Del). In CIT v/s Shalimar Buildwell Pvt Ltd 86 CCH 250(All) it has been held that the AO made the addition merely on suspicion which was not desirable in the eye of law.

9. No provisions has been applied by the ld. AO: The ld. AO made the addition on account of undisclosed income from other sources but he has not invoked or applied any provisions of law. The ld. AO has not stated under what provision of law he has made addition whether, under business or trading income as assessee do trading of milk, or u/s 56 or u/s 68 or 69. Thus the addition so made without any provision of is also against the law and liable to be deleted on this ground alone

10. Here we would like to submit that while doing a judicious act by a person (here the AO) should also keep in mind the circumstance, facts, general approach, status etc. . He should not restrict to himself only to the evidence where the same is not possible. Here the AO restricted to himself only evidence and ignored the circumstance, facts, general approach, status etc. Kindly refer the decision of Mange Ram Mittal v/s ACIT 105 TTJ 594(Del)(SB). Hence we pray yourHonor to kindly consider our contention in the interest of natural Justice and delete entire addition.

11. Initial Onus Discharged: Further it is submitted that even assuming, S. 68 applies, it is only initial onus, which lay upon the assessee to prove the identity and the capacity of the creditor and the genuineness of the transaction and once this initial onus is discharged, it shifts to the AO to rebut/ disprove the same for making a valid addition u/s 68. kindly refer CIT vs Shree Barkha Synthetics 182 CTR 175 (Raj). The Hon'ble RHC again reiterated the same view in CIT vs. First Point Finance Ltd 286 ITR 477 (Raj.).

Here the ld. AO not disputed that the Identity Established, Genuine Transaction, iii. Capacity has also been proved by the assessee by filling various material evidences and capacity has not been doubted and the ld. AO not speak a single word on the capacity of the donor. The persons fully explained the sources of gift given, thus having sufficient funds as also appearing from the documents and statement of the person. He is having income from other sources, agriculture etc as he was 55 years old farmer. Interestingly the ld. AO himself recorded the statement of the person thus, duly discharged the initial burden lay upon it, to which extent only it was responsible, as held earlier in CIT vs. Orissa Credit Corp. Ltd. 159 ITR 78 (SC) and recently referred in CIT vs P. Mohan Kala 291 ITR 279 (SC).

Thus identity, genuineness and creditworthiness of the person stood established beyond doubt only due to the dissatisfaction of the AO it cannot be denied when they have not brought on record any material evidence.

12. Onus was to be discharged by the AO: On the other hand when the onus now shifted on the AO the same was to be discharged by him. The ld. AO despite having all the relevant information's could not rebut the material available with him with the evidence, when the person himself appeared before the ld. AO and confirmed the gift given to the assessee with various evidences. Despite these the ld.AO has proceeded only on assumption, presumptions and suspicion. An allegation remains a mere allegation unless proved. Suspicion cannot take the place of reality, are the settled principles.

He relied on the following case laws:

i. Dhakeshwari Cotton Mills 26 ITR 775 (SC)
ii. R.B.N.J. Naidu v/s CIT 29 ITR 194 (Nag),
iii. Kanpur Steel Co. Ltd. v/s CIT 32 ITR 56 (All).

iv. Labhchand Bohra V/s ITO (2008) 8 DTR 44 (Raj.)
v. Kanhaialal Jangid vs. ACIT (2008) 8 DTR 38 (RAJ.), (217 CTR 354)
vi. Aravali Trading Co. v/s ITO 8 DTR 199
vii. CIT V/S Abdul Aziz 72 DTR 216(Chhattisgarh)
viii. Commissioner of Income Tax-I Vs. M/s. ARL Infratech, Ltd., (D.B. Income Tax Appeal No. 24/2014) decided on 28.09.2016 (Raj.)
ix. Muralidhar Lahoriaml v/s CIT 280 ITR 512(Guj.)

With regard to reopening of the case, the ld. AR has submitted that the reasons recorded itself was wrong, incorrect and without material on record at the time of recording of reasons. Because in the reasons recorded the ld. AO mentioned that "as per information during the F.Y. 2013-14 the assessee has deposited the cash amount of Rs.26,00,000/- in the saving account Punjab National Bank Housing Finance, Reengus. The assessee has not filed the return for the A.Y. 2014-15. The maximum limit of the total income not chargeable to tax for A.Y. 2014-15 was Rs.2,00,000/- while the volume of cash deposit in the bank account is much higher and is not in consonance with the income of the assessee. Hence looking to these facts income to the extent of Rs.26,00,000/- has escaped. Vide reasons recorded (PB2)." However the assessee has not deposited Rs. 26.00 but deposited only Rs.13.00 admittedly. Thus when the very reasons are wrong or incorrect then all the proceedings are invalid.

In the case of Vijay Harish Chandra Patel vs. ITO 400 ITR 167(Guj.) (2018) where it has been held that" When very basis for reopening no longer survives, assumption of jurisdiction u/s 147 by AO by issuing notice u/s 148 was without authority of law and could not be sustained.

Hence when the reason for reopening itself wrong, incorrect and without material and altogether reverse then all the proceedings are void –ab-initio and liable to be quashed."

6. On the other hand, the ld DR has vehemently supported the orders of the revenue authorities and submitted that the ld. CIT(A) has passed a speaking order discussion all the details available on record.

7. We have heard the ld. Counsels of both the parties and have perused the material placed on record. We have also deliberated upon the decisions cited in the orders passed by the authorities below as well as cited before us and we have also gone through the orders passed by the revenue authorities. From perusal of the record, we observe that the assessee belongs to a very rural area a small dhani in Srimadhopur Tehsil District Sikar and not much literate and doing the business of milk sale or Diary and belongs to a farmer family. As the assessee had deposited the cash of Rs.13.00 Lakhs in his bank account on 27.07.2013 which he claimed to be received cash gift from his father Sh. Chhotu Ram Yadav. In support of the statement, assessee filed an affidavit of his father on 31.08.2017 regarding the Gift made by him, in which Sh. Chhoturam stated that he had sold his agriculture land on 25.07.2013 and out of that sale proceed he had given Rs.13,00,0000/- to his son Sh. Kailash Chand Yadav. Further the ld. AR has also submitted that that for sale of agriculture land Sh. Chhoturam has executed an agreement with Sh. Kailash Chand Saini S/o Sh. Ram Sahay Saini on 25.06.2013, in which it is clearly mentioned the rate of Rs.5,11,000/- per bhigha for 4 bhiga agriculture land and he has received advance of Rs.5,11,000/- and decided to get the registry on 25.07.2013 on the stamp and duly notarized with witness and decided to give the rest amount on

25.07.2013, copy of the same has been placed at PB19-21. However, when on 25.07.2013 the registry could not be executed due to some strike in registry office, both the party has again executed an sale agreement on 25.07.2013 because on 25.07.2013 the purchaser had given the rest due amount of Rs.15,23,000/- to Sh. Chhhoturam Yadav and Sh. Chhoturam Yadav had given the physical possession of the land to the purchaser on 25.07.2013, copy of which is placed at PB-22-24, hence it was necessary to make a new agreement for both the parties and there was no difference regarding the contents and terms and condition of the both the agreements. Except some later development as receiving whole sale consideration and hand over of possession to the purchaser. This Agreement was also on stamp and duly notarized and registered with the register of Notary Public. The assessee had also produced the certified copy of entry of agreement dated 25.07.2013 in the Notary Register. Admittedly from the documents or record it has also come to our knowledge that Sh. Chhoturam Yadav has appeared before the Assessing Officer on 31.08.2017 for examination and Assessing Officer has recorded the statement of Sh. Chhoturam Yadav, which is placed at PB 16-18. In his statements Sh. Chooturam Yadav has clearly stated the real facts as in Ans to Q-6 he admitted that he had given Rs. 13.00 lakhs in cash to his son Sh. Kailash Chand Yadav in July 2013 as

gift. In Ans to Q7 he explained the source of cash gift of Rs.13.00 that he has sold his 4 bhigas of Agriculture land about of Rs.20.00 lakhs out of which he had given Rs.13.00 to his son as gift. In Ans to Q 8 regarding the document of Gift he has stated that he has a farmer not much literate and don't know about the written documents but regarding of gift he had given an affidavit on stamp of Rs.100/-. In Ans to Q-9 regarding the difference between Sale consideration received of Rs.20.00 lakhs and consideration of Rs.4,85,651/- mentioned in the sale deed. He has stated that it is correct that the sale consideration of Rs. 4,85,651/- is mentioned in the sale deed but he had received about Rs. 20.00 Lakhs against this land sold. In Ans to Q-10 regarding the sale agreement with Sh. Kailash Chand Saini and Sale deed registered in the name of Sh. Ram Sahai Saini, Sh. Chhoturam stated that Sh. Kailsah Chand Saini is the son of Sh. Ram Sahai Saini, The sale agreement of land was done by Sh. Kailsah Chand Saini but registry has been executed in the name of his father Sh. Ramsahai Saini. Thus from looking to the above facts and documents, it shows that the assessee had received cash of Rs.13.00 lakhs from his father as gift which had been deposited in his bank account as the date of both sale agreements and sale deed matching with the date of deposits. The lower authorities had confirmed the addition due to the reason that the Sh. Kailash Chand Saini has not appeared in response to

the summon, which itself not prove that the contention of the assessee and documents furnished by the assessee are bogus and when the donor itself has been examined by the Assessing Officer. When the Assessing officer himself stated that the summon issued to Sh. Kailash Chand Saini has return with the remark "Unclaimed", Which shows that Sh. Kailash Chand Saini did not took the said summon with the malafide intention to avoid his presence, by one or other reasons, in which there was no default of the assessee or which was not in the hands of the assessee, the true transaction supported with the evidences cannot be denied in absence of any other contrary evidences on record. Thus the Assessing Officer could not revert facts of date of cash deposits on 27.07.2013 in the bank account which was supported by the sale agreement dated 25.07.2013, bank statement of the assessee and also by the affidavit of his father and statements of his father. The lower authorities have not stated that these documents are after thought and after the date of deposits. The assessee has furnished various evidences as two sale agreements dated 25.06.2013 and 25.07.2013 respectively, affidavit, statements of father recorded by the AO. All these cannot be said self-serving evidences and the AO nowhere found any contradiction in these evidences. Thus, here the assessee has not only proved source of cash deposit but also source of source. Other side the lower authorities have

not rebutted these evidence by bringing any contrary material and evidences, except assumption, presumption and suspicion, on which no addition can be made is the settled legal preposition of law, as an allegation remains a mere allegation unless proved. Suspicion may be strong however cannot take the place of reality, are the settled principles. When the Assessing Officer has not brought out any evidence on record that the assessee had received the said Rs.13.00 Lacs in cash from any other person or source than to his father. In support of the affidavit, assessee relied upon the decisions in the cases of **Mehta Pareek & Co. 30 ITR 181 (SC), CIT v/s Lunard Dimond Ltd. 281 ITR 1 (Del)and CIT v/s Bhawani Oil Mills (P) Ltd 239 CTR 445/49 DTR 212(Raj.)-** wherein the main crux of the decisions are that the contents of affidavit could not be treated as of a lesser importance than the statement given by the creditor before the AO. Further most importantly when the donor had been examined by the Assessing Officer himself admittedly who had given the money to the assessee which not disproved by the authority. The Assessing officer has not found any contradiction in the affidavits, statements and agreements etc. We draw strength from the decision of the Hon'ble Allahabad High Court in the case of **CIT vs. INTEZAR ALI 372 ITR 0651 (All)** wherein it has held as under:

"Income—Cash credit—Undisclosed income—Addition—Validity—Assessee voluntarily filed return disclosing total income and agricultural income—AO received information that assessee had deposited certain amount in his bank account, for which enquiries

were made and statements of assessee and purchasers were recorded—Both purchasers denied to have purchased land for consideration from assessee—AO, relying only on report of Stamp Valuing Authority took cognizance of complaint and treated amount to be undisclosed income—CIT(A) upheld order of AO—ITAT deleted addition—Held, assessee had made complaint to registering authority that sale deed had been registered at value lower than actually received—He had deposited entire amount in bank and voluntarily filed return—There was no material whatsoever which could have suggested that such amount was received by him from any other source—Deposition of witness of sale deed, Bank Manager and evidence filed with regard to valuation of property was more than sufficient to prove assessee's stand—Also, in case of one of purchaser, AO had made an addition on substantial basis, as his income—AO had not given any reasons to discard statement of witnesses, deposit of entire sale consideration in bank and deposition of Bank Manager—Revenue's appeal dismissed"

We also draw strength from the decision in the case of **Daulat Ram Rawat Mal 87 ITR 349 (SC), CIT v/s Bedi& Co. P Ltd 230 ITR 580 (SC).** The assessee has also proved, identity (not denied by the AO), genuineness which the ld. AO not disputed, Capacity has also been proved by the assessee by filling various material evidences as above and has not been doubted as he did not speak a single word on the capacity of the donor**.** The persons fully explained the sources of gift given by him with the material evidences. As A/R also submitted that Sh. Chhoturam is also having income from other sources, agriculture etc as he was 55 years old farmer. Thus when the Assessing Officer himself recorded the statement of the person thus, duly discharged the initial burden lay upon it, to which extent only it was responsible, as held earlier in **CIT vs. Orissa Credit Corp. Ltd. 159 ITR 78 (SC)** and **CIT vs P. Mohan**

Kala 291 ITR 279 (SC). The Ld. A/R has also drawn our attention on the decision following decision

Labhchand Bohra V/s ITO (2008) 8 DTR 44 (Raj.)- *Held: cash credit-burden of proof- identity of the creditors established and they confirmed the credit. This discharged the burden of assessee to prove genuineness. However capacity of the lender to advancement money to assessee was not a matter which the assessee could be required to establish and that would amount to calling upon him to establish the source of source. Hence addition cannot be sustained.*

Kanhaialal Jangid vs. ACIT (2008) 8 DTR 38 (RAJ.), (217 CTR 354) held *Income –cash credit –Burden of proof – Assessee having filed confirmation from the creditor and having produced the creditor before AO where the creditor affirmed advancement of loan to assessee, no addition under s. 68 could be made in the hands of assessee on the ground that the creditor could not satisfactorily explain the source of loan- Burden on the asssessee in such cases does not extend to prove the source of the creditor from where he made the advance to the assessee.*

Aravali Trading Co. v/s ITO 8 DTR 199 *held that once the existence of the creditors is proved and such persons own the credits which are found in the books of the assessee, the assessee's onus stand discharged and the latter is not further required to prove the sources from which the creditors could have acquired the money deposited with him and, therefore the addition u/s 68 cannot be sustained in the absence of anything to establish that the sources of the creditors deposits flew from the assessee itself.*

In ***CIT V/S Abdul Aziz 72 DTR 216(Chhattisgarh)-*** *Held that no independed inquiry was made by the a AO to disprove the creditworthiness of the creditors, as established by the affidavits and statement showing source of income. Hence CIT(A) was justified in deleting the additions.*

CIT -I Vs. M/s. ARL Infratech, Ltd., (D.B. Income Tax Appeal No. 24/2014) decided on 28.09.2016 (Raj.) *wherein this court has held as under:-*

> *"4. Counsel for the appellant has mainly contended that the all companies which were floated early one week prior to the public issue and only because their applications have a PAN number and the payment through cheque with credit worthiness and their worth was not examined. The Assessing Officer while considering the same has relied upon the*

inspector report. However, the same was not allowed to be cross-examined by the assessee.

5. Taking into consideration the aforesaid facts, the Tribunal in para 2.6, observed as under:-

"Adverting, the facts of the given case, we are of the considered opinion that all the share applicants stand identified. The assessee has provided PANs of the share applicants. The mode of payment has also been made explained. There is no direct or indirect relation between the assessee company and the share applicants. The statements recorded during survey has got no evidentiary value and the law is very much settled on this issue. In any case, even under the provisions of Section 68 of the Act, the assessee cannot be forced to prove the source of the source. The law on this subject is also settled by numerous decisions. The alleged report of the Inspector of the Department who is stated to have visited at the given addresses of the share applicants was never put or confronted to the assessee. The cumulative effects of these reasons is that the impugned addition cannot be added in the hands of the assessee company. Accordingly, we order to delete the entire additions and allow the appeal of the assessee."

In the case of **Muralidhar Lahoriaml v/s CIT 280 ITR 512(Guj.),** the Hon'ble High court has held as under:

Income—Cash credit—Genuineness of gift—Addition made by the AO by disbelieving the explanation of the assessee that the credit entry in the capital account represented gift from R—Not justified—R appeared before the AO and confirmed the fact of having made the gift by way of bank draft—He produced evidence in support of the source from which the funds for making the gift were available with him—Revenue has not disputed any of these facts—Primary onus which rested with the assessee thus stood discharged—Assessee can be asked to prove the source of credit in books, but cannot be asked to prove the source of the source—Tribunal has sustained the addition without addressing itself to the requirement of s. 68—Finding of the Tribunal that the motive for making the gift is not established has no relevance for disbelieving the gift—Also, the Tribunal totally failed to consider the fact that the donor has filed gift-tax return and assessment has been framed on the donor—Nothing has been brought on record to show that the explanation of the assessee is not satisfactory—Impugned order of the Tribunal cannot be sustained."

In view of the above facts and circumstances, we are of the view that the assessee has proved the source of source of deposit of Rs. 13,00,000/- in his savings bank account, therefore, we direct the A.O. to delete the addition made qua this issue.

8. As regards ground of charging of interest U/s 234 A,B,C of the Act, since we delete the addition made, therefore, there is no need to adjudicate this ground.

9. In the result, this appeal of the assessee is allowed.

Order pronounced in the open court on 30th June, 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:- 30/06/2021
*Ranjan
आदेश की प्रतिलिपि अग्रेषित / Copy of the order forwarded to:

1. अपीलार्थी / The Appellant- Shri Kailash Chand Yadav, Sikar.
2. प्रत्यर्थी / The Respondent- The I.T.O., Ward- Neemkathana
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. 173/JP/2019)

आदेशानुसार / By order,

सहायक पंजीकार / Asst. Registrar