

**IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH 'E', NEW DELHI**

Before Sh. Aakash Deep Jain, Vice President

Dr. B. R. R. Kumar, Accountant Member

ITA No. 5460/Del/2016 : Asstt. Year : 2005-06

ITA No. 5461/Del/2016 : Asstt. Year : 2006-07

ITA No. 5462/Del/2016 : Asstt. Year : 2007-08

Mr. Mohan Sambhaji Jagthap, 2995, Sector-23, Gurgaon, Haryana	Vs	ACIT, Central Circle-3, New Delhi
(APPELLANT)		(RESPONDENT)
PAN No. ACJPJ3988R		

ITA No. 6026/Del/2016 : Asstt. Year : 2007-08

ACIT, Central Circle-3, New Delhi	Vs	Mr. Mohan Sambhaji Jagthap, 2995, Sector-23, Gurgaon, Haryana
(APPELLANT)		(RESPONDENT)
PAN No. ACJPJ3988R		

Assessee by : Sh. Mukesh Rana, Adv.

Revenue by : Sh. Bhavnesh Kulsheshtha, CIT DR

Date of Hearing: 12.05.2022	Date of Pronouncement: 30.06.2022
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ORDER

Per Dr. B. R. R. Kumar, Accountant Member:

The present appeals have been filed by the Assessee as well as the Revenue against the orders of the Id. CIT(A)-23, New Delhi dated 07.09.2016.

ITA No. 5460/Del/2016: A.Y. 2005-06

2. A search and seizure action carried out on the case of the assessee on 28.02.2007. The additions made in the case of the assessee have reached Tribunal which have been set aside back to the file of the Assessing Officer vide order dated 23.01.2015. This is the second round of appeal before the Tribunal.

3. The immediate family of the assessee is,
- a. Mrs. Anjali – Wife of the assessee
 - b. Mrs. Pooja Sharma – sister of Anjali
 - c. Mr. J. P. Nathani – father of Anjali & Pooja
 - d. Mrs. Anuradha – daughter of J. P. Nathani

Addition of Rs.55,060/- and Rs.80,000/-:

4. The AO found that the assessee was having bank account no. SB 211970 with State Bank of Hyderabad, Pragati Vihar, New Delhi wherein deposits of Rs.55,000/- and bank account no. 16083 with PNB Jor Bagh, New Delhi were found and owing to absence of any plausible explanation, the AO made addition of the amount u/s 68 of the Income Tax Act, 1961.

5. The Id. CIT(A) confirmed the addition holding that no explanation could be submitted by the assessee.

6. Before us, it was argued that the amounts have been received on account of agriculture by the assessee on behalf of his father-in-law who is resident of Canada and holding the amount as custodian. It was argued that the parents-in-law have 100 bighas of agricultural land in Uttrakhand which they have

given for cultivation and the amounts have been received out of the produce of land kept by the assessee and deposited in the bank accounts. The assessee has filed evidences pertaining to holding of land (page no. 52 to 55) and cultivation. Hence, the amounts deposited in the bank account can be treated as income from agricultural activities.

Addition of Rs.28,78,785/-:

7. During the course of search at the residence of the assessee 2995, Sector-23, Gurgaon, a deposit receipt US Dollar 66,500 dated 29.07.2004 was found and seized at page 72, Annexure A3, Party R-12. In response, the assessee vide letter dated 20.10.2015 submitted as below:

“Addition of Rs. 28,78,785, the money was received by assessee on behalf of Crown Corporation as assessee was on official trip of Kazakistan & was asked to handover money to Mr. Alexey Kondrat for some of his business transaction of Crown Corporation. Crown Corporation shall be held liable for this tax liability. Amount of addition shall be deleted from assessing Income. It is pertinent to mention that assessee was travelling Kazakistan under the instruction of management of Crown Corporation Pvt. Ltd., and was been told to receive USD 66,500 for official purpose as they had to give to their local business associate for some business transaction. Being an employee assessee had no option except executing this, assessee do not hold any account with any bank in Kazakhstan however Crown Corporation organized it at their level to enable assessee to receive funds in Kazakistan. In assessment order its mentioned wrong that assessee deposited money as

asses-m received money on behalf of Crown Corporation to pay Crown Corporation local associate Mr. Alexey Kondrat for some business activity as assessee was in Kazakhstan for official trip & Crown Corporation used assessee to receive and handover funds to their local associate. Assessee do not hold any rights to that money and Crown Corporation Pvt. Ltd. Holds tax liability for this amount. Assessee was acting under the instruction of Crown Corporation management being an employee of the company. (Affidavit of assessee)”

8. The Assessing Officer held that section 292C provides that in the case of books of accounts, documents or assets found during search, it may be presumed that such books of accounts, documents or assets belong to the person searched, the contents of such books of accounts and documents are true and the same are under signature and in the hand writing of the particular person to whom the same are purported to be in. It was held that the presumption is not restricted to books of accounts, documents or assets found during search u/s 132 but it has been extended regarding books of accounts, documents or assets found during survey u/s 133A also. It implies that in regard to the material discovered during search, provision of presumption contained u/s 292C is not restricted to be applied during assessment proceedings u/s 153A only but also the same can be applied during any assessment proceedings or any other proceedings undertaken under any of the provisions of the Act. In fact presumption is with respect to books of accounts, other documents or any assets found during search or survey operation and whenever use of such material found is made by the authorities under any of the provisions of Act, the presumption is

applicable and may be used by the authorities. The AO held that this concept is in line with the principle given under Indian Evidence Act. As per section 110 of Indian Evidence Act, 1872, burden of proof as to the actual ownership of a thing lies on the person from whose custody it was found. Section 110 of Indian Evidence Act 1872 reads as under:

"When the question is whether any person is owner of anything of which he is shown to be in possession, the burden of proving that he is not the owner is on the person who affirms that he is not the owner,"

9. The AO held that the assessee is required to offer a reasonable explanation regarding the nature of such books of accounts or documents found in his possession or control and if the same is claimed to be belonging to somebody else, then also the assessee is required to explain as to whom the same belong and as to how the same has come into his possession & that too by leading evidences.

10. Thus, amplifying the Assessing Officer, based on the deposit receipt of US\$ 66,500 dated 29.07.2004 seized from the residence of the assessee and based on his interpretation on the provisions of Section 292C, treated the amount found on the deposit slip as undisclosed income in the hands of the assessee.

11. The Id. CIT(A) confirmed the ground holding that there is no supporting evidence that the assessee was sent to Kazakhstan for any official work by the company.

12. Before us, the respective Counsels repeated the arguments taken up before the authorities below. We have also perused the ledger of Crown Corporation Ltd. and approval of the foreign trip (page 83 & 84 PB) and find that there is no mention of amount of \$ 66,500 to be given to Mr. Alexey Kondrat. Nothing new forthcoming before us, we hold that the assessee has failed to prove the particulars of the deposit slips in a proper perspective and could not discharge the onus casted upon on him. Hence, we decline to interfere with the order of the Id. CIT(A) (page 12).

Gifts from Mrs. Pooja Sharma of Rs.23,97,468/-:

13. The assessee received gifts from Mrs. Pooja Sharma who is the sister of the wife of the assessee and the same has been treated as undisclosed income of the assessee by the Assessing Officer. The AO made addition holding that the creditworthiness of donor is doubtful and her salary is only Rs.15.33 lacs and no gift could be more than the annual salary of the donor.

14. The Id. CIT(A) confirmed the addition. The observations of the Id. CIT(A) affirming the order are as under:

"7.2.... I have considered the assessment order, remand report and submissions of the appellant. The undisputed facts are that the appellant and his wife Smt Anjali Jagthap have been receiving substantial amounts by way of money transfer from abroad. Most of these amounts have been remitted by Smt Pooja Sharma, who is sister of Smt Anjali Jagthap, and is a resident of Canada. The stand of the revenue is that these monies have been transferred by Smt Pooja Sharma not out of her own resources or income but out of income earned by the appellant on the side during his visits abroad for the business purpose of his principal Sh. Suresh Nanda. This conclusion has been reached by revenue on the basis of detailed analysis of various seized evidences in the assessment orders for AY 2003-04 to 2007-08. The plea of the appellant, on the other hand, is that this is a

genuine gift given by Smt Pooja Sharma, sister of the appellant's wife, to her sister. As per confirmation of Smt Pooja Sharma, she had given alleged gifts on various dates to the appellant and to Smt Anjali Jagtap, wife of appellant. Smt Sharma has also claimed that in the period 23.12.2002 and 26.11.2004, she received US\$ 30,000 + 91,288 + 20,000 + 19,000 + 42,072 + 32,000 (in all US\$ 234,360) from one Mr Valery Igor Zhivov of Kazakhstan for various services rendered by her for his company in Canada. However, no evidence has been filed to link the Kazakh remittances to the income of Smt Pooja Sharma declared before Canada Revenue Agency and payment of due taxes thereon. I also find from the documents filed that Smt Pooja Sharma had income of Canadian \$115,595 during fiscal 2004, out of which she paid tax of Canadian \$33,835 leaving a balance of Canadian \$81,760. It is not likely that a person with net income of about Canadian \$80,000 will gift away to relatives \$50,000 which is a substantial portion of that income. No evidence has been filed to establish that the alleged gifts to the appellant or his wife are out of taxed income of Smt Pooja Sharma.

5.3 The argument of the revenue, on the other hand, is that the alleged gifts are nothing but the income of the appellant routed from Kazakhstan to India through his sister-in-law Smt Pooja Sharma in Canada. The table below summarizes the above transactions:

<i>Date</i>	<i>Currency</i>	<i>Amount (Kazakh)</i>	<i>Date</i>	<i>Currency</i>	<i>Amount</i>	<i>Beneficiary</i>
<i>23.12.2002</i>	<i>USE</i>	<i>30000</i>	<i>09.12.2004</i>	<i>CAD</i>	<i>25000</i>	<i>Anjali M. Jagtap</i>
<i>29.01.2003</i>	<i>USD</i>	<i>91288</i>	<i>17.12.2004</i>	<i>USD</i>	<i>24927</i>	<i>Mohan S. Jagtap</i>
<i>18.02.2003</i>	<i>USD</i>	<i>20000</i>	<i>02.02.2005</i>	<i>USD</i>	<i>29938</i>	<i>Anjali M. Jagtap</i>
<i>10.03.2003</i>	<i>USD</i>	<i>19000</i>	<i>07.03.2005</i>	<i>USD</i>	<i>30000</i>	<i>Mohan S. Jagtap</i>
<i>29.07.2004</i>	<i>USD</i>	<i>42072</i>	<i>36.04.2005</i>	<i>CAD</i>	<i>29986</i>	<i>Anjali M. Jagtap</i>
<i>26.11.2004</i>	<i>USD</i>	<i>32000</i>	<i>15.09.2006</i>	<i>CAD</i>	<i>15000</i>	<i>Anjali M. Jagtap</i>
<i>2006 V. J</i>	<i>CAD</i>	<i>10000</i>	<i>25.09.2006</i>	<i>CAD</i>	<i>20000</i>	<i>Anjali M. Jagtap</i>
			<i>17.11.2006</i>	<i>CAD</i>	<i>29500</i>	<i>Mohan S. Jagtap</i>
			<i>19.12.2006</i>	<i>CAD</i>	<i>20000</i>	<i>Mohan S. Jagtap</i>
<i>TOTAL</i>	<i>USD</i>	<i>234360</i>	<i>TOTAL</i>	<i>USD</i>	<i>84865</i>	
	<i>CAD</i>	<i>10000</i>		<i>CAD</i>	<i>139488</i>	

The above table substantiates the position taken by the revenue in the approximation of the Kazakh income and remittances as alleged gifts to India. Therefore, the conclusions reached by the revenue are in order and there is no evidence to the contrary to establish the claims of the appellant. No affidavit or gift deed duly registered under Canadian law has been

produced. The balance of evidence is in favour of revenue. Accordingly, the ground raised by the appellant during appeal, that the addition is income of Smt. Pooja Sharma, is dismissed. However, in this view of the matter either the Kazakh income or the amounts of gifts can be taxed. Both cannot be taxed. Therefore, only the amounts remitted to appellant and his wife as alleged gifts, i.e. Rs.23,97,468/- and Rs.22,19,790/-, respectively, are to be taxed in the year of receipt. I also hold that income of Rs.22,19,790/- shall be taxed substantively in the hands of the appellant and protectively in the hands of his wife Smt Anjali Jagthap. The Kazakh income cannot be separately taxed in view of these being the source of the amounts remitted to India as alleged gifts and taxed on receipt basis. Accordingly, addition of Rs.32,31,020/- representing Kazakh income of US \$74,072 is deleted. Appellant gets relief of Rs.32,31,020/-." (emphasis supplied)

(the orders of the Ld. CIT(A)-1 New Delhi in the AYs 2006-07 & 2007-08 are based on the same findings and are similar]

4.5.2 The submission of the appellant during the current appellate proceedings for the only assessment year for which WS has been filed, i.e. AY 2005-06, is similar to the submissions made before the Lnd. CIT(A)-1 New Delhi for all the above years (supra), and the case laws relied upon are the same as¹ during the earlier first appellate proceedings duly mentioned at para-9.1 in the appellate order for AY 2007-08 by the Lnd. CIT(A)-1 New Delhi (supra). There is no fresh or additional submission by the appellant. Even the copies of OCI card (Overseas Citizen of India Card) of Smt. Pooja Sharma and passport of his wife Smt. Anjali Mohan Jagthap do not prove anything as regards the receipt of the alleged income by Smt. Pooja Sharma. As mentioned above para-4, the appellant/appellant's AR was, vide order sheet dt. 23.06.2016, asked to submit

- (i) copies of ITRs with annexures /enclosures detailing income & expense of Smt, Pooja Sharma filed with Canada IT department for the period 2002 to 2008; and,*
- (ii) a chart showing datawise transfer of money from Kazakhstan to Canada (to Pooja Sharma) & from Smt. Pooja Sharma to assessee's or his wife's accounts,*

but except for copy of ITR for 2005 and assessment of 2004 of Smt. Pooja Sharma and FICR of the 03 remittances, which were also submitted to CIT(A)-1, New Delhi and CIT(A), Gurgaon, no other document as per (i) to

(vi) of order sheet dt. 23.06.2018 have been submitted. The said assessment of 2004 was also considered by the Ld. CIT(A)- 1 New Delhi in the above orders (supra) and the ITR of 2005 (not very legible) indicates income shown of CAD \$ 93,490 out of which CAD \$ 31,250 was paid as tax, and the statement of income is in form T4 for "statement of remuneration" which too suggest that the income was from remuneration for some job done as employee and does not suggest any income earned by way of business or commission as the appellant's AR would have us believe. No other evidence has been filed which would substantiate the contention of the appellant that Smt. Pooja Sharma was doing any business with MASH ZAVOD or A.O. SCHELF, the names indicated in the seized documents as may be seen from the details given in the assessment orders which are as under:

Date	Currency	Amount (Kazakh)	Date	Currency	Amount	Beneficiary
23.12.2002	USD	30000 (MASH ZAVOD)	09.12.2004	CAD	25000	Anjali M. Jagtap
29.01.2003	USD	91288 (MASH ZAVOD)	17.12.2004	USD	24927	Mohan S. Jagtap
18.02.2003	USD	20000 (A.O. SCHELF)	02.02.2005	USD	29938	Anjali M. Jagtap
10.03.2003	USD	19000 (A.O. SCHELF)	07.03.2005	USD	30000	Mohan S, Jagtap
29.07.2004	USD	42072 (Mohan)	06.04.2005	CAD	29986	Anjali M. Jagtap
26.11.2004	USD	32000 (IGOR)	15.09.2006	CAD	15000	Anjali M, Jagtap
2006 VJ	CAD	10000	25.09.2006	CAD	20000	Anjali M. Jagtap
			17.11.2006	CAD	29500	Mohan S. Jagtap
			19.12.2006	CAD	20000	Mohan S. Jagtap
TOTAL	USD	234360	TOTAL	USD	84865	
	CAD	10000		CAD	139486	

If the above contention is to be believed, Smt. Pooja Sharma would have business dealings with Mohan as well as IGOR which is not a part of appellant's AR's contention in his WS. Admittedly, the appellant was a constant/regular visitor to Khazakistan for the business dealings of Sh. Suresh Nanda, M/s Crown Corporation Pvt. Ltd. etc, and the names in the bracket against the money could be indicative of the recipient of cash which also include "Mohan", i.e. the appellant. Further though evidence of any remittance of money from Khazakistan to the account of Smt. Pooja Sharma has been produced which could substantiate the appellant's contention. Had these seized documents not been found the receipt of such money by the appellant and his wife would not have been disclosed, and had not been disclosed prior to the search. As mentioned, sufficient opportunity was provided to the appellant but he has not been able to adduce necessary evidence to substantiate and support his contentions of the impugned money having been earned by Smt. Pooja Sharma and duly disclosed to the

Canadian tax authorities in her income tax returns on which due taxes were paid. The AO has also mentioned at para-9.15 of the assessment order of AY 2005-06 and para- 8,16 of AY 2007-08 that as per seized document page-28 of Annx. A1/R12 which is a statutory declaration on 24.06.2004 the income declared by her was CAD \$ 41,600 which too is suggestive of insufficient income of Smt. Pooja Sharma. Further the AO has, at paras-8.9 and 8.15 of the assessment order of AY 2006-07 and paras-8.9 and 8.15 of AY 2007-08, listed the seized documents pages-17 to 24 of Annx.-A1/R12 and pages-47 to 52 and 62 of Annx.- A2/R12 which have references to credit advices/money transfer application for transfer of money to Ms. Pooja Sharma from the remitter Zhivov Igor Valeryvich of Almaty, OJSG SHELF, Atyrau, Khazakistan and OJSC MASHZAVOD, Almaty, Khazakistan on different dates whereby varying amounts were transferred to Smt. Pooja Sharma's account in Canada. The seized document page-18 of Annx.-A1/R12 is money transfer application made by the appellant before Bank Turan Alem, Khazakistan for remitting US \$ 42,122 and the purpose of remittance mentioned is "material aid"; the seized document page-62 Annx.-A2/R12 is an invitation to the appellant from MASH ZAVOD to visit JSC machine building plan at 127, Makataeva St. Almaty, Khazakistan from 15.03.2002 to 15.04.2002; and pages-47 to 52 of Annx.-A2/R12 is an agreement between A.O. SHELF, Khazakistan and M/s Lotus Incorporate New Delhi for appointing agent of A.O. SHELF, Khazakistan and the agreement is signed by the appellant as the President of M/s Lotus Incorporate (LI is a partnership firm with the appellant and Sh. Ashok Jha as partners, considered in my order for AY 2002-03). These documents explicitly indicate the relationship and interaction of the appellant with the above persons at Khazakistan and there is no doubt that the money transfers to Smt. Pooja Sharma account at Canada from Khazakistan has definite linkages with business dealings of the appellant with the above persons at Khazakistan the consideration and income out of which the appellant never disclosed in his income tax returns in India. Besides, there is no evidence brought on record by the appellant, or seized during the search at his residence, which could suggest that Smt. Pooja Sharma had any direct dealings or interaction with these persons at Khazakistan. It is also pertinent to note that all these documents mentioned above and which form basis assessment were seized from the residence of the appellant and the presumption u/s 132(4A) r.w.s. 292C of the Act have not been rebutted effectively with corroborative evidence by the appellant.

4.5.3 The appellant's AR has also submitted that the impugned gifts received by Smt. Anjali Mohan Jagthap was accepted by the assessing authorities and CIT(A) Gurgaon and the same could not be taxed twice. He has submitted copies of the orders of the assessment dt. 31.12.2009 of the ACIT Circle Gurgaon, first appeal order of CIT(A) Panchkula dt. 25.06.2010 and the Hon'ble ITAT Delhi Bench 'A' dt. 12 11.2010 for AY 2007-08 in the case of Smt. Anjali Mohan Jagthap. In these case the assessment was made u/s 153A of the Act wherein FDRs of Rs.30,50,000/- allegedly made out of gift received from Smt. Pooja Sharma in her bank account of State Bank of Patiala was added to her income as she could not prove creditworthiness of Smt. Pooja Sharma and genuineness of the gift, which was confirmed by the CIT(A) Panchkula but the Hon'ble ITAT set aside the order to the CIT(A) for giving opportunity to the appellant and to pass a fresh order. Based on the same evidences filed before the Lnd. CIT(A)-1 New Delhi and the undersigned, as his evidence from para-3 pages- 2 to 9 of the order of CIT(A)-1 Gurgaon the latter allowed the appeal and deleted the addition vide his order dt. 03.02.2015 in A.No. 103/GGN/2009-10 which has been accepted by the department and no further appeal has been filed as informed by the present AO, ITO Ward-1 (2) Gurgaon vide his letter F.No.ITO/Ward-1((2)/ GGN/2016-17/4755 dt. 18.08.2016. However, as noted above, the Ld. CIT(A)-1 New Delhi vide his orders for ail the three years (supra) had directed that the amount received by Smt. Anjali Mohan Jagthap is to be assessed substantively in the hands of the appellant and protectively in the hands of his wife Smt. Anjali Mohan Jagthap.

4.5.4 Under these facts and circumstances, there is no reason, or any material brought on record to the contrary, to differ from the findings and decision of the Ld. CIT(A)-1 New Delhi. I, accordingly, reiterate the findings of the Ld. CIT(A)-1 New Delhi as mentioned above in all the three years and hold that the impugned gifts received by the appellant and his wife constitute undisclosed income of the appellant to be assessed exclusively in his hands. All the above grounds in this regard for all the three years are accordingly dismissed."

15. Before us, the assessee submitted statutory declaration of gifting Canadian \$ 54,927 and 49,500, certificate of foreign inward remittance, in the income tax return. It was argued that

the donor Mrs. Pooja Sharma received money from one IGOR ZHIVOV of Kazakhstan for various services rendered by her for his company in Canada.

16. Heard the arguments of both the parties and perused the material available on record.

17. We find that the total income of Canadian \$ 1,15,595, tax payment of Canadian \$ 31,109. Thus, effectively leaving the assessee with Canadian \$ 84,486 which is much less than the total income as per the return. The details of the receipt of gifts by the assessee and his wife are as under:

Date	Amount	Beneficiary
09.12.2004	CND \$25,000	ANJALLM.JAGTAP
17.12.2004	US \$24,927	MOHAWS. JAGTAP
02.02.2005	US \$29,938	ANJALI M. JAGTAP
07.03.2005	US \$30,000	MOHAN S. JAGTAP
06.04.2005	CND \$29,986	ANJALI M. JAGTAP
15.09.2006	CND \$15,000	ANJALI M. JAGTAP
25.09.2006	CND \$20,000	ANJALI M, JAGTAP
17.11.2006	CND \$29,500	MOHAN S. JAGTAP
19.12.2006	CND \$20,000	MOHAN S. JAGTAP

18. The date, amounts in the frequency of the gifts are totally against the tenets of the payment and receipt of the gifts in the regular social life globally. It is highly impossible that the donor Mrs. Pooja Sharma, the disposable annual income of \$ 84,486 could gift an amount of the quantities at various periods as mentioned in the above table. In addition, the seized material numbered at page no. 1 Annexure A-1 Party R-12. The contents of the seized document are reproduced below:

Received		
23.12.2002	USD	30,000
29.01.2003	USD	91,288
18.02.2003	USD	20,000
10.03.2003	USD	19,000
29.07.2004	USD	42,072
26.11.2004	USD	32,000
Total	USD	2,34,360
	CAD	10,000
PAID		
09.02.2003	USD	6,000 (V Zhivov)
15.03.2005	USD	7,000 (Loral Stamps)
17.12.2004	USD	24,927 (Mohan Sambaj)
07.03.2005	USD	30,000 (Mohan Sambai)
04.12.2004	CA	25,000 (Anjali)
21.03.2005	UD	30,000 (Anjali)
06.04.2005	USD	25,000 (Aniaii) 1,43,000 (Loral Stamps)

19. An analysis made by the Revenue of the above entries undisputedly indicates that some monies have been received in USD on 29.07.2004 and 26.11.2004. This is fortified by the material consisting of hand written page found and seized at page no. 16 Annexure A1, Party R-12 is relevant. The entries on this page are as under:

Credits		
23.12.2002	USD	30,000 (MASH ZAVOD)
29.01.2003	USD	91,288 (MASH ZAVOD)
18.02.2003	USD	20,000 (A.O. SCHELF)
10.03.2003	USD	19,000 (A.O. SCHELF)
29.07.2004	USD	42,072 (Mohan)
26.11.2004	USD	32,000 (IGOR)
Total	USD	2,34,360
2006(VJ.)	USD	10,000
Debits		
21.06.2006	USD	4000 (LEON)
	USD	11048 (Loral Stamps)
09.02.2003	USD	6000 (V. Zhivov)
15.03.2005	USD	7660 (Loral Stamps)
17.12.2004	USD	24,927.59 (Mohan)
07.03.2005	USD	30,000 (Mohan)
04.12.2004	CAD	25,000 (Anjali)=USD 20,000
21.03.2005	USD	30,000 (Anjali)

06.04.2005	USD	25,000 (Anjali)
Total	USD	1,43,000
		15048
		158048
		234360
		158048
		76312

20. It is pertinent to note that the amounts in the entries in both the papers described above are the same. The entries on page no. 16 Annexure A1, Party R-12 also list the name of the payers in brackets against the entries. Thus, the money has been received from Mohan and Igor. This is further evidenced by the documents found and seized during the course of search at the residence of the assessee 2995, Sector - 23, Gurgaon marked as Annexure A1 page 18 which is the money transfer application made by Sh. Mohan Sambhajl Jagthap before bank Turan Atom, Kazakhstan for remitting USD 42,122 in the account of Mrs. Pooja Sharma in Ontario, Canada. The purpose of remittance has been declared as material aid. Thus, these amounts of USD 42,122 as material aid is also an aid to route the monies from Kazakhstan to Canada to India into the assessee's account in the form of gift. In total, out of the total receipt of US\$ 2,34,360, an amount of US\$ 1,34,927 was transferred to the assessee and his wife during the A.Y. 2005-06 and A.Y. 2006-07. Further, there is other undisputable evidence found and seized as Annexure A1 page-40 in the form of fax sheet on the letter head of M/s Excel Employment Tempo INC. The same reads as under:

"Hi Jeeju, —————> (Hand drafted smiley) can I have some,
 Here is your account balance for both accounts.
 \$ Canadian Account - \$ 29,800.00
 \$ US Account - \$ 113860.4
 \$ US Account - \$ 41000

 Thanks

 Pooja
 I will see call ←———— (Hand drafted smiley)
 Me later Ha Ha Ha"

21. The explanation of the assessee that this is hand written summary of Mrs. Pooja Sharma bank account and the declaration /confirmations of the Mrs. Pooja Sharma pertaining to gifts do not hold any credence weighed against the plethora of evidences collected by the Revenue. The submission that Mrs. Pooja Sharma working with IGOR ZHIVOV and the assessee being in Kazakhstan and remitted the money which in turn was gifted to the assessee totally fail to instill any confidence for deleting the addition.

22. Further, the sequence of page no. 18 to 24 of Annexure A1 found & seized clearly proves that the amounts have been routed from Kazakhstan to Canada to India only to give a colour of "Gifts" from Mrs. Pooja Sharma. The entire operation over the period of time from 2003 can be unfolded by going through the contents of the seized material which is as under:

Annexure A-1, Page -17	This Is credit advise of Nation Bank of Canada dated 26.11.2004 for USD 32000 to the account of Ms. Pooja Sharma with name of remitter as Zhivov Igor Valeryvich, Almaty.
Annexure A-1, Page-18	This is money transfer application made by Si. Mohan Sambhajl Jagthap before bank Turan Alem, Kazakhstan for remitting USD 42122 in the account of Ms. Pooja Sharma in Ontario, Canada. The purpose of remittance has been declared as material aid.
Annexure A-1, Page -19	This page is corresponding document of Incoming transfer In Scotia Bank, Ontario, Canada for amount USD 42072 in the account of Ms. Pooja Sharma.
Annexure A-1, Page -20	This is a credit advise to the account of Pooja Sharma in National Bank of Canada for two transfers one dated 23.12.2002 for an amount USD 29,985 and dated 10.03.2003 for an amount of USD 19000.
Annexure A-1, Page -21	This is corresponding transaction statement dated 10.03.2003 for USD 19000.
Annexure A-1, Page -22	This is photo copies of two credit advises - of USD 20000 and USD 6000 dated 18.02.2003 and 11.07.2003 issued by National Bank of Canada to the account of Ms. Pooja Sharma. The name Of the remitter is written as OJSC SHELF, ATYRAU, KAZAKHSTAN.
Annexure A-1, Page -23	This is a money transfer application made to Almaty branch of Bank Turanalem on 29.01.2003 for USD 91288 In favour of Ms. Pooja Sharma made by OJSC MASHZAVOD, Almaty.
Annexure A-1, Page -24	This is the credit advice of USD 30000 and USD 91288 dated 23.12.2002 and 29.01.2003 respectively in favour of Ms. Pooja Sharma, remitted by OJSC SHELF, ATYRAU, KAZAKHSTAN and OJSC MASHZAVOD, ALMATY, KAZAKHSTAN respectively.

Page 62 Annexure A-2, Party R-12	It is invitation to Sh. Mohan Shambaji Jagtap from M/s MASH ZAVOD to visit JSC machine building plan at 127, Makataeva St. Almaty Kazakhstan from 15.03.2002 to 15.04.2002
Page 47-52 Annexure A-2, Party R-12	It is an agreement between A.O. Schelf Kazakhstan and Lotus Incorporate, New Delhi for appointing lotus as the agent of A.O. Schelf Kazakhstan. The agreement has been signed by Sh. Mohan Jagtap as the President of Lotus Incorporate.

23. Based on the documents found, the explanation given by the assessee, we hereby affirm the decision of the Revenue that since the money initially remitted into the bank accounts of Mrs. Pooja Sharma was passed on to the assesses as gift in the subsequent years is a strong indicator of the fact that it was his own unaccounted income routed through the account of Mrs. Pooja Sharma. The claim of Mrs. Pooja Sharma that Mr. Mohan Sambhaji Jagtap being in Kazakhstan just remitted the money on her behalf

is not acceptable. Mr. Mohan Jagtap being a resident in India for income tax purposes, his global income is taxable. Since, no details of the bank account maintained in Almaty Kazakhstan has been furnished, the source of the amount remitted by him remains unexplained. All the documents related to the remittance of this money have been found in the possession of the assessee. The assessee himself has been instrumental in transferring the money from Kazakhstan to the account of Mrs. Pooja Sharma. All the documents evidencing the operation of routing of monies have been found and seized. Hence, keeping in view the entire facts and circumstances, we hereby affirm the order of the Id. CIT(A) on this ground.

Addition of Rs.22,19,790/-:

24. The AO made addition of the amount of gifts received by the wife of the assessee Mrs. Anjali Sharma from her sister, Mrs. Pooja Sharma from Canada. In this context, we would like to make it clear that two issues arise out of the addition made by the AO.

- a. Whether the addition has to be made in the hands of the assessee or Mrs. Anjali Sharma?
- b. Whether, keeping in view the fact that the assessee has routed his monies as explained in the above paragraphs, the substantive addition is liable to be confirmed in the hands of the assessee or not.

25. We have considered the issue with reference to the real ownership and taxability in the right hands. Based on the documents, it has been proven and held that the amount

pertaining to the assessee has been ploughed back to the assessee and to his wife in the form of gifts. Hence, it would only be prudent that the amount of gifts received by the wife of the assessee be assessed in the hands of the assessee who has the real source and ownership of the amounts. Hence, we decline to interfere with the order of the Id. CIT(A) on this issue.

ITA No. 5461/Del/2016 : A.Y. 2006-07

Addition of Rs.80,000/-:

26. The addition is to be deleted based on the same ratio laid down for the similar issue in ITA No. 5460/Del/2016 for the A.Y. 2005-06.

Addition of Rs.10,75,000/-:

27. The order of the Id. CIT(A) is affirmed based on the same ratio laid down for the similar issue in ITA No. 5460/Del/2016 for the A.Y. 2005-06.

ITA No. 5462/Del/2016 : A.Y. 2007-08

Addition of Rs.92,192/-, Rs.1,50,000/- & Rs.1,05,711/-:

28. The additions are hereby directed to be deleted based on the same ratio laid down for the similar issue in ITA No. 5460/Del/2016 for the A.Y. 2005-06.

Addition of Rs.18,96,129/-:

29. This issue pertains to the gifts received by the assessee from the sister-in-law Mrs. Pooja Sharma. This issue has been examined and adjudicated at para 14 to 22 of this order pertaining to ITA No. 5460/Del/2016 for the A.Y. 2005-06. Further, we have already held that the sequence of page no. 18 to 24 of Annexure A1 found & seized clearly proves that the amounts have been routed from Kazakistan to Canada to India only to give a colour of "Gifts" from Mrs. Pooja Sharma. The entire operation over the period of time from 2003 can be unfolded by going through the contents of the seized material. Hence, the same ratio applies and the addition is sustained.

Addition of Rs.11,06,872/-:

30. This issue pertains to the gifts received by the assessee from the sister-in-law Mrs. Pooja Sharma by his wife Mrs. Anjali Sharma. This issue has been examined and adjudicated at para 23 to 24 of this order pertaining to ITA No. 5460/Del/2016 for the A.Y. 2005-06. The same ratio applies and the addition is sustained.

Addition of Rs.3,74,370/-:

31. This issue pertains to the gifts received by the assessee from the sister-in-law Mrs. Pooja Sharma's husband Mr. Vijay by his wife Mrs. Anjali Sharma. This issue similar to the gifts received from Mrs. Pooja Sharma which has been examined and adjudicated at para 23 to 24 of this order pertaining to ITA No.

5460/Del/2016 for the A.Y. 2005-06. The same ratio applies and the addition is sustained.

ITA No. 6026/Del/2016 : A.Y. 2007-08 (Revenue Appeal)

Addition of Rs.3,58,00,000/-- Land Transaction:

32. The facts of the case are that during the course of search proceedings at the residence of the assessee 2995, Sector - 23, Gurgaon a hand written page was found & seized as page no.7, Annexure A-3, Party R-12, the contents of this page are reproduced below:

"Ansal Payment		8 Acres approx	
Total	Advance	Registration	Stamp Duty
26*8	22*8	4 *8	(32) 8%
=208 lacs	=176 lacs	=32 lacs	=2.56 lacs
Mr. Ranas payments		2 acres approx.	
Total	Advance	Registration	Stamp Duty
=150 lacs	64*2	11*2	22*8%
	=128 lacs	=22lacs	=1.76 lacs
Total	Advance	Registration	Total
358 lacs	176+50	32+22+78	4.32 lacs"
	226 lacs	= 132 lacs	

33. This is a handwritten paper which gives the details of payments made towards acquisition of land. The assessee was asked to explain the contents of this page vide questionnaire dated 05.10.2009. In response the assessee vide letter dated 09.12.2009 submitted as below:

"Annexure A3 Page 7 contains a proposal for some land for which the deal never materialized."

34. The relevant portion is reproduced as under:

"It is pertinent to mention that learned Assessing Officer surmised the entire addition of Rs. 3,58,00,000/- only on the basis of some hand written undated loose papers, it was pertinent to mentioned that assessee never purchased any property and it was a quote from a property dealer for Mr. Suresh Nanda. However if learned assessing officer wish to make this addition the same shall be made in account of Mr. Suresh Nanda as search and seizure was conducted under his company/ group name. It is pertinent to mention that statement of assessee during and after search and seizer is same and there was not change, it is also pertinent to mention that the document in question is a dumb document as neither it hold any property detail nor it holds any date. It is also very important to mention that assessee nor his family member ever admitted that handwriting in the paper belongs to assessee. It is very clearly defined in various judgments that no addition can be made on this basis of loose undated sheets found during search and seizer.

.....

It is pertinent to mention that all above judgment can be relied upon to delete the addition of Rs. 3,58,00,000/- such addition shall not be sustained without any evidence. Even the statement of assessee's wife was misrepresented by the Assessing Office in Para 4.4. of the assessment order where she said "...the handwriting contained n the said page is not mine could be of my husband Sh. Mohan Sambahji Jagthap..." It is pertinent to mentioned that in the same Para the comments of Assessing

Officer says "... Hand writing of Mr. Mohan Sambhaji Jacthap has been confirmed by the Mrs. Anjali Sambhaji Jagthap when she was confronted with these documents..." We cannot consider could as a confirmation remark, however, the learned Assessing Officer has recorded it in wrong way to support his claim however it is pertinent to mention that this statement itself is not sustainable."

35. The AO held that from the above, it is gathered that the payments made towards purchase of land of 8 acres and 2 acres approximately was made for 304 lacs in cash out of total deal of Rs.358 lacs for the entire land. The bifurcation of the deal is as under:

Purchase price of 8 acres land is		Rs.208 lacs
Cash paid	=	Rs.176 lacs (A)
Purchase price of 2 acres land		Rs.150 lacs
Cash	=	Rs.128 lacs (B)
Total cash paid (A+B)	=	Rs.304 lacs

36. The AO held that the registration amount in Gurgaon is 8% of the cost price and the assessee has paid total registration charges amounting to Rs.4.32 lacs meaning thereby the cost of the land disclosed in paper is Rs.54 lacs whereas the actual sale consideration took place at Rs.358 lacs. It was alleged that the rest of the money has been paid in cash and brought to tax accordingly.

37. The Id. CIT(A) deleted the addition holding as under:

"5.41 have considered the assessment order, remand report and submissions of the appellant. The undisputed facts are that this document was seized from the residence of the appellant. The document does not contain particulars of the property which is the subject matter of the alleged transaction. There is nothing in the document to suggest that any payment was actually made. There is consistency in the explanation given by the appellant from the date of search when his statement was recorded u/s 132(4), during assessment proceedings and also during appeal. In these circumstances, it cannot be concluded on the basis of this document alone that any property was transacted or that any money changed hands. Even if it could be so concluded, it cannot by any logic be held to be the income of the appellant as he was, after all, admittedly and undisputedly acting as agent on behalf of Sh. Suresh Nanda and representing his business interests. Therefore, this addition cannot be legally sustained in the hand of the appellant. This ground of appeal is allowed. Appellant gets relief of Rs.3,80,00,000/-."

In the set aside assessment order the AO has not brought any further material on record and therefore making the addition once again which was deleted by the CIT(A) is against the principles of judicial discipline. There is no reason, or any material brought on record to the contrary, to differ from the findings and decision of the Ld. CIT(A)-1 New Delhi. The addition made is deleted.

38. The primary issue before us is

"Where is the land"

"Who purchased the land"

"From whom the land was purchased"

"When the land was purchased"

39. There was no answer on the record of the Revenue. The land could not be located nor proved it to be under the ownership of the assessee. Hence, we affirm the decision of the Id. CIT(A).

Addition of Rs.5,23,846/-:

40. During the course of search proceedings at the residence of the assessee 2995, Sector-23, Gurgaon, Haryana on 28.02.2007, details of expenses incurred were found & seized as page no.31-46, Annexure A2, Party R-12. The month wise details of expenses are as per the table given below:

Month	Expenditure
July-August - 2005	Rs.9,49,459/-
September - 2005	Rs.89,162/-
October -2005	Rs.81,809/-
November - 2005	Rs.62,561/-
December - 2005	Rs. 1,08,966/-
January - 2006	Rs.63,769/-
February - 2006	Rs. 1,00,704/-
March - 2006	Rs.88,865/-
April - 2006	Rs.1,60,721/-
May - 2006	Rs. 1,22,103/-
June - 2006	Rs. 1,14,806/-
July - October - 2006	Rs.1,26,216/-
Total	Rs.20,69,141/-

41. The assessee was asked by the AO to furnish the details of these expenses as the source thereof vide questionnaire dated 05.10.2009. In response the assessee vide his letter dated 09.12.2009 submitted as below:

"Annexure A2 Page 31 to 46 as far as I can remember these are papers which represent accounting entries being practiced by my friend Mr. Manoj Rawat who was may be trying to /earn to accounting in quick books software."

.....

"Friend of assessee was trying to do practice on Quick books accounting software used outside India as he was trying to find a job outside India. It is clearly stated that these documents doesn't hold any value. This document (Annexure A2 Page 31-46) doesn't hold any company or personal names or any other detail pertains to assessee. It is pertinent to mention that under the various judgments by the Hon'ble courts such documents can't be treated as base to make addition in income until unless supported by more facts supporting such documents."

42. The AO noted that the assessee has made correction in his own hand writing with respect to the name of parties to which the payments are being made. The total expenses for the financial year 2006-07 are as per the table given below:

Month	Expenditure
April - 2006	Rs. 1,60,721/-
May - 2006	Rs.1,22,103/-
June - 2006	Rs.1,14,806/-
July - October - 2006	Rs. 1,26,216/-
Total	Rs.5,23,846/-

43. The AO held that the assessee has claimed it was rough workings made by one of his friend who was practicing on a particular software at his house, however reply of the assessee was rejected by the AO on the ground that the assessee has made correction in his own hand writing with respect to the name of parties to which the payments was being made.

44. The Id. CIT(A) deleted the addition. It was held as under:

"I have considered the assessment order, remand report and submissions of the appellant. A perusal of the details of entries reveals that these are office expenses and expenses of personal nature contained in standard software format. At many places same expense such as water, BSNL, etc. are repeated several times on consecutive days. This is not a normal expenditure pattern as no one pays water and telephone bills every other day. The appellant has also filed the sworn affidavit of Sh. Manoj Rawat, his friend / acquaintance, who has affirmed that he was practicing on the software. There is no evidence to controvert the claim of the appellant. In the circumstances, this ground of appeal is allowed. Appellant gets relief of Rs.5,23,846/-."

45. In the fresh Assessment order the AO has not brought on record any corroborative material contrary to appellant's explanation as also regarding the nature and purpose of such alleged expenses and therefore, we decline to interfere with the order of the Id. CIT(A) in deleting the addition.

46. In the result, the appeals of the assessee are partly allowed and the appeal of the Revenue is dismissed.

Order Pronounced in the Open Court on 30/06/2022.

Sd/-

(Aakash Deep Jain)
Vice President

Sd/-

(Dr. B. R. R. Kumar)
Accountant Member

Dated: 30/06/2022

Subodh Kumar, Sr. PS

Copy forwarded to:

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

ASSISTANT REGISTRAR