

आयकर अपीलीय अधिकरण, चण्डीगढ़ न्यायपीठ "बी", चण्डीगढ़  
IN THE INCOME TAX APPELLATE TRIBUNAL, CHANDIGARH BENCH "B", CHANDIGARH

HEARING THROUGH: PHYSICAL MODE

श्री आकाश दीप जैन, उपाध्यक्ष एवं श्री विक्रम सिंह यादव, लेखा सदस्य  
BEFORE: SHRI. AAKASH DEEP JAIN, VP & SHRI. VIKRAM SINGH YADAV, AM

आयकर अपील सं. / ITA NO. 105 To 111/Chd/2023  
निर्धारण वर्ष / Assessment Year : 2014-15 To 2020-21

Shri Parshotam Lal S/o Shri Raj Kumar H.No. 8/152, Mandi Mullanpur, Ludhiana – 141101, Punjab	बनाम	The DCIT Central Circle-1, Ludhiana
स्थायी लेखा सं. / PAN NO: BCPPL1074H		
अपीलार्थी/Appellant		प्रत्यर्थी/Respondent

निर्धारित की ओर से/Assessee by : Shri Sudhir Sehgal, Advocate and  
Shri Rishabh Marwah, C.A  
राजस्व की ओर से/ Revenue by : Smt. Kusum, CIT, DR

सुनवाई की तारीख/Date of Hearing : 18/01/2024  
उद्घोषणा की तारीख/Date of Pronouncement : 15/04/2024

**आदेश/Order**

**PER BENCH:**

All the above appeals have been filed by the Assessee against the separate orders of the Ld. CIT(A)-5, Ludhiana dt. 04/01/2023 for the Assessment Years 2014-15 to 2020-21.

2. For the respective assessment years, the grounds of appeal raised by the assessee are as follows:

**ITA No. 105/Chd/2023 for the A.Y. 2014-15:**

1. That the Worthy CIT(A) has erred in confirming the action of the Ld. AO of invoking the provisions of 132A (requisition) followed by provisions of Deemed search, without any reasons to believe that any monies would have escaped assessment had these not been requisitioned, in view of the binding judgment of

the Hon'ble Apex Court in the case of Vindhya Metal Corpn. reported at [1997] 224 ITR 614 (SC) and that of the Hon'ble Gujarat High Court.

2. That the Worthy CIT(A) has erred in confirming the action of the Ld. AO of assuming jurisdiction in this case by issue of notice u/s 153A of the Act (and making various additions u/s 69A of the Act) without any incriminating material for such un-abated assessment year and as such the assessment so made deserves to be quashed.

3. That the Worthy CIT(A) has erred in confirming the addition of Rs. 150000/- to the returned income of Rs. 2,06,100/-.

4. That the Worthy CIT(A) has erred in confirming the addition of Rs. 1,50,000/- on account of gift received by the assessee from his mother during the relevant period, as declared by the assessee by way of a notarised Affidavit, alleging it to unexplained u/s 69A of the Act and taxing the same under the higher rate of tax as given u/s 115BBE of the Act. '

5. That the Worthy CIT(A) has erred in confirming the addition as made by the Assessing Officer, against the fact and circumstances of the case and without appreciating the submissions made by the assessee.

6. Notwithstanding the above said grounds of appeal, the Worthy CIT(A) has erred in holding the assessment to be valid, ignoring the fact that the "Mandatory Approval" given by the Ld. Addl. CIT u/s 153D for assumption of jurisdiction in this case was without any application of mind and was a 'Mechanical Approval' only, which deserved to be quashed in view of the binding judgment of Hon'ble Jurisdictional Bench of ITAT, in the case of Inder International In ITA No. 1573/Chd/2018

7. That the Appellant craves to add or amend the grounds of appeal before the appeal is finally heard or disposed off.

#### ITA No. 106/Chd/2023 for the A.Y. 2015-16:

1. That the Worthy CIT(A) has erred in confirming the action of the Ld. AO of invoking the provisions of 132A (requisition) followed by provisions of Deemed search, without any reasons to believe that any monies would have escaped assessment had these not been requisitioned, in view of the binding judgment of the Hon'ble Apex Court in the case of Vindhya Metal Corpn. reported at [1997] 224 ITR 614 (SC) and that of the Hon'ble Gujarat High Court.

2. That the Worthy CIT(A) has erred in confirming the action of the Ld. AO of assuming jurisdiction in this case by issue of notice u/s 153A of the Act (and making various additions u/s 69A of the Act) without any incriminating material for such un-abated assessment year and as such the assessment so made deserves to be quashed.

3. That the Worthy CIT(A) has erred in confirming the addition of Rs. 1,60,000/- to the returned income of Rs. 2,67,730/-.

4. That the Worthy CIT(A) has erred in confirming the addition of Rs. 1,60,000/- on account of gift received from the mother of the assessee during the relevant period, as declared by the assessee by way of a notarised Affidavit, alleging it to unexplained u/s 69A of the Act and taxing the same under the higher rate of tax as given u/s 115BBE of the Act. '

5. That the Worthy CIT(A) has erred in confirming the addition as made by the Assessing Officer, against the fact and circumstances of the case and without appreciating the submissions made by the assessee.

6. Notwithstanding the above said grounds of appeal, the Worthy CIT(A) has erred in holding the assessment to be valid, ignoring the fact that the "Mandatory Approval" given by the Ld. Addl. CIT us 153D for assumption of jurisdiction in this case was without any application of mind and was a 'Mechanical Approval' only, which deserved to be quashed in view of the binding judgment of Hon'ble Jurisdictional Bench of ITAT, in the case of Inder International In ITA No. 1573/Chd/2018

7. That the Appellant craves to add or amend the grounds of appeal before the appeal is finally heard or disposed off.

#### ITA No. 107/Chd/2023 for the A.Y. 2016-17:

1. That the Worthy CIT(A) has erred in confirming the action of the Ld. AO of invoking the provisions of 132A (requisition) followed by provisions of Deemed search, without any reasons to believe that any monies would have escaped assessment had these not been requisitioned, in view of the binding judgment of the Hon 'ble Apex Court in the case of Vindhya Metal Corpn. reported at [1997] 224 ITR 614 (SC) and that of the Hon'ble Gujarat High Court.

2. That the Worthy CIT(A) has erred in confirming the action of the Ld. AO of assuming jurisdiction in this case by issue of notice us 153A of the Act (and making various additions us 69A of the Act) without any incriminating material for such un-abated assessment year and as such the assessment so made deserves to be quashed.

3. That the Worthy CIT(A) has erred in confirming the addition of Rs. 165000/- to the returned income of Rs. 268170/-.

4. That the Worthy CIT(A) has erred in confirming the addition of Rs. 1,65,000/- on account of gift received from the mother of the assessee during the relevant period, as declared by the assessee by way of a notarised Affidavit, alleging it to unexplained u/s 69A of the Act and taxing the same under the higher rate of tax as given u/s 115BBE of the Act. '

5. That the Worthy CIT(A) has erred in confirming the addition as made by the Assessing Officer, against the fact and circumstances of the case and without appreciating the submissions made by the assessee.

6. Notwithstanding the above said grounds of appeal, the Worthy CIT(A) has erred in holding the assessment to be valid, ignoring the fact that the "Mandatory Approval" given by the Ld. Addl. CIT us 153D for assumption of jurisdiction in this case was without any application of mind and was a 'Mechanical Approval' only, which deserved to be quashed in view of the binding judgment of Hon'ble Jurisdictional Bench of ITAT, in the case of Inder International In ITA No. 1573/Chd/2018

7. That the Appellant craves to add or amend the grounds of appeal before the appeal is finally heard or disposed off.

#### ITA No. 108/Chd/2023 for the A.Y. 2017-18:

1. That the Worthy CIT(A) has erred in confirming the action of the Ld. AO of invoking the provisions of 132A (requisition) followed by provisions of Deemed search, without any reasons to believe that any monies would have escaped assessment had these not been requisitioned, in view of the binding judgment of the Hon'ble Apex Court in the case of Vindhya Metal Corpn. reported at [1997] 224 ITR 614 (SC) and that of the Hon'ble Gujarat High Court.

2. That the Worthy CIT(A) has erred in confirming the action of the Ld. AO of assuming jurisdiction in this case by issue of notice us 153A of the Act (and making various additions us 69A of the Act) without any incriminating material for such un-abated assessment year and as such the assessment so made deserves to be quashed.

3. That the Worthy CIT(A) has erred in confirming the addition of Rs. 170000/- to the returned income of Rs. 297820/-.

4. That the Worthy CIT(A) has erred in confirming the addition of Rs. 1,70,000/- on account of gift received from the mother of the assessee during the relevant period, as declared by the assessee by way of a notarised Affidavit, alleging it to unexplained u/s 69A of the Act and taxing the same under the higher rate of tax as given u/s 115BBE of the Act. '

5. That the Worthy CIT(A) has erred in confirming the action of the Assessing officer of retrospectively invoking the provisions of section 115BBE as substituted by Taxation Laws (Second Amendment) 2016, since such amendment, which came into effect on 15th December 2016, cannot be applied retrospectively; ignoring the submissions of the assessee.

6. That the Worthy CIT(A) has erred in confirming the addition as made by the Assessing Officer, against the fact and circumstances of the case and without appreciating the submissions made by the assessee.

7. Notwithstanding the above said grounds of appeal, the Worthy CIT(A) has erred in holding the assessment to be valid, ignoring the fact that the "Mandatory Approval" given by the Ld. Addl. CIT us 153D for assumption of jurisdiction in this case was without any application of mind and was a 'Mechanical Approval' only, which deserved to be quashed in view of the binding judgment of Hon'ble Jurisdictional Bench of ITAT, in the case of Inder International In ITA No. 1573/Chd/2018

8. That the Appellant craves to add or amend the grounds of appeal before the appeal is finally heard or disposed off.

ITA No. 109/Chd/2023 for the A.Y. 2018-19:

1. That the Worthy CIT(A) has erred in confirming the action of the Ld. AO of invoking the provisions of 132A (requisition) followed by provisions of Deemed search, without any reasons to believe that any monies would have escaped assessment had these not been requisitioned, in view of the binding judgment of the Hon'ble Apex Court in the case of Vindhya Metal Corpn. reported at [1997] 224 ITR 614 (SC) and that of the Hon 'ble Gujarat High Court.

2. That the Worthy CIT(A) has erred in confirming the action of the Ld. AO of assuming jurisdiction in this case by issue of notice us 153A of the Act (and making various additions us 69A of the Act) without any incriminating material for such unabated assessment year and as such the assessment so made deserves to be quashed.

3. That the Worthy CIT(A) has erred in confirming the addition of Rs. 175000/- to the returned income of Rs. 296800/-.

4. That the Worthy CIT(A) has erred in confirming the addition of Rs. 1,75,000/- on account of gift received from the mother of the assessee during the relevant period, as declared by the assessee by way of a notarised Affidavit, alleging it to unexplained u/s 69A of the Act and taxing the same under the higher rate of tax as given u/s 115BBE of the Act. '

5. That the Worthy CIT(A) has erred in confirming the addition as made by the Assessing Officer, against the fact and circumstances of the case and without appreciating the submissions made by the assessee.

6. Notwithstanding the above said grounds of appeal, the Worthy CIT(A) has erred in holding the assessment to be valid, ignoring the fact that the "Mandatory Approval" given by the Ld. Addl. CIT us 153D for assumption of jurisdiction in this case was without any application of mind and was a 'Mechanical Approval'

only, which deserved to be quashed in view of the binding judgment of Hon'ble Jurisdictional Bench of IT AT, in the case of Inder International In IT A No. 1573/Chd/2018

7. That the Appellant craves to add or amend the grounds of appeal before the appeal is finally heard or disposed off.

ITA No. 110/Chd/2023 for the A.Y. 2019-20:

1. That the Worthy CIT(A) has erred in confirming the action of the Ld. AO of invoking the provisions of 132A (requisition) followed by provisions of Deemed search, without any reasons to believe that any monies would have escaped assessment had these not been requisitioned, in view of the binding judgment of the Hon'ble Apex Court in the case of Vindhya Metal Corpn. reported at [1997] 224 ITR 614 (SC) and that of the Hon'ble Gujarat High Court.

2. That the Worthy CIT(A) has erred in confirming the action of the Ld. AO of assuming jurisdiction in this case by issue of notice us 153A of the Act (and making various additions us 69A of the Act) without any incriminating material for such un-abated assessment year and as such the assessment so made deserves to be quashed.

3. That the Worthy CIT(A) has erred in confirming the addition of Rs. 185000/- to the returned income of Rs. 290580/-

4. That the Worthy CIT(A) has erred in confirming the addition of Rs. 1,85,000/- on account of gift received from the mother of the assessee during the relevant period, as declared by the assessee by way of a notarised Affidavit, alleging it to unexplained u/s 69A of the Act and taxing the same under the higher rate of tax as given u/s 115BBE of the Act.

5. That the Worthy CIT(A) has erred in confirming the addition as made by the Assessing Officer, against the fact and circumstances of the case and without appreciating the submissions made by the assessee.

6. Notwithstanding the above said grounds of appeal, the Worthy CIT(A) has erred in holding the assessment to be valid, ignoring the fact that the "Mandatory Approval" given by the Ld. Addl. CIT us 153D for assumption of jurisdiction in this case was without any application of mind and was a 'Mechanical Approval' only, which deserved to be quashed in view of the binding judgment of Hon'ble Jurisdictional Bench of ITAT, in the case of Inder International In ITA No. 1573/Chd/2018

7. That the Appellant craves to add or amend the grounds of appeal before the appeal is finally heard or disposed off.

ITA No. 111/Chd/2023 for the A.Y. 2020-21:

1. That the Worthy CIT(A) has erred in confirming the action of the Ld. AO of invoking the provisions of 132A (requisition) followed by provisions of Deemed search, without any reasons to believe that any monies would have escaped assessment had these not been requisitioned, in view of the binding judgment of the Hon'ble Apex Court in the case of Vindhya Metal Corpn. reported at [1997] 224 ITR 614 (SC) and that of the Hon'ble Gujarat High Court.
2. That the Worthy CIT(A) has erred in confirming income assessed at Rs. 41,70,380/- against the returned income of Rs. 475380/-.
3. That the Worthy CIT(A) has erred in confirming addition made by the AO amounting to Rs. 35,00,000/-, alleging the cash in hand of the assessee as unexplained income u/s 69A of the Act, without giving any benefit of the cash in hand available with the assessee from income earned from utensil repair and flower decoration business/ bank withdrawals 6 gift received during the year and without bringing any evidence on record and taxing the same under the higher rate of tax as given u/s 115BBE of the Act.
4. Notwithstanding the above said grounds of appeal, the Worthy CIT(A) has erred in confirming the action of the Ld. AO of not granting the benefit of cash-in-hand available with the assessee as Opening Balance as on 01.04.2019, while deciding the case of the assessee:
  - a. That the Worthy CIT(A) has erred in confirming the action of the Ld. AO of not granting the benefit of cash in hand of the assessee from the regular business of utensils repair, available as opening balance from the previous years being AY 2014-15 to AY 2019-20
  - b. That the Worthy CIT(A) has erred in confirming the action of the Ld. AO of not granting the benefit of cash in hand available with the assessee from the additions made to the income of the assessee in the earlier years being AY 2014-15 to AY 2019-20, as unexplained money us 69A
  - c. That the Worthy CIT(A) has erred in confirming the action of the Ld. AO of not granting the benefit of telescoping of the additions/ cash income of the previous years, to explain the source of the cash seized by him, especially where there is no other asset available with the assessee.
5. That the Worthy CIT(A) has erred in confirming the addition of Rs. 195000/- on account of gift received from the mother of the assessee during the relevant period, as declared by the assessee by way of a notarised Affidavit, alleging it to

*unexplained u/s 69A of the Act and taxing the same under the higher rate of tax as given u/s 115BBE of the Act.'*

6. *That the Worthy CIT(A) has erred in confirming the addition as made by the Assessing Officer, against the fact and circumstances of the case and without appreciating the submissions made by the assessee.*

7. *Notwithstanding the above said grounds of appeal, the Worthy CIT(A) has erred in holding the assessment to be valid, ignoring the fact that the "Mandatory Approval" given by the Ld. Addl. CIT us 153D for assumption of jurisdiction in this case was without any application of mind and was a 'Mechanical Approval' only, which deserved to be quashed in view of the binding judgment of Hon'ble Jurisdictional Bench of ITAT, in the case of Inder International In ITA No. 1573/Chd/2018*

8. *That the Appellant craves to add or amend the grounds of appeal before the appeal is finally heard or disposed off.*

3. During the course of hearing, the Ld. AR submitted that it is a case of an individual in whose possession cash amounting to Rs. 35,00,000/- was seized by the Police Authorities and subsequently, the matter was referred to the Investigation Wing, Income Tax Department, Ludhiana. It was further submitted that the preliminary statement of the assessee was recorded by the ITO (Inv.), Jalandhar on 21/12/2019. Subsequently, another statement of the assessee was recorded on oath under section 131(1A) on 23/12/2019 in the office of DDIT(Inv.) Jalandhar and thereafter notices under section 153A were issued for A.Y. 2014-15 to A.Y. 2020-21 and the assessment was completed under section 143(3) r.w.s 153A of the Act for the respective assessment years.

4. It was submitted that the case of the assessee in ITA No. 111/Chd/2023 pertaining to A.Y. 2020-21 may be taken as a lead case where there has been an addition of Rs. 35,00,000/- under section 69A of the Act and which has been confirmed by the Ld. CIT(A).

5. It was further stated that there is also common ground of appeal in all these assessment years in respect of addition on account of gift received from the Mother of the assessee under section 69A of the Act.

6. It was further submitted that except for the addition of Rs. 35,00,000/- under section 69A in ITA No. 111/Chd/2023 pertaining to A.Y. 2020-21 and addition on account of gift received from the mother of the assessee under section 69 in each of the impugned assessment years from 2014-15 to 2020-21, in respect of rest of the grounds of appeal, the assessee wishes not to press the same and the same may be treated as withdrawn.

7. After hearing the Ld. DR, the case of the assessee in ITA No. 111/Chd/2023 pertaining to A.Y. 2020-21 is taken as a lead case for the purpose of present discussion.

8. In this regard, briefly the facts of the case are that the cash amounting to Rs. 35,00,000/- was seized from the possession of the assessee by the Police Authorities during the regular checking at Hightech Naka, G.T. Road, Phillaur and the matter was referred to the Investigation Wing, Income Tax Department by SHO, Police Station, Phillaur on 21/12/2019 for ascertaining the source of cash so found in possession of the assessee. Thereafter, preliminary statement of the assessee was recorded by ITO (Inv.), Jalandhar on 21/12/2019 followed by another statement recorded on oath under section 131(1A) on 23/12/2019 in the office of DDIT(Inv.), Jalandhar. Thereafter, summons were also issued to the assessee on 24/01/2020 to explain the source of the cash of Rs. 35,00,000/- alongwith documentary evidence.

9. Subsequently, notice under section 142(1) was issued to the assessee to file its return of income and pursuant to that, the assessee filed his return of income and thereafter notice under section 143(2) was issued and submissions were called for from the assessee to explain the sources of the cash so seized from the possession. In response, the assessee filed his submissions and explanations.

10. The submissions so filed by the assessee were considered but not found acceptable to the AO and the seized cash of Rs. 35,00,000/- was brought to tax as unexplained income in the hands of the assessee under section 69A r.w provision of Section 115BBE of the Act. In this regard, it would be relevant to refer to the findings of the AO which read as under:

“(i) In his statement under oath on 23.12.2019 in presence of his counsel Sh. Ashwani Jindal, CA, in front of DDIT(Inv.), Jalandhar, the assessee has unequivocally and in a sound state of mind surrendered the amount of cash seized of Rs. 35,00,000/- being unexplained and unaccounted. Thereafter, Sh. Ashwani Jindal, CA, and Authorized representative of Sh. Parshotam Lai attended the office on 30.01.2020 and stated that no further information is to be filed as the amount of Rs.35,00,000/- has already been surrendered as unexplained income whereas now the assessee is claiming that the cash seized was his cash in hand.

(ii) In his statement the assessee has categorically stated that an amount of Rs.35,00,000/- was accumulated by him in the last 6 months from flower decoration business^] The cash was seized in December 2019, so in any case the cash belonged to the F.Y.2019-20 relevant to A.Y.2020-21 as opposed to the submissions of the assessee that the cash seized was his cash in hand being carried over so many years. The submission of the assessee that the cash was generated from flower decoration business, is itself a contradictory statement from his earlier stance that the cash belonged to one Sh. Surinder Kumar with whom he was employed as carrier of cash and that Sh. Surinder Kumar was involved in sale/ purchase of foreign currency in lieu of Indian Currency i.e. Rupees.

(iii) Another peculiar inconsistency with the submission of the assessee is that as on 31.03.2016 the assessee has shown his cash in hand at Rs. 16,53,235/- which inflated to Rs.19,89,535/- as on 31.03.2017. During the F.Y.2017-18 on 08.11.2016 Demonetization took place therefore, the cash in hand of Rs.16,53,235/- as on 31.03.2016 inflated by the savings of assessee as on 08.11.2016 should have been deposited in the bank account of the assessee for replacement. However, on perusal of the bank account statement of the assessee it is seen that such is not the case and the assessee has deposited a measly sum of Rs.20,000/- during the demonetization period. Therefore, this anomaly completely demolishes the proposition of the assessee that he was maintaining huge cash in hand for so many years.

(iii) Further, as claimed by him that gifts were given by his mother is also a hollow claim not supported by any document evidence and contrary to his statement recorded on oath in presence of his taxation counsel on 23.12.2019. A person working as domestic help, cannot give gifts in lakhs, year-on-year even to his son as the same is contrary to human probabilities.

(iv) Further, the veracity of the cash in hand cannot be relied upon as no detailed cash flow statement has been given and only lump-sum balance figures at the end of year have been placed on record. Also no cogent basis whatsoever has been given for the opening cash in hand taken by the assessee as on 01.04.2013.

(v) On perusal of the statement of the assessee and keeping in view living standard of the assessee it is clear that the assessee is a person of limited means and such a person could not maintain such huge cash in hand when he was well aware of banking channels and when interest income from banking could have substantially contributed to his net income.

(vi) Further, it is seen that the submissions of the assessee are not creditworthy as time and again the assessee is changing his stance as no uniformity can be seen in his submissions recorded on 21.12.2019, on 23.12.2019 and during the course of assessment proceedings. This trepidation on the part of the assessee confirms that the assessee has no cogent explanation with regards to the source of cash and the same is unaccounted & unexplained money

7. On perusal of the facts and circumstances of the case it is vividly clear that the submissions of the assessee are a concocted story without any documentary evidence and the same has no relation with reality by a mile. In view of the above facts discussed in detail the submission of the assessee with respect to cash balances shown by him being carried over for so many years are not acceptable and are hereby rejected. In view of the discussion made (supra), it is clear that the cash seized of Rs.35,00,000/- from the possession of the assessee was unaccounted & unexplained money devoid of any source. The case of the assessee is a classic case for invocation of-deeming sections i.e. 68 /69 of the Income Tax Act, 1961. Hence, the section 69A is hereby invoked on account of cash seized of Rs.35,00,000/- in the case of the assessee.

13. "In the above situation, merely showing cash as cash in hand without any corroborating clinching evidences in support of the same would not meet the conditions for the cash in hand, being treated as explained and offering the satisfactory explanation with regards to nature & source thereof. The provisions of 69/69A, etc of the Act therefore shall still get triggered because the primary requirement of explaining the source of income from any particular business/profession cannot be said to be satisfied. Section 69 69A. etc of the Act only create a fiction to deem certain unrecorded assets/investments as income of the assessee for the financial year.

14. In view of the above discussion, it is clear that the seized cash of Rs.35,00,000/- being unaccounted/unexplained and not duly explained by source and corroborated by documentary evidence. Accordingly, after examining the evidences and the materials on the record, it is established that the seized cash of Rs. 35,00,000/- is unaccounted/unexplained cash which falls under the purview of Section 69A and is to be taxed @60% u/s 115BBE of the Act.

15. After perusal and examination of the documents/evidences submitted, an addition of Rs.35,00,000/- is made to the returned income of the assessee u/s 69A of the IT Act, 1961 on account of unexplained cash to be taxed under section 115BBE of the Income Tax Act, 1961. Penalty proceedings u/s 271AAC of the Act on account of unexplained cash are being initiated separately."

11. Being aggrieved, the assessee carried the matter in appeal before the Ld.CIT(A) who has since sustained the said addition made by the AO. Against the said findings and the direction of the Ld. CIT(A), the assessee is in appeal before us.

12. During the course of hearing, the Ld. AR took us to the contents of the following table relating to each of the assessment years starting from A.Y. 2014-15 to 2020-21 giving details of the returned income, the addition made by the AO, the relief allowed by the Ld. CIT(A) and the position of closing cash in hand:

A.Y.	Period	Returned Income	Additions Made by the AO				Closing Cash-in-Hand of Assessee (as per BS ft ITR)	Ref Page no. in the PB
			Addition for Opening cash in hand	Addition of Partial Business Income u/s 115BBE on estimate basis as made by the AO	Addition for cash Gift from mother during the year	Addition for cash seized, ignoring cash-in-hand sources of assessee		
2014-15	31.3.14	2,06,100	5,38,015	43,500	1,50,000	7,49,016	PS22	
2015-16	31.3.15	2,67,730		1,08,500	1,60,000	11,31,866	PS23	
2016-17	31.3.16	2,68,170		96,800	1,65,000	16,53,236	P g 2 4	

2017-18	31.3.17	2,97,820		1,32,400	1,70,000		19,89,536	Pg25
2018-19	31.3.18	2,96,800		1,32,500	1,75,000		23,87,836	P3 26
2019-20	31.3.19	2,90,580		1,26,800	1,85,000		28,16,648	P g 2 7
2020-21	31.3.20				1,95,000	35,00,000	35,58,448	P S 2 8
		Total	5,38,015	6,40,500	12,00,000	35,00,000		

13. Firstly, regarding the addition with respect to cash seized from the assessee, it was submitted that the business income declared by the assessee has been partly accepted by the AO for A.Y 2014-15 to 2020-21 being business of repair of Kitchen utensils and appliances as well as Flower decoration business which has been duly reflected in the ITRs, Balance sheet and capital account of the assessee which has been duly submitted during the course of assessment proceedings.

14. It was further submitted that on appeal, the addition made by the AO with respect to opening cash in hand of the assessee from the business and savings and part income from business has been deleted by the Ld. CIT(A) for A.Y 2014-15 to 2019-20 and business income declared in the returned income has been accepted, meaning thereby that the cash in hand of the assessee for the A.Y. 2014-15 to A.Y. 2019-20 has been accepted by the Ld. CIT(A).

15. It was further submitted that at the same time, credit of assessee's cash in hand against the cash seized at the time of seizure has not been given to the assessee by the Ld. CIT(A) and the addition has been sustained, though in the earlier years, the income declared has been accepted and the capital account, balance sheet has been duly accepted wherein source of Rs. 35,00,000/- of cash in hand has been clearly reflected. It was submitted that the assessee be allowed the benefit of the cash in hand and in support, reliance was placed on the Coordinate Bench decisions in case of ACIT Vs. Joginer Paul (*ITA No. 734/Chd/2014*), ITO Vs. Ashok Kumar Jain (*ITA No. 180/Chd/2013*) and CIT Vs. Palwinder Pal Singh (*ITA No. 76 of 2011*).

16. It was further submitted that where the source of cash in hand of the assessee stands duly explained, the explanation so filed by the assessee must be accepted unless the cash in hand of the assessee has been utilized somewhere else, for which no evidence has been brought on record by the Department and as such, the burden of onus has not been discharged by the Department. It was further submitted that the only contention of the Ld. CIT(A) with respect to sustaining the addition of cash seized has been that the assessee has changed his statement before the AO and that he has not retracted his statements of surrender of income. In this regard, it was submitted that the real income of the assessee has to be assessed. The income cannot be assessed merely on the basis of statement of the assessee recorded by the Department, especially where the business income of the assessee has been accepted by the Department. It was submitted that the anomalies and contradictions in the statement were duly brought on record before the Ld. CIT(A) which become more glaring in the back drop of the fact that the statements were recorded in English where the assessee is an illiterate person.

17. It was further submitted that the filing of the ITR and furnishing of the evidences during the course of assessment proceedings supported by the Affidavits, Balance Sheets, capital account during the assessment proceedings amounted to automatic retraction by the assessee. It was further submitted that the retraction can be made at any stage of the proceedings and reliance was placed on the judgment of the Coordinate Chandigarh Bench in case of *M/s Atop Fasteners Pvt. Ltd. Vs. DCIT (ITA No. 1616/Chd/2019)*.

18. Further, our reference was drawn to the submissions dated Nil in response to notice u/s 142(1) dated 25/02/21 made before the AO which are contained at pages 49 to 60 of the paper book and the contents thereof read as under:

*"II. For the question no. 16 and onwards our reply, is as under:*

A. & B. in such a SCN, your good self has pointed out the fact that during the interception by the police and investigation in the police station the assessee had admitted to having being involved in transporting cash for purchase of foreign currency from one Shri Surinder Kumar and other Shri Mohinder R/o Apra. ^

Further your good self has also rightly mentioned that in the on-oath statement dated 23<sup>rd</sup> of December 2019 at was admitted by the assessee that the cash belonged to him and that it was related to the flower decoration business, which had been started by him recently. That your good self has also mentioned that the same stance of the assessee was reiterated by him during the post-requisition proceedings under section 132A as well.

1. In this regard it is a further submitted as under:

i to v a. In response to the questions (i) to (v), it is submitted that, there has been no U-turn in the explanation of the assessee with regard to the source of the cash in hand which was seized on 21<sup>st</sup> of December 2019 from the assessee, as has been alleged by you in such show cause notice.

In fact, the real picture was brought on record only during the on earth statement as recorded by the DDIT investigation Jalandhar, in respect to the money relating to the flower & decoration business in which he says he had engaged recently. It was due to the coercion used by the police authorities that the assessee gave into their narrated story/ statement about carrying cash in order to buy US dollars, whereas in reality the cash belonged to the assessee and was infact his & his mother's life savings, which had been saved for the purpose of business only. Infact, the opportunity of flower decoration business came out of nowhere and it proved very fruitful for the assessee as is evident from the increase in savings of the assessee in the recent years.

As such, the questions (i) to (v) are not applicable to the assessee's case. The whole story w.r.t. carrying INR to be exchanged for USD was stated under pressure from the police authorities and under use of coercion against the assessee, which has no value in the eyes of law.

b. With respect to the cash seized from the assessee on 21 December 2019 it is again reiterated that the same forms a part of the cash in hand of the assessee as was available to him and as is also reflected in the balance sheet of the assessee as on 31.03.2020 and also the balance sheets & ITRs filed u/s 153A for the periods 01.04.2014 till 31.03.2019, as already brought on record in our earlier replies and the same may please be considered.

Further, it is a fact that the assessee had been engaged in the work of repair of kitchen appliances and kitchen utensils over the years and had "been saving money from the same. The Income from the same & is already declared in the income tax returns filed u/s 153A of the Act. Proof of the same in the form of sample purchase vouchers of the material purchased by the assessee for such repair work including, the handles of cookers, rubbers and cooker whistles, rubber

stoppers etc as purchased in cash during the period AY 2014-15 till AY 2019-20, as available with the assessee are attached herewith as Annexure I for your ready reference.

In addition to the same the assessee's mother Late Smt. Darshna Rani also worked and saved money in order to support the "assessee to stand on his own feet. Copy of the affidavit of the assessee with respect to the gift received from her mother over the years and his mother's death certificate, who expired recently on 19<sup>th</sup> February 2021, are also attached here with as Annexure II & III, for your ready reference.

Further savings a cash in hand of the assessee over the years for the AY 2014-15 to AY 2020-21 are duly reflected in the ITRs and balances sheets which have been submitted before your goodself along with our earlier replies in this case for the AY 2014-15 to AY 2019-20.

Thus, from the savings from the work of repair of kitchen appliances and kitchen utensils; the work of flower decoration (which was started sometime back by the assessee) and from the gifts received from his family, the assessee had a total cash in hand of Rs. 35,58,447,5/- lacs as on 31.3.2020 including the impugned cash of Rs. 35 lacs as seized by the department on 21.12.2019, as such the cash in hand of the assessee, as seized from the assessee is fully explained.

vi. a. Further, it has already been brought on record, that during the FY 2019-20, the assessee had engaged in flower decoration business with the help of certain aides - Munna and Mainji, of Bengali origins, who were well versed with business of flower decoration etc but who lacked the necessary savings/ resources for the same. Then, once the assessee put in his life savings in the business and the business was taken care of by the aides of the assessee, they had a bumper response in such business and the assessee was able to multiply his savings very quickly from such flower & decoration business, as is also evident from the Balance sheet and FTR of the AY 2020-21.

b. Infact, with the increase income, the disputes with the partners/ aides also grew, however it was the next event which completely disrupted such new business of the assessee.

c. On the 21.12.2019, which was just after the peak marriage season, the assessee along with his aides Munna & Mianji was on his way to discussing potential business deal for leasing of a marriage palace, near Phillaur as informed to him by Munna but the assessee was intercepted by police on The way and thereafter the assessee was left lurching for his life savings in this search/ seizure proceedings of the police and then income tax authorities, infact, the assessee's aides Munna and Mianji were let go scot free by the police, as the cash was found in the custody of the assessee and there was no mention of such persons in the police / income tax proceedings as well and now, after the above they have broken the link with the assessee and are not traceable by him.

d. As the assessee, who is an un-educated person who had recently started seeing the good days in his life and who had no access to proper accountants, counsels or even education and he didn't know the importance of the keeping evidence to support the existence of his flower decoration business, which operates in an unorganised sector till date, he has been left in dearth for his life savings, being alleged a Hawala money, without any evidence in this regard.

e. In order to support his claim, the assessee is here by submitting:

Sample copies of invoice of flowers purchased in cash by the assessee during the year, as available with the assessee, in Annexure - IV;

Sample copies of the booking orders for flower decoration received by him & aides, as available with the assessee, in Annexure - V and

Affidavit duly notarised in this regard in support of this claim, as Attached as Annexure - VI for your ready reference.

Further, it is not a case where any evidence has been brought on record by the department against the assessee. Therefore, as the assessee had been engaged in the business of flower decoration which is primarily operating in an unorganised sector as such no proper records/ evidence of purchase of flowers and related material or invoices/ list of functions have been maintained by the assessee. Moreover, generally the assessee was paid directly by the persons hosting the party and the marriage palace staff only made the assessee connect them with their clients, in return for a minor commission in cash as such no payments were made to the assessee by the marriage halls/ hotels but by the customer directly, at the premises of these marriage halls.

2. As already explained above and as appearing in the balance sheet of the assessee for the year ended 31<sup>st</sup> of March 2020 and earlier years, which are on record, the source of cash in hand of the assessee as seized on the eve of 21<sup>st</sup> of December 2019 clearly stands explained from his savings, gifts and earning from flower decoration business and as such, does not call for invoking the provisions of section 69A read with section 115BBE of the income tax act at all.

Infact, if an addition is attempted to be made under sec 68 to 69D of the Act, it must be appreciated that all of these are deeming provisions, wherein the burden of abuse of provisions is on the department. Incase such burden of proof is not discharged by the department, then such an addition cannot be made in this regard in case of the assessee.

3.&4. On 23 December 2019 the assessee has brought on record, the factual reality with respect to the life savings of the assessee, which had been earlier alleged as unexplained cash under pressure from the police and officials of the investigation department on 21.12.2019. The assessee who is an uneducated and uninfluential person, gave into the pressure from the police and admitted wrong facts, as narrated by the police under coercion only. The affidavit of the assessee in this regard is placed as Annexure VI (supra) for your ready reference.

*As the statement of the assessee on 23 December 2019 before the DDIT Investigation Jalandhar, has not been proved wrong/ false, as such there is no question of initiation of any prosecution u/s 277 & 276C(1) of the Act against the assessee, without bringing on record any evidence against the assessee.*

*5. The PAN of the assessee is already on record. Moreover, as the assessee's income was below taxable limits in the earlier years, as such no returns had been filed by the assessee till before the AY 2020-21. As required under the search proceedings, the requisite returns have been duly filed u/s 153A of the Act for the AY 2014-15 to AY 2020-21 and the supporting Balance sheet/ Statement of affairs of the assessee have also been placed on record, the same may please be taken into consideration.*

*Hope the above satisfies you in its entirety and the addition so proposed in case of the assessee is deleted and oblige."*

19. It was further submitted that out of the total cash in hand of the assessee, the cash gifts received from the mother of the assessee totaling to Rs. 12,00,000/- only have been doubted by the AO. It was submitted that for such cash gifts, the affidavit of the assessee alongwith the death certificate of the mother and her bank certificate have been ignored without assigning any reasons and without cross-examining the assessee and relying on the decision of the Hon'ble Supreme Court in case of M/s Mehta Parikh And Company Vs. The CIT [ 1956] 30 ITR 181 (SC) and decision of Gujarat High Court in case of Glass Lines Equipments Co. Ltd. Vs. CIT (2001) 119 taxman.com 0813, it was submitted that the explanation of the assessee must be accepted in absence of any evidence to the contrary. Further reliance was placed on the decision of Punjab & Haryana High Court in case of CIT Vs. Chuni Lal [1995] 212 ITR 206 wherein it was held that the cash credit received through bank account of wife, son and daughter in law could not be added unless it is proved that they were benamidars of the assessee. It was further submitted that even if any addition is called for, it can be made only in the hands of the mother of the assessee who has unfortunately expired.

20. Regarding judgement of the Tirath Ram Gupta Vs. CIT[2008] 304 ITR 145 (P&H), it was submitted that the same is not applicable in the facts of the present case as in that case, the gift was given to the appellant by an unrelated person without any reason whereas in the case of the assessee, the relationship of the donor being the mother of the assessee was unquestionable and as such the above case is not applicable in the facts of the present case.

21. Without prejudice to the above, it was submitted that even where the addition have been made under section 69 A in the A.Y. 2014-15 to A.Y 2019-20 for the cash gifts received from the mother of the assessee totaling to Rs. 12,00,000/-, the benefit of telescoping which is envisaged under the law has not been given to the assessee while making additions for cash seized under section 69A of the Act amounting to Rs. 35,00,000/- in the A.Y. 2020-21.

22. Per contra, the Ld. DR submitted that cash has been found in possession of the assessee and the assessee has admitted that the cash belongs to him at the same time, he has failed to explain and substantiate the nature and source thereof. It was further submitted that in the statement so recorded u/s 131(IA), the assessee has admitted and surrendered the said sum however, while filing the return of income, the assessee has retracted from the surrender. It was submitted that the Id CIT(A) has rightly held that the retraction so made cannot be accepted and subsequent explanation that the source of cash so seized is out of assessee's past savings and opening cash-in-hand cannot be accepted. Further, our reference was drawn to the findings of the Ld. CIT(A) and the contents thereof read as under:

5.3 *“Grounds of Appeal Nos. 3 & 4: In these grounds of appeal, the AR has challenged the addition made by the AO of the seized cash as unexplained money of the assessee. The AR has further contended that the benefit of cash-in-hand from earlier years should be given to the assessee in the current year. A seizure of Rs. 35 lacs was made from Sh. Parshotam Lai on 21.12.2019 by Police Authorities.*

Statement before ITO (Inv.)

In the preliminary statement recorded by the ITO (Inv.), on 21.12.2019, the assessee deposed as under:

- I. Said money belonged to his employer Sh. Surinder Kumar r/o Ludhiana;
- II. He denied having any address of his employer;
- III. Sh. Surinder Kumar is dealing in dollars.
- IV. Sh. Surinder Kumar's son Sh. Manni assists him in the business.
- V. Sh. Surinder Kumar has been deputing Sh. ParshotamLal on phone, directing him to collect Indian Currency to be physically transferred to a particular point.
- VI. Against the delivery of Indian Currency, he was asked to collect dollars/ Foreign Currency and pass on the same to Sh. Surinder Kumar.
- VII. The said cash of Rs.35,00,000/- was meant to be delivered at Apra to one Sh. Mohinder Kumar, running a cosmetic shop in Main Bazar, Apra.

(Whole amount offered as unexplained income)

Further, during the course of investigation before DDIT (Inv.), Jalandhar, the AR of the assessee submitted that no further information has to be filed as the amount of Rs. 35 lacs has already been surrendered as unexplained income.

[Statement before DDIT (Inv.)]

In his statement before DDIT (Inv.), the assessee submitted as under:

- i) That his family comprises of himself, his wife and two children.
- ii) Till November & December, 2018 he was doing repair of Gas Stoves.
- iii) In December, 2018 he came into contact of Sh. Surinder Kumar and started the work of transferring Indian Currency from one place to another.
- iv) In May & June, 2019 he left the job of Sh. Surinder Kumar and started the business of Flower Decoration.
- v) That the amount of Rs. 35 lacs recovered from him by Police Authorities belonged to him.
- vi) He did not have the contact detail of Sh. Surinder Kumar for whom he did the work of transfer Indian Currency.
- vii. He did not have the contact detail of any of his employees with whom he did the flower decoration business.
- viii. He could not provide any details of places from where the flowers were procured and the places to where they were delivered.

From the above statements made before various authorities, it is clear that the assessee has been changing his statement regularly. Initially he had ascribed the source of cash to one Sh. Surinder Kumar. Later on, the assessee has owned the cash and ascribed the same to his earning of earlier years and has asked for benefit of the available cash-inland of the previous years in line with the returns of

income filed u/s 153A. The money found in possession of the assessee has to be explained by the assessee from his genuine sources. The statements of the assessee are fluid and the stances are being changed every now and then.

Section 292C as amended by Finance Act, 2008 conveys as under:

"Where any books of account, other documents, money, bullion, jewellery or other valuable article or thing are or is found in the possession or control of any person in the course of a search u/s 132 (w.e.f. 01.10.1975), or survey u/s 133A (w.e.f. 01.06.2002), it may, in any proceeding under this Act, be presumed—

(i) that such books of account, other documents, money, bullion, jewellery or other valuable article or thing belong or belongs to such person;

(ii) that the contents of such books of account and other documents are true; and

(iii) that the signature and every other part of such books of account and other documents which purport to be in the handwriting of any particular person or which may reasonably be assumed to have been signed by, or to be in the handwriting of, any particular person, are in that person's handwriting, and in the case of a document stamped, executed or attested, that it was duly stamped and executed or attested by the person by whom it purports to have been so executed or attested.]"

The provisions of Section 292C make it very clear that the seized cash belongs to the assessee. In the present case, the department has got both, the statement of the assessee recorded during the course of proceedings before DDIT (Inv.) and the corroborative evidence in the nature of seized cash to justify the said addition.

The change of statement by the assessee repeatedly amounts to retraction. The assessee had surrendered the whole amount of Rs. 35 lacs as per the submissions filed by the AR on 31.01.2020. Subsequently, the assessee changed his stance and requested during the assessment proceedings that the benefit of available cash in hand of previous years should be given from seized cash.

In case, the assessee had any doubts on the surrender made of Rs. 35 lacs, the said retraction to adjust the seized cash with the available cash-in-hand of previous year should have been made on an immediate basis i.e. within a matter of few days rather than waiting for the assessment proceedings to start. In case, there was any coercion and pressure from the department, then the surrender should have been retracted on an immediate basis.

The Hon'ble High Court of Madras in the case of Commissioner of Income-tax vs. MAC Public Charitable Trust reported at [2022] 144 taxmann.com 54 (Madras) has held as under:

"Whether statement recorded under section 132(4) and later, confirmed in statement recorded under section 131, cannot be discarded simply by observing that assessee has retracted same - Held, yes - Whether such retraction is required to be made as soon as possible or immediately after statement of assessee was recorded - Held, yes - Whether statements given to Assessing Officer under section 132 (4) have legal force and unless retractions are made

within a short span of time, supported by affidavit swearing that contents are incorrect and it was obtained under force, coercion and by lodging a complaint with higher officials, same cannot be treated as retracted."

The Hon'ble High Court of Delhi in the case of Principal Commissioner of Income-tax (C)-2, New Delhi vs. Avinash Kumar Setia reported at 2017] 81 taxmann.com 476 (Delhi) held as under:

"Section 69A, read with section 133A of the Income-tax Act, 1961 - Unexplained money (Surrender of income) - Assessment year 2009-10 - During survey, assessee surrendered certain income - He confirmed same by way of declaration after two months - However, two years later assessee withdrew said declaration -He alleged that surrender was made by him to remove pressure of Income-tax authorities and it did not represent true picture - Further, he submitted that there was no corroborative material available with department in relation to it - Whether in absence of any satisfactory explanation, retraction made by assessee two years after declaration could not be said to be bona fide and, hence, addition on account of surrendered income could not be deleted - Held, yes [Para 11] [In favour of revenue]"

From the reading of the above judgments, it is clear that the retractions not filed on an immediate basis lose relevance after a course of time and appear to be afterthought to evade the due taxes. In the case of the assessee, the statements have been repeatedly changed and in above circumstances, the genuineness of the claim of the assessee can never be ascertained.

The statements of the assessee suffer from following discrepancies:

- a. Initially the cash was ascribed to Sh. Surinder Kumar.
- b. Afterwards, whole amount of cash was offered as surrender by the counsel of the assessee.
- c. Later on, the assessee requested for benefit of cash-in-hand from previous years as per returns filed u/s 153A from the seized cash.
- d. As per the statement of the assessee, the seized cash was from flower decoration business which was alleged to be started in the months of May & June, 2019.
- e. As the cash was seized in the month of December, 2019, the assessee had only six months to generate a cash of Rs. 35 lacs or approximately Rs. 6 lacs per month.
- f. During the assessment & appellate proceedings, the assessee has claimed benefit of available cash in hand from previous years as per returns filed u/s 153A despite the fact that earlier the assessee in the statement recorded had said that the cash was generated from flower business started only six months ago.
- g. The theory of cash-in-hand of previous years, is all the more unacceptable as the assessee claims a cash-in-hand of Rs. 16,53,235/- on 31.03.2016 and Rs. 19,89,535/- on 31.03.2017. During the said period, demonetization occurred on 08.11.2016. In case, the assessee had genuine cash-in-hand, the same would have

been deposited in the bank account but as per the observations of the AO only a sum of Rs. 20,000/- was deposited in the bank account during that period.

In view of above discussion, it is apparent that the contentions of the AR to allow the benefit of cash in hand of previous years are full of defects and changing stances. Resultantly the same cannot be allowed and the grounds of appeal on this issue are dismissed."

"5.4 Ground of Appeal No. 5: The addition made by the AO in this ground of appeal pertains to the receipt of gift of Rs. 1.95 lacs by the assessee from / his mother. The AO has held that the assessee could not establish the creditworthiness of the person from whom the said gift has been received. The mother of the assessee worked as a domestic help. It is highly improbable that a gift of Rs. 1.95 lacs could have been given to the assessee by his mother. During the appellate proceedings, the assessee has not been able to adduce any evidence in support of his contention. The assessee has not been able to provide the bank account details of the donor for this office to ascertain the genuineness and creditworthiness of the transactions. The AR has relied on a number of judgments which are part of the submissions.

The contentions of the counsel have been considered and are not found to be correct. It has been very clearly held by the Hon'ble High Court of Delhi in the case of CIT vs. Anil Kumar reported at [2008] 167 Taxman 143 (Delhi) that "In the case of cash gifts recorded in the books of the donee, mere identification of the donor and showing the movement of the amount through banking channels is not sufficient to prove the genuineness of the gift. The onus lies on the donee not only to establish the identity of the donor but also the donor's capacity to make such a gift. Where there was nothing on record to show as to (1) what was the financial capacity of the donors, (ii) what was the creditworthiness of the donors, (Hi) what was the kind of relationship the donors had with the donee-assessee, (iv) what are the source of funds gifted to the assessee, and (v) whether the donors had the capacity of giving large amount of gift to the assessee, the Tribunal would not be justified in deleting the additions made by the Assessing Officer, especially when the assessee did not appear in person before the Assessing Officer despite being asked to do so."

Further, it has been held by Hon'ble Punjab & Haryana High Court in the case of Tirath Ram Gupta vs. CIT [2008] 304 ITR 145 that "A gift is generally given out of natural love and affection and without any consideration, which necessarily denotes the closeness between the donor and the donee. It can be given either on some occasion or to help a relative or friend. To see the genuineness of a gift, the test of human probability is the most appropriate. A gift cannot be accepted as such to be genuine merely because the amount has come by way of a cheque or draft through banking channel, unless the identity of the donor, his creditworthiness, relationship with the donee and the occasion are proved. Unless the recipient proves the genuineness thereof, the same can very well be treated to be an accommodation entry of the assessee's own money, which is not disclosed for the purpose of taxation. The above considerations for testing the genuineness of a gift are not exhaustive, as there may be other reasons also which would be appropriate for considering the genuineness of the gift."

*In view of above, it is clear that the assessee has not been able to establish the genuineness and creditworthiness of the donor, hence the addition has been rightly made by the AO on this count. The said ground of appeal is dismissed."*

23. We have heard the rival contentions and perused the material available on record. It is an admitted and undisputed fact that the cash amounting to Rs. 35,00,000/- was seized from the possession of the assessee on 21/12/2019 by the Police Authorities during the regular checking at Hightech Naka, G.T. Road, Phillaur. On 23/12/2019, in his statement recorded under section 131(1A) before DDIT(Inv.), Jalandhar, in response to question no. 4, the assessee has stated that Rs 35 lacs recovered from him by the police authorities on 21/12/2019 belongs to him. Regarding the source of the said amount, the assessee has stated that the same is the accumulated income from flower decoration business which he started six months back. At the same time, the assessee stated that he has no documentary evidence to prove his contention and he gave his consent that the amount of Rs 35 lacs may be treated as his unexplained income and taxed as per provisions of the Act. We therefore find that there is a categorical admission made by the assessee in his statement so recorded u/s 131(1A) that the cash so seized belongs to him and the source of the same is out of his flower decoration business and given that he has no documentary evidence to corroborate the same at that point in time, he has surrendered and offered the said amount to tax as his unexplained income. The assessee has further stated in the said statement that the statement has been explained to him in Punjabi in the presence of his Counsel and he has found the contents of the statement to be true to the best of his knowledge and belief and he will abide by the same and the statement has been given voluntarily.

24. Subsequently, in the return of income filed on 27/03/21, the assessee has shown gross receipts of Rs 896,200/- from business of flower decoration and utensils repairs and net cash income of Rs 468,200/- has been reflected therein.

However, there was no separate disclosure as far as surrendered income of Rs 35 lacs. During the course of assessment proceedings, the assessee has contended that the source of cash so seized is out of opening cash in hand available from past savings from his business, bank withdrawals, earnings from flower decoration business during the year and gifts received from his mother. The contention so advanced by the assessee was not found acceptable to AO as well as to the Id CIT(A) and the amount was brought to tax as unexplained income of the assessee u/s 69A of the Act, at the same time, returned income disclosing business income from flower decoration business carried on by the assessee was accepted.

25. We agree with the findings of the Id CIT(A) that where the assessee had any doubts on the surrender so made, the said retraction by way of seeking adjustment of the seized cash with the available cash-in-hand of previous years should have been made within reasonable period rather than waiting for the assessment proceedings to start and in case, there was any coercion and pressure from the department, then the surrender should have been retracted on an immediate basis. As we have noted above, the cash was seized on 20/12/2019, the statement of the assessee was recorded u/s 131(IA) on 23/12/2019 which was reaffirmed by the Counsel on behalf of the assessee on 24/01/2020. Thereafter, the assessee waited for more than a year for the AO to issue notice and in the return of income filed on 27/03/21, in response to the notice so issued, didn't offer the said amount to tax thereby retracting from his statement and surrendered so made earlier. It is clearly a case of an after-thought on part of the assessee and that too, much delayed beyond the reasonable period of time and the same cannot be accepted. As we have noted above, the assessee has made the statement voluntarily and there is no whisper of any threat or coercion while recording his statement u/s 131(IA) nor any such contention has been raised before us.

26. At the same time, we find that where the income from the flower decoration business has been accepted and brought to tax, there is part acceptance on the part of the Revenue authorities that source of cash to the extent of income from flower decoration business stand explained by the assessee and to that extent, the addition of net cash income of Rs 468,200/- from flower decoration business cannot be sustained and deserve to be set-aside and the remaining addition of Rs 30,31,800/- is hereby sustained subject to benefit of telescoping of cash gifts from the mother of assessee as discussed in subsequent paragraphs.

27. Now, coming to the matter relating to addition on account of cash gift received by the assessee from his mother, we find that it is assessee's own contention that he had received gift of Rs 1.95 lacs during the financial year relevant to assessment year 2020-21 from his mother and in total, he has stated to have received a sum of Rs 12 lacs from his mother as gift in the previous years and availability thereof has been stated as part of opening cash in hand, as part of his explanation to justify the cash so seized. Unfortunately, the mother of the assessee had expired on 18/02/2021 and there is no documentary evidence on record from mother of the assessee to corroborate the contention so raised by the assessee. The assessee has submitted his own affidavit that he had received gift from his mother from time to time. There is however nothing on record from the mother of the assessee that she had gifted the amount from time to time to the assessee and the contents of the affidavit therefore cannot be verified. The creditworthiness of the mother has not been established during the assessment and appellate proceedings and even before us, there is nothing on record which can reasonably demonstrate the ability and creditworthiness of the mother of the assessee to give such gifts consistently over a period of time. All the three tests in terms of identity of the donor, creditworthiness of the donor and genuineness of the gift transaction need to be satisfied which in the

present case, the assessee has failed to establish. We therefore affirm the findings of the AO and of the Id CIT(A) and the authorities relied on by the Id CIT(A) clearly support the case of the Revenue. In the result, the addition of Rs 1.95 lacs u/s 69A is hereby sustained and ground no. 5 is dismissed.

28. Applying the same reasoning, the addition on account of gift received by the assessee from his mother in other assessment years 2014-15 to 2019-20 totalling to Rs 10,05,000/- are hereby confirmed u/s 69A of the Act and the grounds of appeal no. 4 in respective appeals are hereby dismissed.

29. At the same time, we agree with the contention raised on behalf of the assessee that where the addition have been made under section 69A in the A.Y. 2014-15 to A.Y 2019-20 for the cash gifts received from the mother of the assessee totaling to Rs. 12,00,000/- and which are hereby sustained, the benefit of telescoping should be allowed to the assessee while making additions for cash seized under section 69A of the Act in the A.Y. 2020-21.

30. In the result, we upheld the addition totaling to Rs 18,31,800/- towards cash seized u/s 69A in A.Y 2020-21 after allowing telescoping benefit of Rs 12 lacs towards cash gift received by the assessee u/s 69A in the respective assessment years which has been separately brought to tax in respective assessment years. The ground of appeal no. 3 and 4 are thus partly allowed.

31. Coming to other grounds of appeal, in ITA No. 105/Chd/2023, 106/Chd/2023, 107/Chd/2023, 109/Chd/2023, 110/Chd/2023, Ground no. 1, 2 & 6 were not pressed during the course of hearing and hence, the same are dismissed as not pressed. Similarly, in ITA No. 108/Chd/2023 & 111/Chd/2023, Ground no. 1, 2 & 7 were not pressed during the course of hearing and hence, the same are dismissed as not pressed.

32. In ITA No. 105/Chd/2023, 106/Chd/2023, 107/Chd/2023, 109/Chd/2023, 110/Chd/2023, Ground no. 3, 5 & 7 are general in nature, doesn't require any separate adjudication. Similarly, in ITA No. 108/Chd/2023, Ground no. 3, 6, 8 and in ITA No. 111/Chd/2023, Ground no. 2, 6, 8 are general in nature which doesn't require any separate adjudication.

In the result, the respective appeals are partly allowed.

Order pronounced in the open Court on 15/04/2024.

Sd/-

आकाश दीप जैन  
(AAKASH DEEP JAIN)  
उपाध्यक्ष / VICE PRESIDENT

Sd/-

विक्रम सिंह यादव  
(VIKRAM SINGH YADAV)  
लेखा सदस्य/ ACCOUNTANT MEMBER

**AG**

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

1. अपीलार्थी/ The Appellant
2. प्रत्यर्थी/ The Respondent
3. आयकर आयुक्त/ CIT
4. आयकर आयुक्त (अपील) / The CIT(A)
5. विभागीय प्रतिनिधि, आयकर अपीलीय आधिकरण, चण्डीगढ़/ DR, ITAT, CHANDIGARH
6. गार्ड फाईल/ Guard File

आदेशानुसार/ By order,  
सहायक पंजीकार/ Assistant Registrar