

आयकर अपीलीय अधिकरण, जयपुर न्यायपीठ, जयपुर
IN THE INCOME TAX APPELLATE TRIBUNAL, JAIPUR BENCHES, "B" JAIPUR

डा० एस. सीतालक्ष्मी, न्यायिक सदस्य एवं श्री राठोड कमलेश जयन्तभाई, लेखा सदस्य के समक्ष
BEFORE: DR. S. SEETHALAKSHMI, JM & SHRI RATHOD KAMLESH JAYANTBHAI,

आयकर अपील सं./ITA No. 339/JP/2024
निर्धारण वर्ष / Assessment Years : 2015-16

Shri Rohit Ladiwala B-24, NU Litet Colony, Jaipur	बनाम Vs.	DCIT, Central Circle-01, Jaipur
स्थायी लेखा सं./जीआईआर सं./PAN/GIR No.: AFGPL 6091 R		
अपीलार्थी / Appellant		प्रत्यर्थी / Respondent

निर्धारिती की ओर से / Assessee by : Sh. Vinod Kumar Gupta, CA
राजस्व की ओर से / Revenue by : MS. Alka Gautam, CIT(V.H)

सुनवाई की तारीख / Date of Hearing : 03/10/2024
उदघोषणा की तारीख / Date of Pronouncement: 17/10/2024

आदेश / ORDER

PER: RATHOD KAMLESH JAYANTBHAI, AM

The present appeal is filed by the above named assessee against the order of Commissioner of Income Tax (Appeals)-4, Jaipur [for short CIT(A)] passed on 30/01/2024. The dispute relates to the assessment year 2015-16. Ld. CIT(A) passed that order because the assessee has challenged the order of the assessment before him. That order of the assessment was passed on 31.12.2019 u/s. 143(3) r.w.s. 153A of the Income Tax Act, [for short Act] by DCIT, Central Circle-01, Jaipur.

2. In this appeal, the assessee has raised following grounds: -

"1. Ld.AO erred in law as well as on the facts of the case by passing order u/s 143(3)/153A dated 31.12.2019 for want of jurisdiction and various other statutory reasons.

2. On the facts and circumstances of the case as well as in law, the Learned CIT(A) has erred in passing the ex-parte order, without granting sufficient opportunity of being heard to the appellant.

3. Ld.CIT (A) erred in law as well as on the facts of the case in confirming the action of AO in making addition of Rs. 13,76,000/- u/s 69 of the Act in respect of gift of jewellery received from his maternal grandmother alleging the same to be unexplained investment. The addition so made is wrong on law as well as on the facts of the case, unjustified, excessive, unreasonable and kindly be deleted in full.

4. Ld.CIT (A) erred in law as well as on the facts of the case in confirming the action of AO in making addition of Rs.37,47,000/-, being the amount pertaining to gifts received on the occasion of marriage of assessee, u/s 68 of the act. The addition so made is contrary to the law and facts, unjustified, illegal and excessive and deserves to be deleted in full.

5. Alternatively and without admitting Ld.CIT (A) erred in law as well as on the facts of the case in confirming the action of AO in not giving benefit of telescoping of the funds available in the hands of the firm M/s Ramesh Mahesh & Co. and the assessee being the partner of the said firm.

6. Ld.CIT (A) erred in law as well as on the facts of the case in confirming the action of AO in invoking Sec 115BBE, which is contrary to provisions of law as well as facts of the case.

7. The appellant prays your honour indulgence to add, amend or alter of or any of the grounds of the appeal on or before the date of hearing.

3. Succinctly, the fact as culled out from the records is that a search & seizure operation under section 132(1) of the Act was carried out on 30.10.2017 at the various premises of Ladiwala and Kanoongo Group, Jaipur. Residential premises of the assessee at B-24, New Light Colony,

Tonk Road, Jaipur was also covered. Consequent to search action notice u/s 153A of the Act was issued to the assessee on 05-12-2018 which was duly served. In response to that notice, assessee furnished his return of income on 22-12-2018 declaring total income of Rs. 28,27,570/-. Earlier the assessee had filed his regular return of income as per provision of section 139 of the Act on 30-09-2015 at the total income of Rs. 28,27,570/-. After filling of return of income by the assessee notices were issued in terms of section 143(2) and 142(1) of the Act which was attended by the assessee. In the return of income so filed by the assessee he has declared remuneration Income from partnership firm Ramesh Mahesh & Company, income earned from commission on sale & interest income from saving bank account, interest from others and interest from R.D. during the year.

3.1 While search proceeding conducted at the residential premises of the assessee various incriminating documents were found and seized. On perusal of the exhibit 25 seized from the residential premises of the assessee it was noticed that the assessee has received gifts in cash and in kind on the occasion of his marriage. The total value of the gift was Rs. 51,23,000/-. As the amount of gift amount was higher side, vide query letter dated 30.09.2019 the assessee was asked to furnish the details and the

explanation for these gifts. The details of the gift received by the assessee as tabulated in the order is reproduced herein below:-

Page No.	Details of Donor	Date of Gift Deed	Amount of Gift Deed in ₹	Mode	Relationship with Donee	PAN of Donor
1-4	Shri Om Prakash Mittal	14.11.2014	400000	Cheque No.213965 dated 14.11.2014	No details filed	-
5-6	Shri Ramavtar Agarwal	10.11.2014	11000 Euros equivalent to 836000	TT	No details filed	-
7-11	Smt. Rameshwari Devi	-	Jewellery amounting to ₹ 1376000	-	No details filed	-
12-18	Bijendra Kumar Kori	11.11.2014	150000	Cheque no. 632633 dated 27.10.2014	No details filed	AFUPK3887N
19-23	Kapoor Chand Agarwal	11.11.2014	150000	Cheque no. 740076 dated 20.10.2014	No details filed	ADLPA4295R
24-30	Manju Karar	11.11.2014	150000	Cheque No. 433563 dated 04.11.2014	No details filed	AIEPK7593C
31-33	Manju Karar	13.12.2014	350000	RTGS CBINR52014111 dated 17.11.2014	No details filed	AIEPK7593C
34-40	Rekha Kumari Gupta	15.11.2014	150000	Cheque No. 744157 dated 22.10.2014	No details filed	ADPPG8663D
41-47	Shyamal Banerjee	14.11.2014	150000	Cheque No. 529398 dated 31.10.2014	No details filed	AIAPB3518Q
48-50	Shyamal Banerjee	13.12.2014	300000	RTGS dated 19.11.2014	No details filed	AIAPB3518Q
54-55	Gulzar Sharif	17.10.2014	511000	Cheque No. 478022 dated 15.10.2014	No details filed	Not mentioned
56	Radha Kishore Gupa	15.12.2014	300000	RTGS dated 19.11.2014	No details filed	AQJPG1329F
57	Radha Kishore Gupa	15.12.2014	300000	RTGS dated 26.11.2014	No details filed	AQJPG1329F
		Total	5123000			

3.2 After going through the details so submitted in support of the gifts so received the Id. AO noted that assessee has not furnished the bank statement, ITR and proof of creditworthiness of Shri Om Prakash Mittal, Shri Bijendra Kumar Kori, Kapoor chand Agarwal, Manju Karar, Rekha Kumari gupta, Shyamal Banerjee, Guljar Sharif and Radha Kishore Gupta. The assessee has not explained the relationship with these persons. Ld. AO further noted that assessee has not furnished the income status of Smt. Rameshwari Devi. The assessee could not produce any documentary evidence to show that the maternal grandmother of the assessee was in possession of the jewellery which was gifted to assessee on marriage. Assessee also stated to have receipt of 11,000/- euros from the Shri Ramavtar Agarwal. The assessee has not furnished the income status of Shri Ramavtar Agarwal. As he has gifted Euros, the onus was on the assessee to prove his creditworthiness through his tax returns details of the country in which he is residing. Even bank details of Shri Ramavtar Agarwal was also not filed. Ld. AO noted that assessee has furnished the written submission on 01.10.2019, but has not furnished the copy of ITR, Bank Statements and other evidences to prove the genuinely, identity and creditworthiness of the donors. The assessee has furnished only the copy of gift deed and id proof of the donors. The same was already available in

the seized material. Thus, a show cause letter dated 26.12.2019 was issued to the assessee. The assessee has not furnished any reply to the show cause. Ld. AO also noted that the income tax return of the donors was also verified from the system. On perusal of the same it was noticed that the annual income of the few donors was equal to the gift amount and in the case of some donors the income is sufficient to gift such amount but why these persons will gift their complete Income or major part of income to the assessee. The assessee has not furnished any justification for the same. The assessee failed to commensurate the gifted amount from the bank details or cash book of the donors. In the absence of genuineness and creditworthiness of the donors, Ld. AO noted that the assessee has routed his unaccounted income in the form of gifts from other persons. Ld. AO also noted that assessee has not provided any details of business relation with any of the donors. Neither he has been able to state as to whether any such reciprocal gifts have been advanced by the assessee nor details of the gift to them given by his partners to the donor in the past. Therefore, total gift of Rs. 51,23,000/- was added u/s 68/69 of the Act in the hands of the assessee comprising of addition on account of unexplained jewellery shown under the garb of gift, which is actually unexplained investment of the assessee is being added as unexplained

investment u/s 69 r.w.s. 115BBE of Rs. 13,76,000/-. And Addition on account of unexplained cash credit in bank book which is shown in the garb of gifts of Rs. 37,47,000/-. The addition is being made for unexplained cash credit u/s 68 r.w.s. 115BBE of the I. T. Act, 1961.

4. Aggrieved from the above order of the assessment the assessee preferred an appeal before the Commissioner of Income Tax, Appeals-4, Jaipur [for short CIT(A)]. Ld. CIT(A) has dismissed the appeal of the assessee and confirmed the view of Id. Assessing Officer stating that in spite of giving many opportunities of being heard given to the assessee-appellant, he has chosen not to make any submissions or furnish any information to substantiate and plead the grounds of appeal. There is substantial evidence on record in support of assessment order. Therefore, Id. CIT(A) hold that there is no infirmity in the finding of the Id. AO and accordingly the appeal filed by the assessee was dismissed by observing as under:

Addition on account of jewellery received at the time of marriage

6.2 I have considered the observations/findings of the AO in the assessment order for the year under consideration. During the course of search and survey action at the residential and business premises of the appellant various incriminating documents were found and seized. On perusal of the exhibit 25 seized from the residential premises of the appellant it was noticed that the appellant has received gifts in cash and kind on the occasion of his marriage. The total value of the gift was Rs. 51,23,000/- and out of that Rs. 37,47,000 are in

bank and Rs. 13,76,000 in the form of jewellery. In the present ground, the appellant has challenged addition on account of jewellery. Even the identity and source in terms of the mentioned names is not proved by the appellant. The appellant has not furnished the income status of Smt. Rameshwari Devi who is claimed to have gifted jewellery. The appellant could not produce any documentary evidence to show that the maternal grandmother of the appellant was in possession of the jewellery which was gifted to appellant on marriage... The income tax return of the donors was also verified from the system. On perusal of the same it was noticed that the annual income of the few donors was equal to the gift amount and in the case of some donors the income is sufficient to gift such amount but why these person will gift their complete income or major part of income to the assessee. The appellant even after specific query has not provided any details of business relation with any of the donors. Neither he has been able to state as to whether any such reciprocal gifts has been advanced by the appellant or his partners to the donor in the past.

In this ground of appeal the appellant has challenged the addition in the assessment w.r.t. the claimed gifts of jewellery of Rs. 13,76,000.

During the appellate proceedings, the appellant has not furnished any information/evidences to rebut the findings of the AO. It is specifically observed here that inspite of giving many opportunities of being heard to the appellant, as detailed above the appellant has chosen not to make any submissions or furnish any information to substantiate and plead the grounds of appeal. There is substantial evidence on record in support of the assessment order. Based on the material available on file and in absence of any new submission/ finding and any other material for which the appellant was provided number of opportunities, I do not find any infirmity in the action of the Id. AO.

Accordingly, this Ground of Appeal is dismissed

Addition on account of gift received by cheque at the time of marriage

7.2 I have considered the observations/findings of the AO in the assessment order for the year under consideration. In this ground of appeal the appellant has challenged the addition of Rs. 37,47,000 in the assessment w.r.t. the claimed gifts of cash credit in bank book which is shown in the garb of gifts.

During the course of search and survey action at the residential and business premises of the appellant various incriminating documents were found and seized. On perusal of the exhibit 25 seized from the residential premises of the appellant it was noticed that the appellant has received gifts in cash and kind on the occasion of his marriage. The total value of the gift was Rs. 51,23,000/- and out of that Rs. 37,47,000 are in bank and Rs. 13,76,000 in the form of jewellery.

The appellant has not furnished the bank statement, ITR and proof of creditworthiness of Shri Om Prakash Mittal, Shri Bijendra Kumar Kori, Kapoor chand Agarwal, Manju Karar, Rekha Kumari gupta, Shyamal Banerjee, Guijar Sharif and Radha Kishore Gupta, The appellant has not explained the relationship with these persons. Even the identity and source in terms of the mentioned names is not proved by the appellant. The appellant has received gift of 11.000/ euros from the Shri Ramavtar Agarwal. The appellant has not furnished the income status of Shri Ramavtar Agarwal. As he has gifted Euros, the onus was on the appellant to prove his creditworthiness through his tax returns details of the country in which he is residing. Neither the bank details of Shri Ramavtar Agarwal has been filed. The income tax return of the donors was also verified from the system. On perusal of the same it was noticed that the annual income of the few donors was equal to the gift amount and in the case of some donors the income is sufficient to gift such amount but why these person will gift their complete income or major part of income to the assessee. The appellant even after specific query has not provided any details of business relation with any of the donors. Neither he has been able to state as to whether any such reciprocal gifts has been advanced by the appellant or his partners to the donor in the past.

During the appellate proceedings, the appellant has not furnished any information/evidences to rebut the findings of the AO. It is specifically observed here that inspite of giving many opportunities of being heard to the appellant, as detailed above the appellant has chosen not to make any submissions or furnish any information to substantiate and plead the grounds of appeal. There is substantial evidence on record in support of the assessment order.

Furthermore there are judicial precedents as per which addition under section 68 of the Act can be made w.r.t. cash deposit in bank account. Hon'ble ITAT Delhi Bench in the case of Jagdish Prasad Sharma v. ITO IT Appeal No. 104 (Delhi) of 2015. dated 13-1-2020), following the later decision of the Bombay High Court in Arunkumar J. Muchhala v. CIT [2017] 85 taxmann.com 306/250 Taxman 362/399 ITR 256 (Bom.), has held that bank passbook is also the books of the assessee within the meaning of section 2(12A) and, therefore, addition u/s 68 can also be made, irrespective of whether credit entries are made in the books of account of the assessee or not. Alternatively, in case the money itself is treated as unexplained as the same is taxable u/s 69A of the Act. It is held accordingly.

Based on the material available on file and in absence of any new submission/finding and any other material for which the appellant was provided number of opportunities, I do not find any infirmity in the action of the Id. AO.

Accordingly, this Ground of Appeal is dismissed.”

5. At time of hearing of the present appeal, Id. AR of the assessee fairly admitted that the reasons for the non-compliance before the Id. CIT(A) was not attributable to the assessee, but it was on account of his illness during which the Id. CIT(A) issued two notices on 09.01.2024 and 17.01.0224, he was ill and was not attending his work. The rest of three notices were issued during covid period. To support the contention Id. AR filed an affidavit supported by the medical treatment papers. The contention of the Id. AR of the assessee that during these periods he was advised bed rest for the two notices issued in January 2024. Based on these explanation Id. AR in support of the grounds so raised by the assessee and filed a detailed written submission which reads as follows ;

1. Appellant is an individual and partner in M/s Ramesh Mahesh and Co. A search and seizure operation u/s 132(1) was carried out on 30.10.2017 at Ladiwala and Kanoongo Group, Jaipur. Appellant being the partner of M/s Ramesh Mahesh and Co, his residential premise was also covered in the search action.

2. During the course of search, from the residential premise of appellant certain documents were found and seized as Page-1 to 57 of Exhibit-25. The documents so found were the gift deeds/declarations given by the donor on the stamp papers containing complete details and description that gift has been given on the occasion of marriage of appellant on 19-11-2014, along with payment details, PAN details of donor etc. Moreover, copies of identity documents and respective cheques through which said gifts were made were also found in the said exhibit.

3. Ld.AO termed the said documents as incriminating documents and initiated the proceedings by issuing notice u/s 153A on 22.12.2018, in response to which return of income, declaring total income of Rs.28,27,570/-, was filed. Earlier the appellant had filed his regular return u/s 139 of the Act on 30-09-2015 declaring total income of Rs.28,27,570/-.

4. Details of gift: on the occasion of appellant's marriage, the appellant had received gift from relatives/close friends of his father. The gifts of money were received through banking channels either through Cheques/RTGS/Bank Transfers. Moreover, the jewellery having total value of Rs. 13,76,000/- was received in gift from the maternal grandmother. Thus, total gifts of Rs.51,23,000/- were received consisting of Rs.37,47,000/- in money and Rs.13,76,000/- in kind.

5. On account of gift received from maternal grandmother, the Ld. AO made the addition of Rs. 13,76,000/- u/s 69 of the Act by holding as under: (Page-4 of order)

The assessee has not furnished the income status of Smt. Rameshwari Devi. The assessee could not produce any documentary evidence to show that the maternal grandmother of the assessee was in possession of the jewellery which was gifted to assessee on marriage.

6. In respect of gifts received in money, the Ld.AO made the addition of Rs.37,47,000/- u/s 68 of the act by holding as under:

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However, the income tax return of the donors was also verified from the system. On perusal of the same it was noticed that the annual income of the few donors was equal to the gift amount and in the case of some donors the income is sufficient to gift such amount but why these person will gift their complete income or major part of income to the assessee. The assessee has not furnished any justification for the same. The assessee failed to commensurate the gifted amount from the bank details or cash book (in case of business) of the donors.

In the absence of genuineness and creditworthiness of the donors it is clear that the assessee has routed his unaccounted income in the form of gifts from other persons.

The assessee even after specific query has not provided any details of business relation with any of the donors. Neither he has been able to state as to whether any such reciprocal gifts has been advanced by the assessee or his partners to the donor in the past.

Hence following additions are being made:-

Addition on account of unexplained jewellery shown under the garb of gift, which is actually unexplained investment of the assessee is being added as unexplained investment u/s 69 r.w.s. 115BBE of Rs. 13,76,000/-. The assessee has concealed his income therefore penalty proceedings u/s 271(1)(c) is being initiated for concealment of income.

(Rs. 13,76,000)

Addition on account of unexplained cash credit in bank book which is shown in the garb of gifts of Rs. 37,47,000/-. The addition is being made for unexplained cash credit u/s 68 r.w.s 115BBE of the I. T. Act, 1961. The assessee has concealed his

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income therefore penalty proceedings u/s 271(1)(c) is being initiated for concealment of income.

(Rs. 37,47,000/-)

7. In the first appeal, the addition so made by the Ld. AO was sustained by the Ld. CIT (A). Hence this appeal.

Grounds of Appeal No. 1

Ld.AO erred in law as well as on the facts of the case by passing order u/s 143(3)/153A dated 31.12.2019 for want of jurisdiction and various other statutory reasons.

Grounds of Appeal No. 2

On the facts and circumstances of the case as well as in law, the Learned CIT(A) has erred in passing the ex-parte order, without granting sufficient opportunity of being heard to the appellant.

Facts: As narrated above.

Submission:

No valid jurisdiction u/s 153A:

1. As submitted above, action u/s 132 of the act was conducted in the case of appellant on 30.10.2017. For the A.Y 2015-16, the only material found was certain gift deeds in respect of gifts received by the appellant on the occasion of his marriage. The said documents were seized as Exhibit-25 (PBP:1 To 81) (Please note that while numbering Exhibit-25, the department has skipped numbering back side of the seized documents and accordingly after taking into account the back side, the total pages come to 81 instead of 57).

2. Nature of documents found during the course of search: The Ld.AO termed the said documents (Exhibit-25 running from Page-1 to 81) in the nature of incriminating. Thus, first of all, the question for adjudication is, whether said documents constitute the incriminating material? In this regard, the nature of documents found and seized is being elaborated hereunder:

Page Nos	Description	Remarks
1-1	Copy of Passport of Om Prakash Mittal	Supporting documents with respect to gift of Rs. 4,00,000/- which was credited on 15.11.2024 vide Cheque No.213965.
2-2	Copy of PAN Card of Om Prakash Mittal	
3-3	Copy of deposit slip for Cheque No.213965 dated 14-11-14 given by Om Prakash Mittal in the bank account of assessee	
4-4	Gift deed/declaration by Shri Om Prakash Mittal	
5-5	Bank confirmation of TT Transfer	Supporting documents with respect to gift of 11,000/- Euro where 5968.50 Euro and 4968.50 Euro (after bank charges) were credited on 10.10.2014 and on 13.10.2014 respectively.
6-6	Gift deed/declaration by Shri Ram Avtar Agarwal	
7-7	Copy of valuation report dated 31.03.2014 for valuation of jewellery belonging to Smt. Rameshwari Devi Agarwal by the registered valuer	Supporting documents with respect to gift of jewellery.
8-8	Copy of Ration Card of Smt. Rameshwari Devi	
9-9	Copy of valuation report dated 31.03.2014 for valuation of jewellery belonging to Smt. Rameshwari Devi Agarwal by the registered valuer. The said	

	jewellery received in gift by the assessee and accordingly acceptance accorded by the assessee on said report	
10-11	Gift deed for jewellery received in gift from Smt. Rameshwari Devi	
12	Bank account details of Shri Birendra Kumar Kori	Supporting documents with respect to gift of Rs. 1,50,000/- which was credited on 14.11.2024 vide Cheque No.632633.
13	Copy of PAN Card of Shri Birendra Kumar Kori	
14	Copy of Cheque through which gift received by the assessee from Shri Birendra Kumar Kori	
15	Bank account details of Shri Birendra Kumar Kori	Duplicate of Page 12
16	Copy of PAN Card of Shri Birendra Kumar Kori	Duplicate of Page 13
17	Copy of Cheque through which gift received by the assessee from Shri Birendra Kumar Kori	Duplicate of Page 14
18	Gift deed/declaration by Shri Birendra Kumar Kori	Supporting documents with respect to gift of Rs. 1,50,000/- which was credited on 14.11.2024 vide Cheque No.632633.
19	Copy of PAN Card of Shri Kapoor Chand Agarwal	Supporting documents with respect to gift of Rs. 1,50,000/- which was credited on 15.11.2014 vide cheque no. 740076
20	Copy of Cheque through which gift received by the assessee from Shri Kapoor Chand Agarwal	
21	Copy of PAN Card of Shri Kapoor Chand Agarwal	Duplicate of Page 19
22	Copy of Cheque through which gift received by the assessee from Shri Kapoor Chand Agarwal	Duplicate of Page 20
23	Gift deed/declaration by Shri Kapoor Chand Agarwal	Supporting documents with respect to gift of Rs. 1,50,000/- which was credited on 15.11.2014 vide cheque no. 740076

24	Bank account details of Smt. Manju Karar	Supporting documents with respect to gift of Rs. 1,50,000/- which was credited on 18.11.2014 vide cheque no. 433563.
25	Copy of PAN Card of Smt. Manju Karar	
26	Copy of Cheque through which gift received by the assessee from Smt. Manju Karar	
27	Bank account details of Smt. Manju Karar	Duplicate of Page 24
28	Copy of PAN Card of Smt. Manju Karar	Duplicate of Page 25
29	Copy of Cheque through which gift received by the assessee from Smt. Manju Karar	Duplicate of Page 26
30	Gift deed/declaration by Smt. Manju Karar	Supporting documents with respect to gift of Rs. 1,50,000/- which was credited on 18.11.2014 vide cheque no. 433563.
31	Bank account details of Smt. Manju Karar	Supporting documents with respect to gift of Rs. 3,50,000/- which was credited on 17.11.2014 through RTGS.
32	Copy of PAN Card of Smt. Manju Karar	
33	Gift deed/declaration by Smt. Manju Karar	
34	Copy of Voters ID Card of Rekha Kumari Gupta	Supporting documents with respect to gift of Rs. 1,50,000/- which was credited on 14.11.2014 vide cheque no. 744157.
35	Copy of PAN Card of Smt. Rekha Kumari Gupta	
36	Copy of Cheque through which gift received by the assessee from Smt. Rekha Kumari Gupta	
37	Copy of Voters ID Card of Rekha Kumari Gupta	Duplicate of Page 34
38	Copy of PAN Card of Smt. Rekha Kumari Gupta	Duplicate of Page 35
39	Copy of Cheque through which gift received by the assessee from Smt. Rekha Kumari Gupta	Duplicate of Page 36
40	Gift deed/declaration by Smt.	Supporting documents with

	Rekha Kumar Gupta	respect to gift of Rs. 1,50,000/- which was credited on 14.11.2014 vide cheque no. 744157.
41	Copy of Voters ID Card of Shyam Lal Banerjee	Supporting documents with respect to gift of Rs. 1,50,000/- which was credited on 14.11.2014 vide cheque no. 529398.
42	Copy of PAN Card of Shyam Lal Banerjee	
43	Copy of Cheque through which gift received by the assessee from Shri Shyam Lal Banerjee	
44	Copy of Voters ID Card of Shyam Lal Banerjee	Duplicate of Page 41
45	Copy of PAN Card of Shyam Lal Banerjee	Duplicate of Page 42
46	Copy of Voters ID Card of Shyam Lal Banerjee	Duplicate of Page 43
47	Gift deed/declaration by Shyam Lal Banerjee	Supporting documents with respect to gift of Rs. 1,50,000/- which was credited on 14.11.2014 vide cheque no. 529398.
48	Copy of Voters ID Card of Shyam Lal Banerjee	Duplicate of Page 41
49	Copy of PAN Card of Shyam Lal Banerjee	Duplicate of Page 42
50	Gift deed/declaration by Shyam Lal Banerjee	Supporting documents with respect to gift of Rs. 3,00,000/- which was credited on 20.11.2014 through RTGS.
51	Copy of PAN Card of Om Prakash Mittal	Duplicate of Page 2-2
52	Copy of deposit slip for Cheque given by Om Prakash Mittal in the bank account of assessee	Duplicate of Page 3-3
53	Gift deed/declaration by Shri Om Prakash Mittal	Duplicate of Page 4-4
54	Copy of Cheque through which gift received by the assessee from Shri Gulzar Sharif	Supporting documents with respect to gift of Rs. 5,11,000/- which was credited on 16.10.2014 vide cheque no. 478022.
55	Gift deed/declaration by Shri Gulzar Sharif	

56	Gift deed/declaration by Shri Radha Kishore Gupta	Supporting documents with respect to gift of Rs. 3,00,000/- which was credited on 19.11.2014 through RTGS.
57	Gift deed/declaration by Shri Radha Kishore Gupta	Supporting documents with respect to gift of Rs. 3,00,000/- which was credited on 26.11.2014 through RTGS

3. Perusal of the above clearly shows that these were merely identity documents of donors, their gift deeds and copies of cheques through which gifts have been made by them.

4. Whether any incriminating document was found during the course of search:

4.1 The assessment order u/s 153A dated 31.12.2019 is containing 8 pages in total, out of which, at Page-7 and 8, the Ld.AO has placed duly signed office note after placing the official seal. The observations so made in the said office note are being elaborated hereunder:

4.2 At Page-7, in the first paragraph, the Ld.AO has stated that as on the date of search i.e. 30.10.2017, the assessment proceedings were not pending, therefore, assessment proceedings in this case will be considered as completed (non-abated)

4.3 Afterwards, the Ld. AO has mentioned the decision of Hon'ble Rajasthan High Court in the case of Jai Steel (India) Jodhpur Vs ACIT (2013) 36 Taxmann.com 523 (Raj HC) and CIT Central-III Vs Kabul Chawla (2015) 61 Taxmann.com 412 (Delhi HC) and certain other case laws. It is important to note that the cases, so quoted, are favorable to the case of appellant and we place our reliance on these case laws.

4.4 At Page-8, Paragraph 2 of the note, the Ld. AO has mentioned two categorical findings which are being reproduced hereunder for the esteemed consideration of Hon'ble Bench:

- (a) Ld.AO has clearly mentioned that for this assessment year, no incriminating document was found by stating as under:

"For this AY, no incriminating seized document or electronic record has been found. Therefore, in the absence of any incriminating material, the completed assessment is being reiterated"

- (b) At Page-8, in respect of documents so found, the Ld.AO has further stated that *"the documents pertaining to the assessee for the relevant AY have been verified and nothing adverse could be noticed"*

4.5 In view of these facts and circumstances, it is evidently and expressly admitted by the Ld.AO that during the course of search no such incriminating documents were found pertaining to this assessment year. The said finding has been given after quoting various legal precedents, which are being relied upon.

5. Without prejudice to anything stated hereinbefore, the appellant would like to attract attention of your honors to para-5, page-2 of assessment order and para 6.2, page-7 of the appellate order to highlight that the Ld. CIT(A) has just reiterated the allegation of Ld. AO without applying his own minds, without considering the facts of the current case and rather contradicting his own observations and findings. Relevant extracts of the paras are reproduced below for ready reference:

- a. Para-5, Page-2 of the Assessment order:
"5. Addition of gifts received on the occasion of marriage:- During the course of search and survey action at the residential and business premises of the assessee various incriminating documents were found and seized. On perusal of the exhibit 25 seized from the residential premises of the assessee it was noticed that the assessee has received gifts in cash and kind on the occasion of his marriage. The total value of the gift was Rs. 51,23,000/-. The gift amount was on higher side therefore vide query letter dated 30.09.2019 the assessee was asked to furnish the explanation for these gifts".
- b. Para 6.2, Page-7 of the appellate order:
"6.2 I have considered the observations/ findings of the AO in the assessment order for the year under consideration. During the course of search and survey action at the residential and business premises of the appellant various incriminating documents were found and seized. On perusal of the exhibit 25 seized from the residential premises of the appellant it was noticed that the appellant has received gifts in cash and kind on the occasion of his marriage. The total value of the gift was Rs. 51,23,000/- and out of that Rs. 37,47,000 are in bank and Rs. 13,76,000 in the form of jewellery..."
- c. Perusal of the above stated observations manifest that the Ld. CIT(A) has just reiterated the allegation of the Ld.AO that the *"appellant has received gifts in cash and kind on the occasion of his marriage"*. Further, in the immediate line of the appellate order, the Ld. CIT(A) has stated that *"the total value of the gift was Rs. 51,23,000/- and out of that Rs. 37,47,000 are in bank and Rs. 13,76,000 in the form of jewellery"*. Therefore, at one hand, the Ld. AO is observing that the appellant has received gifts in cash and kind and on the other hand also observing that gift is received in bank and in the form of jewellery which arises the question as to how can the same amount can be received in cash and in bank under the current case.
- d. Moreover, it should be noted that all these findings have been reached, by the CIT(A), after perusing the seized documents: Exhibit-25 himself for which para 6.2, page-7 (supra) can be referred where the Ld. CIT(A) stated that: *"On perusal*

of the exhibit 25 seized from the residential premises of the appellant it was noticed...”.

- e. Hence, the above findings of the Ld. CIT(A) and submission thereon makes it clear that the allegation has been confirmed and the order has been passed without application of mind and without considering the facts of the case.
- f. Furthermore, without prejudice to anything stated hereinbefore, the Ld. CIT(A) treated the seized documents in the nature of incriminating without specifying how these can be categorized as ‘incriminating’ and without specifying which seized documents are ‘incriminating documents’ under the present case. Here, the appellant wants to highlight that the seized documents marked as Exhibit -25 was the basis for making additions by the Ld. AO vide assessment order and the confirmation thereof by the Ld. CIT(A). In this regard, reference to the description of the seized documents provided in Point. 2 (Page-5 to 10), clearly shows that the seized documents are legal documents of the donors (Passport, PAN, Voter ID etc.), Gift deed executed between appellant and donor, declaration, valuation report of jewellery, copies of cheques/ deposit slip.
- g. However, can these ‘seized documents’ be called ‘incriminating material’ under the current case?. In our submission, it cannot be. In this reference, it is submitted that it is an established fact that every document/ material seized in search cannot be termed as incriminating. A document/ material seized partakes the nature of incriminating material, relevant for making assessment u/s 153A, only when it is established that the transaction is undisclosed or unexplained and the income earned out of such transaction has escaped the scope of taxation while it should have been assessed to tax had it been disclosed in the right manner. Whereas, under the current case, the seized documents are subjected as ‘incriminating material’ and ‘the gifts’ received by the appellant are treated as ‘unexplained cash credit/ unexplained investment’ which is illegal and justified. In this regard, please note that that these were the general documents executed in the ordinary course of affairs of the appellant and he has genuinely kept these documents for the purpose of record keeping, thus, these were naturally to be found but that would not mean that such documents are in the nature of incriminating per se. Moreover, all the gifts which has been termed as ‘unexplained cash credit’ has been received entirely through banks and not a penny was received in cash. Further, as far as gift received in the form of jewellery is concerned, the same is backed by a duly signed and executed gift deed which contains the identity of the donor, her address and details of jewellery which clearly takes them out from the scope of being termed as ‘incriminating material’ since they were fully disclosed from the beginning and are self-explanatory in nature. Therefore, the said seized documents cannot take the character of ‘incriminating material’ just because they were seized during search without fulfilling the test of being termed incriminating material for the purpose of section 153A Act in the sense that they have not resulted into detection of any undisclosed income or asset of the appellant.

- h.* Without prejudice to anything stated hereinbefore and without any admission, your honors would appreciate that the seized documents have been found during the search proceedings and not in any post search enquiry. Therefore, this very fact alone give force to the claim that the said documents and the transactions contained therein are genuine. Hence, the same should be looked in a positive perspective rather than other way merely on the basis of presumption and without having any corroborative evidence of routing back the cash.
- i.* In this regard, we rely on the following judgements:
- Hon'ble Delhi High Court in the case of PCIT Vs Param Dairy Ltd. dated 15.02.2021 wherein it was held as under:
"5. We have considered the aforesaid contentions and are of the view that no substantial question of law arises, as the matter is squarely covered by Kabul Chawla supra, which has been correctly applied to the facts of the case by the ITAT. The ITAT, in the impugned order has held that in the audited report filed by the assessee along with the report, cash book, ledger, bank book etc. were mentioned; that the respondent assessee was maintaining books on TALLY Accounting Software which was seized during the search and was being treated as incriminating material; however, regular books of account of the assessee, by no stretch of imagination, could be treated as incriminating material to form basis of framing assessment under Section 153A read with Section 143(3) of the Act. It was further held that assessment for the Assessment Years 2008-2009 and 2009-2010 were completed under Section 143(3) vide orders dated 28th July, 2010 and 31st May, 2011 respectively and audited books of account were thoroughly examined and details of purchase of milk must have been scrutinized as it was part of audited financial statement of accounts; as per Kabul Chawla supra, completed assessments can be interfered only on the basis of some incriminating material unearth during the search. With respect to the Assessment Years 2010-2011 to 2012-2013, the ITAT held that though no assessment was framed under Section 143(3) but it could safely be concluded that the period of limitation for issuing a notice under Section 143(2) expired much before the date of the search; reliance was placed on Chintels India Ltd. Vs. Deputy Commissioner of Income-Tax (2017) 397 ITR 416 (Delhi) holding that once an assessee does not receive a notice under Section 143(2) of the Act within the stipulated period, such an assessee can take it that the return filed by him has become final and no scrutiny proceeding are to be undertaken with respect to that return".
 - The Hon'ble ITAT Delhi Bench "F", New Delhi in the case of Smt Sunita Bhaghchandka Vs. ACIT [ITA No. 3447/Del/2016] dated 19.08.2019 wherein the hon'ble bench held as under:
"16. Now we come to the bank certificate issued by the bank. In impugned bank certificate there is no information about the undisclosed income of the assessee. If the documents unearthed during the course of search do not indicate existence of any unaccounted income, they are not incriminating in nature. It is important that documents found during the course of search must give some indication

about the undisclosed income of the assessee. The impugned certificate did not give any indication about the fact of gift of the shares, which are alleged to be undisclosed income of the assessee. As held by the honourable Delhi High Court in CIT vs. Kabul Chawla (2016) 380 ITR 573 (Del), principal Commissioner of income tax vs. Meeta Gutgutia (2017) 395 ITR 526 (Del), Principal Commissioner Of Income Tax Vs Best Infrastructure (India) Private Ltd in ITA number 11/22/2017 dated 1/8/2017, that the concluded assessment can only be disturbed on the basis of the undisclosed income contained in the incriminating documents found during the course of search. The revenue could not show us any evidence that how the bank certificate found during the course of search at the premises of 3rd party belonging to the assessee can be said to be an incriminating document and what is the undisclosed income of the assessee contained in those documents. Apparently, that bank account clearly shows only the bank balance of that bank account. It is not the case of the revenue that such bank account is not disclosed by the assessee to the income tax department. Is the contention of the revenue is upheld, then it would imply that any document found during the course of search on other person belonging to the 3rd person, whether it contains any details of unaccounted income of 3rd person or not, the concluded assessment of the 3rd person will be disturbed and any addition can be made in the hands of 3rd person even if, in the seized document no reference of unaccounted income is found. Thus, such a view, will render the distinction between concluded assessment and abetted assessment meaningless. Thus, we cannot uphold the view of the revenue. In view of this, we do not have any hesitation in holding that the impugned bank certificate is not an incriminating document based on which the concluded assessment in the case of the assessee can be disturbed. In view of this according to us , we hold that no addition can be made in the hands of the assessee in absence of any incriminating evidence leading to any unaccounted income unearthed during the course of search. Accordingly, ground number 1 – 3 of the appeal of the assessee is allowed”.

- j. Further, the appellant wants to highlight following relevant extracts of para 6.2, page-7 of the appellate order “...*The income tax returns of the donors was also verified from the system. On perusal of the same it was noticed that the annual income of the few donors was equal to the gift amount and in some donors the income is sufficient to gift such amount but why these people will gift their complete income or major part of income to the assessee...*”

At the outset, it is clear that the order has been passed on presumptive basis which is evident from the appellate order where the Ld. CIT(A) has presumed that although the income of donor(s) was equal to gift amount or sufficient to gift such amount, their action of gifting their complete income or major part of income to the appellant is very unlikely, hence the allegation of the Ld. AO is true. This very presumption confirms that the Ld. CIT(A) had no evidence to support the allegation that the appellant has routed his unaccounted income in the form of gift from other persons otherwise he would have brought such evidence instead

of presuming. Therefore, the order deserves to be quashed since addition based merely on presumptions is unsustainable in law.

Validity of Action u/s 153A:

6. For the impugned assessment year, the appellant had filed its original return of income on 30.09.2015, which was processed u/s 143(1) vide intimation dated 30.11.2015, subsequently, a search was conducted u/s 132(1) of the act on 30.10.2017 post which notice u/s 153A of the act was issued on 05.12.2018 initiating the proceedings. Here it is appropriate mention the findings of Hon'ble Bangalore Bench in the case of ITO Vs M/s Ramchandra Setty and Sons, wherein following the decision of Hon'ble Special Bench Mumbai in the case of All Cargo Global Logistics Ltd. Vs. Deputy Commissioner of Income-tax (23 taxmann.com 103), the scope of Section 153A has been analysed in detail:

Scenario	Scope of Section 153A
1. No return of income is filed by the assessee (whether or not time limit to file return of income has expired.	Since no return has been filed, the entire income shall be regarded as undisclosed income. Consequently, AO would have the authority/jurisdiction to assess the entire income, similar to jurisdiction in regular assessment u/s 143(3). No requirement to restrict to documents found during the course of search.
2. Return of Income just filed by the assessee – return yet to be processed u/s 143(1) – Time limit for issue of notice u/s 143(2) not expired.	Since return filed is even pending to be processed, the return would be treated as pending before the AO. Consequently, AO would have authority/jurisdiction to assessee the entire income, similar to jurisdiction in regular assessment u/s 143(3).
3. Return of Income filed by the assessee – return processed and intimation issued u/s 143(1) – Time limit for issue of notice u/s 143(2) not expired.	Since intimation is not akin to assessment and time limit for notice u/s 143(2) has not expired, even though return has been processed, it will be case where return has not attained finality. Consequently, AO would have authority/jurisdiction to assess the entire income, similar to jurisdiction in regular assessment u/s 143(3).
4. Return of income filed by the assessee. Intimation passed or not u/s 143(1) and time limit for issue of notice u/s 143(2) has expired.	Return of income of the assessee shall be treated as having been accepted and attained finality. AO loses jurisdiction to verify the return of income

	<p>Since, no assessment would be pending there would be no abatement of any proceedings.</p> <p>Accordingly, the scope of assessment u/s 153A would be restricted to incriminating material found during the course of search.</p>
5. Notice u/s 143(2) issued and assessment pending u/s 143(3)	<p>Pending regular assessment proceedings would abate and would converge/merge in proceedings u/s 153A.</p> <p>Accordingly, the scope of assessment under section 153A would cover the pending return filed as well and would not be restricted to incriminating material found during the course of search.</p>
6. Assessment u/s 143(3) completed.	<p>Since regular assessment proceedings have been completed & are not pending, there would be no abatement of proceedings.</p> <p>AO loses jurisdiction to review the completed assessment. Accordingly, the scope of assessment u/s 153A would be restricted to incriminating material found during the course of search.</p>
<p>7. Proceedings u/s 147 pending where:</p> <p>(a) Assessment originally completed u/s 143(3) OR</p> <p>(b) No assessment earlier completed u/s 143(3)</p>	<p>Pending assessment/reassessment proceedings u/s 147 would abate and would converge/merge in proceedings u/s 153A.</p> <p>Accordingly, the powers of the AO, in both the cases, shall extent to:</p> <p>(a) Assess income that would validly be assessed in the pending proceedings u/s 147</p>

7. As submitted above, in the impugned assessment year the return of income filed on 30.09.2015 was processed u/s 143(1) vide intimation dated 30.11.2015. The time limit for issuance of notice u/s 143(2) has been expired on 30.09.2016. Thus, the impugned assessment year (AY 2015-16) falls under category-4 of the above chart and scope of assessment u/s 153A was limited to the incriminating material found during the course of search and the completed assessment could be tinkered only if any incriminating material is found during the course of search.

8. As elaborated herein before, during the course of search, no such incriminating material was found and in the absence of such incriminating material, Ld. AO is precluded from making any additions.

9. The case of assessee is squarely covered by the following decision decision:

- Hon'ble Apex Court in the case of PCIT, Central-3 Vs Abhisar Buildwell P. Ltd. dated 24.04.2023 [Civil Appeal No. 6580 of 2021] held that in respect of completed/unabated assessments, no addition can be made by the AO in absence of any incriminating material found during the course of search under Section 132 or requisition under Section 132A of the Act, 1961. The relevant para is reproduced as under:

"13. For the reasons stated hereinabove, we are in complete agreement with the view taken by the Delhi High Court in the case of Kabul Chawla (supra) and the Gujarat High Court in the case of Saumya Construction (supra) and the decisions of the other High Courts taking the view that no addition can be made in respect of the completed assessments in absence of any incriminating material.

14. In view of the above and for the reasons stated above, it is concluded as under:

- i. that in case of search under Section 132 or requisition under Section 132A, the AO assumes the jurisdiction for block assessment under section 153A;*
- ii. all pending assessments/reassessments shall stand abated;*
- iii. in case any incriminating material is found/unearthed, even, in case of unabated/completed assessments, the AO would assume the jurisdiction to assess or reassess the 'total income' taking into consideration the incriminating material unearthed during the search and the other material available with the AO including the income declared in the returns; and*
- iv. in case no incriminating material is unearthed during the search, the AO cannot assess or reassess taking into consideration the other material in respect of completed assessments/unabated assessments. Meaning thereby, in respect of completed/unabated assessments, no addition can be made by the AO in absence of any incriminating material found during the course of search under Section 132 or requisition under Section 132A of the Act, 1961. However, the completed/unabated assessments can be re-opened by the AO in exercise of powers under Sections 147/148 of the Act, subject to fulfilment of the conditions as envisaged/mentioned under sections 147/148 of the Act and those powers are saved".*

- Hon'ble Jaipur Bench of ITAT in the case of DCIT Vs Rigid Conductors (Raj.) P Ltd in ITA No.264/JPR/2022 vide order dated 24.05.2023 held as under:

“14.6 Considering all these case laws cited before us which clear the settled position of law even by the apex court wherein it has categorically held that in search cases no incriminating material is unearthed during the search, the AO cannot assess or reassess taking into consideration the other material in respect of completed assessments/unabated assessments. In the light of the facts and circumstances discussed herein above and binding judicial decision of the apex court, in our considered view we do not find any error having been committed by the Id. CIT(A) in accepting the plea of the Assessee that there is no incriminating document which was seized in the course of search relating to the addition sought to be made on account of the capital gain so arising on account of compulsory acquisition, the land is already accepted and reflected in the return of income filed by the assessee in the all the past years and even the assessee is doing so consistently. Therefore, the jurisdictional requirement of Section 153A of the Act was not satisfied in this case. In view of the above and for the reasons stated above and considering the binding decisions of various High Courts and final findings of the apex court on the decision cited here in above, we see no reason to interfere with the impugned judgment and order passed by the learned CIT(A).”

- Hon'ble Jurisdictional High Court in the case of Jai Steel Vs ACIT (2013) 36 taxmann.com 523 (Raj HC) held as under:
“18. To consider the rival submissions made at the Bar in the context of the present case and the substantial question of law framed, the scope of 'assessment and reassessment of total income' under Section 153A(1)(b) and the first and second proviso have to be considered. Further, for answering the above issues, guidance will have to be sought from Section 132(1) of the Act, as Section 153A of the Act cannot be read in isolation, inasmuch as, the same is triggered only on account of any search/requisition under Sections 132 or 132A of the Act. If any books of account or other documents relevant to the assessment had not been produced in the course of original assessment and, found in the course of search, such books of account or other documents have to be taken into consideration while assessing or reassessing the total income under the provisions of Section 153A of the Act. Even in a case where undisclosed income or undisclosed property has been found as a consequence of the search, the same would also be taken into consideration. The requirement of assessment or reassessment under the said section has to be read in the context of Sections 132 or 132A of the Act, inasmuch as, in case nothing incriminating is found on account of such search or requisition, then the question of reassessment of the concluded assessments does not arise, which would require more reiteration and it is only in the context of the abated assessment under second proviso which is required to be assessed.”

Therefore, in view of the submission made above and judicial precedents (supra), in case of completed assessment, assessment u/s 153A is confined to incriminating material, found during the course of search of the appellant u/s 132 of the Act, only and since no incrimination material was unearthed during the

course of search of the appellant, the proceedings u/s 153A may kindly be quashed.

Grounds of Appeal No. 3

Ld.CIT (A) erred in law as well as on the facts of the case in confirming the action of AO in making addition of Rs. 13,76,000/- u/s 69 of the Act in respect of gift of jewellery received from his maternal grandmother alleging the same to be unexplained investment. The addition so made is wrong on law as well as on the facts of the case, unjustified, excessive, unreasonable and kindly be deleted in full.

Grounds of Appeal No. 4

Ld.CIT (A) erred in law as well as on the facts of the case in confirming the action of AO in making addition of Rs.37,47,000/-, being the amount pertaining to gifts received on the occasion of marriage of assessee, u/s 68 of the act. The addition so made is contrary to the law and facts, unjustified, illegal and excessive and deserves to be deleted in full.

Grounds of Appeal No. 6

Ld.CIT (A) erred in law as well as on the facts of the case in confirming the action of AO in invoking Sec 115BBE, which is contrary to provisions of law as well as facts of the case.

Facts: As narrated above.

Findings of Ld.AO and CIT(A):

1. In respect of gift in money received on occasion of marriage, the Ld. AO has made the addition of Rs. 37,47,000/- u/s 68 of the act on the following premise which was sustained by the CIT(A):
 - (a) *The income tax return of the donors was also verified from the system. On perusal of the same it was noticed that the annual income of the few donors was equal to the gift amount and in case of some donors the income is sufficient to gift such amount but why these persons will gift their complete income or major part of the income to the assessee.*
 - (b) *The assessee failed to commensurate the gifted amount from the bank details or cash book (in case of business) of the donors.*
 - (c) *In absence of genuineness and creditworthiness of the donors, it is clear that the assessee has routed his unaccounted income in the form of gifts from other persons.*
 - (d) *The assessee even after specific query has not provided any details of business relation with any of the donors. Neither he has been able to state as to whether any such reciprocal gifts has been advanced by the assessee or his partners to the donors in the past.*

- (e) *The assessee has not furnished the income status of Smt. Rameshwari Devi. The assessee could not produce any documentary evidence to show that the maternal grandmother of the assessee was in possession of the jewellery which was gifted to the assessee on marriage.*

Submissions:

1. Admittedly, the identity of donors was duly established from the identity documents found during the course of search itself.
2. As far as creditworthiness of donors is concerned, it is evident that Ld.AO and the CIT(A) has verified the income tax returns of the donors and admittedly the incomes of the donors were sufficient to make the gifts. (Kindly refer Page-5, Para-1 of the assessment order and para 6.2, page-7 of appellate order). Ld. AO has given a very vague statement without mentioning the specific person whose income was equal to the amount of gift.
3. It is further observed that appellant has failed to commensurate the gifted amount from the bank details or cash book. Firstly, during the course of search itself bank details of the donors along with the copies of cheques through which gifts were given were found and impounded along with copy of their deposit slips in the bank account of the appellant. The cheques were containing the signature of the donors, which leaves no room for the doubt that gifts were made through the banks of the donors. Moreover, Ld.AO was in possession of complete details of bank of donors and if he ever had any doubt on the same, he could verify the same by calling the information for verification from concerned bank/donor by issuing the notice u/s 133(6) of the act.
4. As far as genuineness of the gift is concerned, the Ld.AO has doubted the genuineness of the gift on the ground that why these persons will gift their complete income or major part of the income to the appellant and whether appellant has any business relation with any of the donors or any reciprocal gift was given in past. In this regards it is submitted that the gift were made on the occasion of marriage, which is a very prevalent practice in Indian society and the same were made out of the love and affection and were explained to the Ld. AO vide reply dated 27.12.2019 and same has not been dealt specifically.
5. It is important to note that family of appellant has been in the business since many generations and hold a high repute in the society, especially Agarwal families. It may kindly be noted that most of the donors are Agarwal only who has made the gifts as they have been in social circle and in affinity with the father of appellant and looking to the status of appellant, the amount gifted were very meager.
6. Even otherwise, the genuineness of the gift cannot be double merely on account of lack of relationship. In this regards we place our reliance of the

decision of Hon'ble Jurisdictional High Court in the case of CIT Vs Padam Singh Chouhan (2008) 215 CTR 303 (Raj HC) holding as under:

"3. We have gone through the orders of the AO, the learned CIT(A), and the learned Tribunal. What we find is, that the AO has assumed doubts against the donor, merely on the basis of his having deposited certain amounts in his accounts, soon before making of the gifts, and that the assessee had withdrawn the amounts deposited by him, including the amount of the said gifts, in short span of time. With this, the learned AO has found, that the facts created doubt, that how the assessee as well as his family members are receiving such huge gifts from a person residing abroad, and concluded, that it appears, that the gifts are not genuine, and are only a managed affair of the assessee. The learned CIT(A) has reversed this finding by holding, that the assessee had clearly shown from the assessment proceedings, that the gifts were made out of love and affection towards the assessee, and it is a matter of God's grace to make love and affection between donors and donee, and that to have love and affection between two persons, blood relation is not required, and looking to the status of the donors, the amount gifted was very meagre. Then, it was found by the learned CIT(A), that the assessee has also furnished the copies of the gift deeds, and affidavits of the donors. In the opinion of the learned CIT(A), it is not a case, where the assessee had first given such amounts to the donors, and the donor returned back to the assessee by way of gift. The CIT(A) had gone through the bank accounts of the donors, copies thereof are on record, and found, that there was sufficient cash balance on the date of gift to the appellant, in respect of both the donors, and thus, the addition was deleted, and the learned Tribunal has affirmed this finding, by relying upon certain judgments.

4. In our view, there is no legal basis to assume, that to recognize the gift to be genuine, there should be any blood relationship, or any close relationship, between the donor and the donee. Instances are not rare, when even strangers make gifts, out of very many considerations, including arising out of love, affection and sentiments.

In our view, when the assessee has produced the copies of the gift deeds and the affidavits of the donors, in the absence of anything to show, that the act of the assessee in claiming gift, was an act by way of money laundering, simply because he happens to receive gifts, it cannot be said that, that is required to be added in his income. "

7. The gift received from the maternal great grandmother has been doubted on the ground that her income status was not furnished and appellant could not produce any documentary evidence to show that she was in possession of said jewellery. In this regard, following facts require the kind consideration:

- (a) The donor was 105 Years old lady belonging to a reputed business family and throughout her life various occasion had come, when she had received various gifts and presents in the form of gold/jewelry. Thus, looking into her age and family status, holding of meager 371 Grams of gold jewelry was fully justified.

(b) It is further important to note that during the course of search, a valuation report dated 31.03.2014 was found and impounded at Page-7 of Exhibit-25. The said valuation is carried out by a valuer, who is registered with the income tax department and the report is clearly showing that Smt. Rameshwari Devi was in possession of the jewelry, thus the possession of jewelry by the donor is evident and duly established.

8. Without prejudice to the above and without admitting anything contrary, it is important to note that the addition, on account of jewellery, has been made u/s 69 of the Act which necessitate possession of jewellery for its invocation, whereas the said jewelry was gifted to the wife of appellant: Smt. Nikita Ladiwala as evident from the gift deed executed by Smt. Rameshwari Devi. Thus, even otherwise, the addition in the hands of the appellant is not sustainable as he is not the recipient of said gift.

9. Without prejudice to anything stated in this ground and without any admission, it should also be noted that the jewellery of the family has already been assessed separately and is either backed by Wealth Tax Return or covered by eligible credit as per CBDT Instruction No. 1916. Therefore, even otherwise also, the jewellery under question is fully explained, hence no separate addition, of the same, can be made under the current case.

10. Without prejudice to anything stated above and without any admission, even otherwise also it is settled legal principle that no addition can be made on the basis of loose sheets without any corroborative evidence. In this regard, we rely on the judgement of the Hon'ble Karnataka High Court in the case of DCIT/ CIT(A) Vs. Sunil Kumar Sharma [W.A. No. 830/2022], wherein the hon'ble high court, vide order 22.01.2024, rejected the appeal of the revenue by holding that loose sheets have no evidentiary value without corroborative evidence. Further, the Hon'ble Supreme Court has also dismissed SLP filed by the revenue against the said order. Relevant extracts of Hon'ble High Court order are reproduced below:

"50. In the instant case, the first issue raised by the Revenue is as regards the addition of income made by the Assessing Officer based on loose sheets found in the house of a third party. However, we find that the Revenue has not established the said loose sheets to be considered as evidence in law by producing corroborative evidence supported by judgments and findings. Further, since the statement made by Shri K. Rajendran under Section 132 of the IT Act is later retracted by him by filing an affidavit, the statement given by him does not hold any evidentiary value.

51. The notice issued under Section 153C of the IT Act in respect of the Assessment year 2018-19 is not applicable, which is also supported by various judgments of the High Court. Further, the notice as regards the Assessment years 2015-16, 2016-17 and 2017-18 are also not applicable, as the total addition of income were made on the basis of loose sheets. Further, the

panchanama or mahazar of all the loose sheets said to have been seized from the house of Shri Rajendran, are now unavailable and the learned counsel for the Revenue has no answer for the same. On these premise, the assessment order made for the Assessment years 2015-16, 2016-17, 2017-18 and 2018-19 requires to be quashed.

...

56. In the light of the above said Apex court Decisions and the Panchanama provided herein, it is deemed appropriate to conclude that the notice provided under Section 153C is bad in law”.

11. Whether CIT(A) was justified in changing the section under which addition was made by CIT(A):

- (a) During the course of first appeal, the addition so made by Ld.AO u/s 68 of the act was sustained.
- (b) Along with sustaining the action of AO, Ld. CIT(A) made the addition u/s 69A of the act in respect of gift of money received by holding as under: (Page-10, Last Para of CIT(A))

“Alternatively, in case the money itself is treated as unexplained as the same is taxable u/s 69A of the act. It is held accordingly”

- (c) Thus, effectively Ld.CIT(A) has changed the provision of law qua the item for which assessment is made by Ld.AO.
- (d) In this regards it is submitted that section 68 deals with unexplained credits in the books of the appellant, whereas, section 69A deals with “unexplained money, bullion, jewellery or other valuable article”. Both are entirely different. Ld. AO has categorically mentioned section 68 of the act in his order, whereas Ld. `CIT(A) has also invoked provisions of section 69A for which a specific notice was warranted and in absence of the same, the addition so made by Ld. CIT(A) is unjustified and deserves to be deleted in full.
- (e) In this regard, we place our reliance on the decision of Hon’ble ITAT Chennai, in the case of Sekar Jayalakshmi Vs ITO in ITA No. 20/Chny/2021 vide order dated 21.12.2022, it was held as under:

7. Both the sides have been heard, perused the materials available on record and gone through the orders of authorities below including paper book filed by the assessee. In this case, the Assessing Officer made addition of ₹.6,00,000/- as unexplained credit. However, the Assessing Officer has not mentioned the relevant section under which, the addition was made, but “unexplained credit” comes under section 68 of the Act. In the appellate order, in page No. 7, para (v), the Id. CIT(A) has noted that “However, I am also in agreement with the appellant that the provisions of section 68 are not applicable to the appellant”. Therefore, the Id. CIT(A) treated the addition of ₹.6,00,000/- as unexplained money under

section 69A of the Act and confirmed the addition. Section 68 of the Act deals with "unexplained Credit" in the books of the assessee and section 69A of the Act deals with "unexplained money, bullion, jewellery or other valuable article". Both are entirely different. Though the Assessing Officer has not mentioned the section 68 of the Act in his order, the very fact that he calls it "unexplained credit" and not "unexplained money" as done by the Id. CIT(A), while he invoked section 69A of the Act, it proves that the Assessing Officer invoked section 68 of the Act. I find merit into the contention of the Id. Counsel for the assessee that there is no power conferred upon the Id. CIT(A) to assess a particular item under different provision of the Act what the Assessing Officer had done without giving a specific notice to the assessee regarding such action. I am of the considered view that law does not permit for such change of provision of law. As per section 250 of the Act, the Id. CIT(A) is empowered to make further inquiry as he thinks fit or may direct the Assessing Officer to make further inquiry and report to the Id. CIT(A). As per section 251(1)(a) of the Act, in appeal against an order of assessment, he may confirm, reduce, enhance or annul the assessment, but there is no such power provided by the law that Id. CIT(A) could change the provision of law qua the item of which assessment was made. Therefore, in the absence of such power, learned CIT(Appeals) could not have treated the addition made under section 69A of the Act. Therefore, the addition made by the Id. CIT(A) under section 69A of the Act is liable to be deleted.

Grounds of Appeal No. 5

Alternatively and without admitting, the Ld. CIT (A) erred in law as well as on the facts of the case in confirming the action of AO in not giving benefit of telescoping of the funds available in the hands of the firm M/s Ramesh Mahesh & Co. and the assessee being the partner of the said firm.

Facts and Submissions:

1. The appellant is a partner in M/s Ramesh Mahesh and Co. and the only source of income for the appellant is remuneration from partnership firm and interest/commission income. During the course of search also, no other independent source of income of the appellant was found, which means, the source of income for the appellant was firm only.

2. The firm M/s Ramesh Mahesh and Co. was subject to a search operation u/s 132 of the act on 30.10.2017, post which, an application u/s 245C(1) of the act was filed before Income Tax Settlement Commission (ITSC) on 27.03.2019 for AY 2012-13 to 2018-19, which was admitted by Hon'ble ITSC vide order u/s 245D(1) dated 05.04.2019 and final order u/s 245D(4) of the act was passed by Hon'ble ITSC on 03.12.2020 determining total undisclosed income of Rs.18,07,47,543/- for AY 2012-13 to 2018-19.

3. Once capitalization of said unaccounted income is given in the books of accounts of the firm, the capital account of the appellant would substantially increase and therefore, cash withdrawals made out of the said capital balance was sufficient to cover the addition made on account of gift and alleged unexplained jewellery. Therefore, the share of partner out of undisclosed income in the hands of the firm to be telescoped towards unexplained credit and jewellery and resultantly no addition for the same is warranted.

4. It is submitted that there is no indication when the Jewellery was purchased by the appellant and when the cash was given to be taken back in garb of gift, and since the entire amount was brought to tax as unaccounted investment in the year of assessment, the appellant is entitled to consider unexplained amount available with him from the firm as the source of amount invested. Therefore, there is no need for making any addition on this account.

Appellant Prays for Justice.

6. In addition to the above written submission, the Id. AR appearing on behalf of the assessee also submitted that;

“In continuation to our earlier written submission, please find below our additional submission with respect to gift received by the appellant:

1. It is humbly submitted that the gift had been received, by the appellant, from relatives/close friends of his father on the occasion of appellant’s marriage. In this regard, the appellant wants to attract your honors attention to the following page(s) of the paper book where it is specifically stated that the gift had been made on the occasion of marriage:

Sr. No.	Paper Book Page No.
1	4 - 5
2	8 - 9
3	14 - 15
4	23 - 24
5	30 - 31
6	39 - 40
7	43 - 44
8	53 - 54
9	64 - 65

10	69 - 70
11	72 - 73
12	75 - 80

2. Further, although it has been explicitly mentioned in the gift deed/ declaration that the gift has been received on the occasion of appellants marriage, the appellant is also enclosing his Marriage Certificate and marriage invitation card to support and provide more force to this fact.

Appellant prays for justice.”

7. To support the contention so raised in the written submission reliance was placed on the following evidence / records / decisions:

S.No.	Particulars	Page No.
1.	Copy of Seized document inventoried as Exhibit-25 found at residential premises of assessee during the course of search	1-81
2.	Copy of Medical Prescription for Shri Vinod Kumar Gupta (CA/AR)	82-82
3.	Duly Notarized affidavit of Shri Vinod Kumar Gupta (CA/AR)	83-85

Case laws relied upon:

S. No.	Particulars	Page No.
1.	Hon'ble Delhi High Court in the case of PCIT Vs Param Dairy Ltd. [ITA No. 37/2021].	1 To 4
2.	Hon'ble ITAT Delhi Bench "F", New Delhi in the case of Smt. Sunita Bhaghchandka Vs. ACIT [ITA No. 3447/De1/2016].	5 To 17
3.	Hon'ble Rajasthan High Court in the case of Jai Steel Vs ACIT [D.B. ITA No. 53/2011].	18 To 35
4.	Hon'ble Rajasthan High Court in the case of CIT Vs Padam Singh Chouhan [ITA No. 33 of 2004].	36 To 38

5.	Hon'ble Karnataka High Court in the case of DCIT/ CIT(A) Vs. Sunil Kumar Sharma [W.A. No. 830/2022].	39 To 132
6.	Hon'ble ITAT Chennai, in the case of Sekar Jayalakshmi Vs ITO [ITA No. 20/Chny/2021].	133 To 137

8. The Id. AR of the assessee in addition to the above written submission so filed vehemently argued that the assessee has received the gift at the time of his marriage. The document in the form of gift deed details of the mode of payment being banking details etc. were found in the search proceeding. This material being reflected as regular transactions. The assessee has already filed his regular return of income on 30.09.2015. The seized material suggest that the said material cannot be considered as incriminating material, as all the transactions are duly recorded in the regular course and it has nothing to say that the material found are in the nature of incriminating material. The lower authority has not appreciated the fact that the gift were not received in cash the same is received by an account payee cheque and duly supported by gift deed. The gift received at the time of marriage is outside the scope of charging provision of gift u/s. 56(2)(x) of the Act being the gift received at the time of marriage is exempt. Ld. AR of the assessee in addition also stated that since the addition made is without any incriminating material considering the apex court decision in

the case of Abhishar Buildwell the addition is required to be deleted. Ld. AR of the assessee also invited our attention to the office note duly served to the assessee along with the assessment order wherein Id. AO accepted the fact that no incriminating material found in the case of the assessee. The relevant part of the observation is restated herein below :

“For this AY, no incriminating seized documents or electronic record has been found. Therefore, in the absence of any incriminating material, the completed assessment is being reiterated.

The Hon'ble apex court has dismissed the SLP filed by the revenue in the case of Pr. CIT Central IT, New Delhi Vs. Meeta Gutagutia (2018) 96 taxmann.com 468(SC) where Hon'ble High Court held that invocation of section 153A to re-open concluded assessments of assessment years earlier to year of search was not justified in absence of incriminating material found during search qua each such earlier assessment year.

However, without prejudice to above, the documents pertaining to the assessee for the relevant A. Y. have been verified and nothing adverse could be noticed.

As it is evidently clear that the Id. AO even though accepted that in the absence of the incriminating no addition can be made in the hands of the assessee even though he has made the addition which is not correct and therefore, the addition made by the Id. AO has not basis and required to be deleted. The Id. AR of the assessee relying on the provision of section 292C submitted that these documents even support the contention of the assessee that the assessee has received the money at the time of marriage. The assessee also submitted the marriage certificate as well as

proof of invitation card so as to support the fact that the gift were received at the time of marriage of the assessee.

9. The Id. DR is heard who relied on the findings of the lower authorities and more particularly advanced the similar contentions as stated in the order of the assessment. The Id. DR vehemently argued that the assessee has not submitted the details so called for as to confirm the receipt of the gift by the assessee. Assessee not submitted any details before the Id. CITA) also.

10. We have heard the rival contentions and perused the material placed on record. Ground no. 1 raised by the assessee deals with the issue of jurisdiction of the Id. AO making the addition where there are no incriminating documents found in the possession of the assessee, the assessment should be reiterated. As is seen from the office note forming part of the assessment order served to the assessee wherein the Id. AO confirms that the material that he is relying to make the addition are not in the nature of incriminating material but still commenting on documents found is trying to dissect the material without doing any independent inquiry of those doners, even though all the details were available with Id. AO.

Since, it is not disputed that the material found upon which Id. AO commented that “ the documents pertaining to the assessee for the relevant AY have been verified and nothing adverse could be noticed.” Thus, once it is accepted that material found do not suggest any incriminating in nature no stretch of imagination, could be treated as incriminating material to form basis of framing assessment under section 153A r.w.s. 143(3) of the Act [Param Dairy Ltd.(Supra) -Delhi HC - 37/2021]. Even this issue is finally decided by the apex court in the case of PCIT, Central-3 Vs Abhisar Buildwell P. Ltd. (Supra) held that in respect of completed/unabated assessments, no addition can be made by the AO in absence of any incriminating material found during the course of search under Section 132 or requisition under Section 132A of the Act, 1961. The relevant para is reproduced as under:

“13. For the reasons stated hereinabove, we are in complete agreement with the view taken by the Delhi High Court in the case of Kabul Chawla (supra) and the Gujarat High Court in the case of Saumya Construction (supra) and the decisions of the other High Courts taking the view that no addition can be made in respect of the completed assessments in absence of any incriminating material.

14. In view of the above and for the reasons stated above, it is concluded as under:

- 1. that in case of search under Section 132 or requisition under Section 132A, the AO assumes the jurisdiction for block assessment under section 153A;*
- 2. all pending assessments/reassessments shall stand abated;*
- 3. in case any incriminating material is found/unearthed, even, in case of unabated/completed assessments, the AO would assume the jurisdiction to assess or reassess the ‘total income’ taking into consideration the*

incriminating material unearthed during the search and the other material available with the AO including the income declared in the returns; and

4. *in case no incriminating material is unearthed during the search, the AO cannot assess or reassess taking into consideration the other material in respect of completed assessments/unabated assessments. Meaning thereby, in respect of completed/unabated assessments, no addition can be made by the AO in absence of any incriminating material found during the course of search under Section 132 or requisition under Section 132A of the Act, 1961.”*

Even the Id. AO has accepted these facts as appended to the assessment order and therefore, respectfully following the verdict of the apex court the ground no.1 raised by the assessee stands allowed.

Ground no. 2 relates to the fact that the assessee was not given appropriate opportunity by the Id. CIT(A), since we have considered the appeal of the assessee this ground becomes educative in nature.

Ground no. 3, 4 & 5 relates to the merits of the addition that when the evidence itself suggest that the money so received were exempt from chargeable to tax being the money received at the time of marriage covered by the exemption u/s. 56(2)(x) of the Act and even on the merits the addition is not required to be made. Based on these observations ground no. 3 & 4 are allowed and ground no. 5 being alternative ground become infructuous.

Ground no. 6 relates to the levy of tax at the special rate on the addition as per provision of section 115BBE of the Act, since the assessee got relief in respect of the addition this ground also becomes infructuous.

Ground no. 7 being general it does not require any adjudication.

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

Order pronounced in the open court on 17/10/2024.

Sd/-

(डा० एस. सीतालक्ष्मी)
(Dr. S. Seethalakshmi)
न्यायिक सदस्य / Judicial Member

Sd/-

(राठोड कमलेश जयन्तभाई)
(Rathod Kamlesh Jayantbhai)
लेखा सदस्य / Accountant Member

जयपुर / Jaipur

दिनांक / Dated:- 17/10/2024

*Ganesh Kumar, Sr. PS

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

1. The Appellant- Shri Rohit Ladiwala, Jaipur
2. प्रत्यर्थी / The Respondent- DCIT, Central Circle-01, Jaipur
3. आयकर आयुक्त / The Id CIT
4. आयकर आयुक्त(अपील) / The Id CIT(A)
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, जयपुर / DR, ITAT, Jaipur
6. गार्ड फाईल / Guard File (ITA No. 339/JP/2024)

आदेशानुसार / By order,

सहायक पंजीकार / Asst. Registrar