IN THE INCOME TAX APPELLATE TRIBUNAL,
MUMBAI BENCH "E", MUMBAI

BEFORE SHRI G.S. PANNU, ACCOUNTANT MEMBER AND
SHRI SANJAY GARG, JUDICIAL MEMBER

ITA Nos.525, 526, 527, 528, 529 & 530/M/2008
Assessment Years: 1999-2000, 2000-01, 2001-02, 2002-03, 2003-04 & 2004-05

Mrs. Sumanlata Bansal, 1502/1503, Safalya, Tara Baug, Lovelane, Byculla, Mumbai – 400 010 **PAN: AAHPB0141N**	Vs.	Asst. Commissioner of Income Tax, Central Circle-8, Mumbai
(Appellant)		(Respondent)

Present for:
Assessee by : Shri Ashok D. Mehta, A.R.
Revenue by : Shri S.D. Srivastava, D.R.

Date of Hearing : 29.07.2016
Date of Pronouncement : 28.09.2016

O R D E R

Per Sanjay Garg, Judicial Member:

Present is a bunch of appeals preferred by the assessee against the separate orders of the Commissioner of Income Tax (Appeals) [hereinafter referred to as the CIT(A)] of even dated 26.09.2007 in relation to the additions made by the AO in the assessment proceedings carried out u/s 153A of the Income Tax Act on account of gifts received by the assessee, detailed as under:

S.No.	Asst. Year	Amount of Gift	Para No. of the Assessment Order
1	1999-2000	Rs.2,04,000/-	Para No.5
2	2000-01	Rs.4,55,000/-	Para No.5
3	2001-02	Rs.6,52,000/-	Para No.5
4	2002-03	Rs.4,55,000/-	Para No.5

2. The assessee is an individual doing business of dealing in shares and securities and also Director in the company 'M/s. Bansal Sharevest Services

Pvt. Ltd.' A search action was carried out in the premises of the said company, but no incriminating material was found. During the assessment proceedings for the block of 6 assessment years as per the provisions of section 153A of the Act, the AO noticed that as per certain gift deeds the assessee had received the amounts as stated in the table above. The AO asked the assessee to produce the concerned donors to prove the genuineness of the gift and financial capacity of the donors. In reply dated 17.02.2006, the assessee submitted that the gifts were received through account payee cheques. The assessee also filed confirmations of the donors in this respect. However, the confirmations filed by the assessee were rejected by the A.O. on the ground that the affidavits filed by the donors were date 28.03.2006 whereas the covering letter to these affidavits was dated 27.3.2006 i.e. one day prior to the date of affidavits. Further that all the donors were identified by only one person. The A.O., therefore, treated the gifts shown to have been received by the assessee as unexplained credits under section 68 and added the gift amounts into the income of the assessee.

3. In her appeals before the CIT(A), the assessee took a legal plea challenging the validity of the assessment orders on the ground that the notices u/s 143(2) of the Act were not issued to the assessee by the AO before passing the Assessment Orders. However, the assessee did not succeed on the issue of legality and validity of the assessments as the Learned CIT(A) was of the opinion that the requirement of issue of notice u/s. 143(2) to make assessment, as in the case of normal procedure, was not required at all in respect of the assessments framed u/ss. 153A or 153C of the Act.

Further, the Ld. CIT(A) after considering the submissions of the assessee issued a questionnaire and asked the assessee to produce documentary evidences or the donors /sources for his examination in order to ascertain the financial position of the alleged donors to make the gifts. After examining the evidence so furnished by the assessee, the learned CIT(A) concluded that the

gifts could not be accepted as genuine gifts vide para 2.3.10 of his order which read as under: -

> "2.3.10Therefore, in view of this detailed discussion held above, these gifts cannot be accepted as a genuine gifts for the following reasons summarized below:-
>
> (i) Only affidavits from the donors filed.
> (ii) Donors were not produced before the Assessing Officer.
> (iii) In many cases, no details of the Assessing Officer and the station of Assessing Officer of the alleged donors were they were assessed have been given enabling this Assessing Officer to examine the records of the alleged donors. Only GIR Nos. have been given.
> (iv) No documentary evidences other than affidavits were produced before the Assessing Officer to prove the financial competence of the alleged donors.
> (v) Even in the appellate proceedings when I specifically asked the assessee to produce the persons or to furnish the documentary evidences for the purpose of verifying the financial competence of the alleged donors, the assessee expressed his inability to comply with my request.
> (vi) Thus, the assessee has failed to establish the financial capability of the donors to advance these gifts.
> (vii) The peculiar fact of a group of donors making gifts to a group of persons of the assessee's and his family members is unthinkable and hence it falls outside the realm of human probability.
>
> Therefore, since the assessee has not explained property the source of the investment of deposits in the bank account which she has attempted to explain by way of alleged receipt of gifts, which stands unproved, the cash deposits made in the bank account of the assessee as reflected in the balance-sheet filed by the assessee is to be treated as the unexplained investment U/s. 69B of the Act, and hence, undisclosed income of the assessee. Thus, the addition of Rs.2,04,000/- is confirmed as the undisclosed income U/s. 69B and not U/s. 68 as has been done by the Assessing Officer."

Similarly he confirmed the gifts in other years also.

4. In A.Y. 2001-02, 2002-03 and 2003-04 one more issue was considered by the A.O. for addition, i.e. the deposits made in the HDFC account in Fort Branch Mumbai of Shri Santosh Puranmal Purohit who was introduced by the assessee. The A.O. made the following additions in the respective assessment years.

S.No.	Asst. Year	Amount of Unexplained Cash Deposits	Para No. of the Assessment Order

1	2001-02	Rs.8,20,000/-	Para No.13
2	2002-03	Rs.11,24,000/-	Para No.13
3	2003-04	Rs.4,95,000/-	Para No.5
4	2004-05	Rs.40,000/-	Para No.5

The assessee contended that she might have introduced the account but she was not at all concerned with the operation of the bank account. The A.O asked the assessee for production of Shri S.P. Purohit before him, but on failure of the assessee to do so, the AO treated the deposits in the bank account as assessee's own undisclosed deposits under section 69B of the I.T. Act.

The assessee's contentions before the Ld. CIT(A) were also not accepted. The CIT(A) confirmed the addition holding as under: -

> "The assessee has offered no explanation as to why this should not be treated as her income and thus has failed to rebut the presumption by producing necessary evidences or by getting any confirmation letter from the other third party namely Shri Santosh Purnamal Purohit whether he was assessed to tax, or whether he has disclosed all these facts in his returns of income filed or whether he has got any source for the deposits made in the bank accounts, the statement of which was found in the assessee's premises etc. Unless the assessee produces the confirmation letter from the said Purohit, the presumption would stand unrebutted by the assessee. Therefore, the assessee has not explained satisfactorily as to why this bank account of the deposits in the bank account should not be treated as her own. Hence, as per the presumption enshrined in Section 292C of the LT. Act, this bank account is to be treated as her own deposits. And, since these deposits were not accounted for in the books of the appellant and since the assessee has failed to explain the source of these deposits they are to be treated as Unexplained Investment U/s. 69B of the Income-tax Act."

He accordingly confirmed the additions in respective years.

5. Being aggrieved by the above findings of the Ld. CIT(A), the assessee preferred the present appeals before the Tribunal. Lengthy arguments were advanced before the Tribunal on the legal issue regarding the validity of the assessment framed under section 153A of the Act without issuance of notice under section 143(2) of the Act. A difference of opinion arose between the Members of the Tribunal on this issue. The Ld. Judicial Member opined that the issuance of notice under section 143(2) of the Act was necessary for the

Assessing Officer (hereinafter referred to as the AO) to assume jurisdiction to make assessment under section 153A or 153C of the Act. He, therefore, held that since notice under section 143(2) was not issued in this case before the framing of the assessment under section 153A of the Act, hence the assessments framed by the AO in all these years were bad in law. However, the Ld. Accountant Member was of the view that the issuance of notice under section 143(2) was not mandatory in relation to assessments framed under section 153A of the Act. The matter was, thus, referred to the third Member. The Hon'ble President of the Tribunal acting as third Member, vide order dated 20.05.15, has decided the issue in favour of the Revenue holding that the issuance of notice under section 143(2) of the Act was not mandatory in relation to the framing of assessment under section 153A of the Act. After the decision on this legal issue, the matter has been referred back to this regular Bench to decide the appeal in the light of third member decision on the legal issue.

6. The assessee, during the hearings before us has raised additional legal plea that since no incriminating material was found during the search action in relation to the gift deeds in question, hence in the absence of any incriminating material found during the search action, the AO was not justified in making additions in relation to the gifts received by the assessee during all the relevant years. The assessee has raised this plea by way of an additional legal ground before us. It is settled law that the legal issue can be raised or agitated at any stage of the case. Since the purely legal issue raised by the assessee goes to the root of the case and the finding arrived on that issue will be determinative of the validity of the assessments which already stood completed and not abated on the date of search, hence we deem it fit to admit the legal issue.

7. The Ld. D.R., in rebuttal to this legal plea raised by the assessee has strongly contended that even in the absence of any incriminating material found during the search action, the AO is empowered to look into, consider

and make additions in relation to the issues regarding which no incriminating material was found during the search action as it was open to the AO to pass fresh assessment orders under section 153A of the Act looking into all the aspects of the matter irrespective of the fact whether or not the original assessments have been completed and not pending or abated on the date of search action. He has further contended that even otherwise the original assessment proceedings were not completed under section 143(3) of the Act rather the returns filed by the assessee were processed under section 143(1) of the Act and under the circumstances the AO was empowered to examine and look into the issues as the same were not looked into while processing the return under section 143(1) of the Act.

8. We have heard the rival contentions and have also gone through the records. Admittedly, for A.Y. 1999-2000, A.Y. 2000-01 & A.Y. 2001-02, the assessment stood completed on the date of search. The same were not pending and even the limitation period for issuance of notice u/s 143(2) for initiation of scrutiny assessment proceedings had expired. The contention of the Ld. A.R. has been that in case of completed assessments, no addition can be made under section 153A in the absence of any incriminating material being found during the search action. The Ld. A.R. has further contended that as directed by this Bench this fact has been verified from the record and as per the AOs letter dated 20.08.15, the AO has accepted that the gift deeds were not recovered in the course of search. He further, in this respect, has relied upon the decision of the Hon'ble jurisdictional Bombay High Court in the case of "All Cargo Global Logistics Ltd." 120 DTR 89.

9. On the other hand, the Ld. D.R. has contended that the assessment for the above stated years were completed under section 143(1) of the Act which means that the only returns were processed and there was no application of the mind by the AO to the returns filed by the assessee. He, while citing the provisions of section 147 of the Act, has stated that where the initial return is

processed under section 143(1) of the Act, the AO can form reasons to believe that income has escaped assessment by examining the very return or the documents accompanying the return and that it was not necessary in such a case by the AO to come across some fresh tangible material to form reasons to believe that income has escaped assessment. He, in this respect, has relied upon the following decisions:

1. Hon'ble Supreme Court in Zuari Estate [2015] 373 ITR 661 (SC)
2. Hon'ble Delhi High Court in Indu Lata Rangwala vs. Dy. CIT [2016] 384 ITR 337.

The ld. DR has further submitted that similar proposition can be applied in the case of assessment made under section 153A of the Act and that it is not necessary for the AO to come across some fresh tangible material during the search action.

10. We have considered the rival contentions. The issue relating to the validity of assessment made under section 153A without having any incriminating material found during the search action u/s 132 of the Act in case where the original return was processed under section 143(1) of the Act has come into consideration before the co-ordinate bench of the Tribunal in the case of "The ACIT Cent. Cir. 33, Mumbai vs. Shri Jayendra P. Jhaveri" ITA Nos.2141, 2142, 2143 & 2144/M/2012 & CO Nos.248, 249, 250 & 251/M/2013 decided on 20.02.2014 (One of us being party to that order). The Tribunal has discussed the issue in detail and has made the following observations:

> "8. The learned DR has also filed written submissions. To stress his point that the return processed u/s. 143(1) cannot be said to be an assessment but a mere intimation, he has relied upon the judgment of Hon'ble Supreme Court in the case of "Rajesh Jhaveri Stock Brokers P. Ltd." (2007) 291 ITR 500 (SC). His contention has been that in the case in hand the assessment was not done originally u/s. 143(3) hence the estimation in question has been rightly made u/s. 153A of the Act by the AO. He has further contended that the principal laid down by the Special Bench of the Tribunal in the case of "All Cargo Global Logistics Ltd." 137 ITD 287 can be applied to the case where the

original assessment was completed u/s. 143(3) of the Act and not to the case where the return was processed u/s. 143(1) of the Act.

9. We have considered the submissions of the learned DR. So far so the reliance placed by him in the case of "Rajesh Jhaveri Stock Brokers P. Ltd." (supra) is concerned, we may observe that the issue before the Hon'ble Supreme Court in that case was regarding the reopening of the assessment u/s. 147 of the Act. The Hon'ble Supreme Court held that the proposition of law laid down by the Hon'ble Gujarat High Court in the case of "Adani Exports v. Deputy CIT", (1999) 240 ITR 224 (Guj) was not applicable in that case. In the case of "Adani Exports" (supra), where the assessment was made u/s. 143(3) of the Act, and the AO did not hold any belief that income had escaped assessment on account of erroneous computation, the re-opening u/s. 147 made merely on the basis of audit objections was held to be bad in law by the Hon'ble High Court. In the case of "Rajesh Jhaveri Stock Brokers P. Ltd." (supra), the Hon'ble Supreme Court while interpreting the provisions of section 143(1) and section 143(3) (as were in force during the relevant time period) has held that in case of assessment made u/s. 143(3), the assessment is made by the AO by applying his mind whereas in case of processing of return u/s. 143(1) of the Act, there is no application of mind by the AO and as such, if a new material comes into the knowledge of the AO and the requirements of section 147 of the Act are fulfilled, the AO is free to initiate proceedings u/s. 147 and the failure to take steps u/s. 143(3) will not render the AO powerless to initiate re-assessment proceedings even when intimation u/s. 143(1) had been issued. So the proposition of law laid down in the case of "Rajesh Jhaveri Stock Brokers P. Ltd." (supra) relates to the powers of the AO for re-opening of assessment u/s. 147in relation to the assessment proceedings conducted under section 143(1) viz-a-viz u/s 143(3) of the Act. (as were in force during the relevant period, since section 143 has been further amended vide Finance Act 2008 w.e.f 01.04.2008.) It is to be noted that powers of the AO to re-open an assessment u/s. 147 is subject to limitation of time period as prescribed u/s. 149 of the Act. So the reasonable conclusion will be that whether the return was processed u/s. 143(1) or u/s. 143(3), if the AO has a reason to believe that any income chargeable to tax has escaped assessment, he can re-open the assessment u/s. 147 by issuing notice u/s. 148 but within the time limit as prescribed u/s. 149 of the Act.

10. So far so, the question as to the processing of return u/s. 143(1) viz-a-viz assessment made u/s. 143(3) is concerned, it may further be observed that

after processing of return u/s. 143(1) the same can be assessed u/s. 143(3) by issue of notice u/s. 143(2) subject to its issuance within the limitation period of 12 months from the end of the month in which return is furnished as per the proviso to clause (ii) of section 143(2) [as was existing at the time of relevant assessment year]. Once the limitation period as prescribed vide proviso to clause (ii) of sub section (2) of section 143 is expired, it is not open to the AO to assess the income u/s. 143(3) of the Act and the return filed by the assessee u/s. 139 is deemed to be accepted, which however, can be re-opened u/s. 147 of the Act subject to the fulfillment of ingredients of section 147 and within the time period as prescribed u/s. 149 of the Act, as discussed in the preceding para. So under such circumstances if the return is processed u/s. 143(1) and not u/s. 143(3) and after the prescribed period of limitation, the same cannot be assessed u/s. 143(3) though it may be interpreted as mere intimation assessment or otherwise, but the same shall be deemed to be accepted by the AO and it will not have any different colour other than the return which is processed u/s. 143(3) of the Act. The only distinguishing feature as held by the Hon'ble Supreme Court in the case of "Rajesh Jhaveri Stock Brokers P. Ltd." (supra), would be that if to a set of facts and circumstances, the AO has applied his mind and he was of the belief that there was no escapement of income then for invoking the provisions of section 147 of the Act, he is precluded, on the basis of same facts and circumstances, to say that he has reason to believe that income of the assessee has escaped assessment. Whereas in case of returns processed u/s. 143(1), since the AO does not apply his mind, such a defense is not available to the assessee. However, that proposition of law does not help the revenue in the present case which is a case of assessment/re-assessment u/s. 153A of the Act.

11. Admittedly, in the case in hand, the return was processed u/s. 143(1) of the Act but the same has attained finality due to the expiry of limitation period of twelve months from the end of the month in which the return was filed. Hence, the assessment is deemed to be completed and not pending on the date of search on 14.08.2008. Admittedly, no incriminating material was found from the premises of the assessee during the search u/s. 132 of the Act. The Special Bench of the Tribunal in the case of "All Cargo Global Logistics Ltd."(supra), has held that assessment u/s. 153A can be made on the basis of incriminating material found during the search. The Hon'ble Rajasthan High Court in the case of "Jai Steel (India) v. ACIT" (2013) 259 CTR 281 has held that in case nothing incriminating is found on account of search

or requisition, the question of reassessment of the concluded assessment does not arise. Under such circumstances, it is not open to the assessee to seek deduction or claim expenditure which has not been claimed in the original and already concluded assessment, in the case of assessment u/s. 153A in pursuance of search action. Hon'ble High Court rejected the argument of the learned counsel for assessee to the effect that once the notice u/s. 153A is issued, the assessments for six years are at large both for the AO and the assessee. It has been further held by the Hon'ble High Court that the provisions of section 153A to 153C cannot be interpreted to be further innings to the AO and/or assessee beyond the provisions of section 139(return of income), 139(5) (revised return of income), 147 (income escaping assessment) and 263(revision of orders) of the Act. The Hon'ble High Court has further observed that the words "assess" or "re-assess" have been used at more than one place in the section and a harmonious construction of the entire provision would lead to an irresistible conclusion that the word 'assess' has been used in the context of abated proceedings and 'reassess' has been used for completed assessment proceedings, which would not abate as they are not pending on the date of initiation of the search or making of requisition and which would also necessarily support the interpretation that for the completed assessments, the same can be tinkered only on the basis of the incriminating material found during the course of search or requisition of documents. The Hon'ble High Court while reproducing the proposition of law laid down by the Hon'ble Supreme Court in the case of "K P Varghese v. ITO" (1981) 24 CTR 358 "that it is recognized rule of construction that a statutory proviso must be so construed, if possible, that absurdity and mischief may be avoided" has observed that if the argument of the counsel for the assessee was to be accepted, it would mean that even in case where the appeal arises out of the completed assessment has been decided by the CIT(A) or Tribunal and the High Court, on a notice issues u/s. 153A of the Act, the AO would have power to undo what has been concluded by the High Court. Any interpretation which leads to such conclusion has to be repelled and/or avoided as held by the Hon'ble Supreme Court in the case of K P Varghese (supra).

Almost similar proposition of law has been laid down by the co-ordinate bench of the Tribunal Bench of the Tribunal in the case of "M/s Deepa Restaurant & Bar P. Ltd." in ITA No.1336/M/2012 decided on 05.02.2014 (one of us being the party of the said order) wherein, it has been observed that where the scrutiny assessment order u/s. 143(3) of the Act

was set aside by the higher authorities that, itself, cannot be a ground for re-opening the assessment u/s. 147 of the Act on the plea that since scrutiny assessment has been annulled on the legality of notice u/s. 143(2) of the Act and the case has not been heard at any of the stage hence, there was a reason to believe that the income assessed in this case has escaped assessment. The co-ordinate Bench in the above said case has further held that such an action cannot be allowed under the law as it may amount to defeating one of the statutory provisions in the grab of acting under other provisions of the statute. Once assessment u/s. 143(3) had been annulled by higher authorities on the ground of legality of notice u/s. 143(2) of the Act, re-opening u/s. 147 on that very ground would mean nothing else but the abuse of process of law. Hence, the contention of the learned DR that as the return was processed u/s. 143(1) and it was a mere intimation hence, the AO had reason to believe that income had escaped assessment and it was open to the AO to reassess the income u/s. 153A, even without any incriminating material found during the search action, is not tenable.

12. The learned DR has further relied on the judgment of the Hon'ble Andhra Pradesh High Court in the case of "Gopal Lal Badruka Vs. DCIT", 346 ITR 106 (AP) to stress the point that the AO can use evidence other than that found during the course of search while framing the assessment u/s. 153A of the Act. The said judgment of Hon'ble Andhra Pradesh High Court has been duly discussed by the Special Bench of the Tribunal in the case of "All Cargo Global Logistics Ltd." (supra), holding that the same was distinguishable on the facts. In the case of "Gopal Lal Badruka Vs. DCIT" (Supra), incriminating evidence was found in relation to eight plots of land but no evidence was found in respect of 24 plots. Since incriminating material was found in respect of eight plots, Hon'ble Court held that the AO can estimate the income in respect of all 32 plots. The fact was that incriminating material was found in that case.

The other judgment of the Hon'ble Delhi High Court in the case of "CIT vs. Chetan Dass Lachman Dass" [2012] 211 Taxmann 61, strongly relied upon by the learned DR, is also of no help to the revenue but to the assessee only. In the said case the Hon'ble Delhi High Court, in para 11 of the order, though has held that there is no condition in section153A that additions should be strictly made on the basis of evidence found during the course of search or other post search material or information available with the AO which can be related to the evidence found and that the seized material can be relied

upon to also draw inference that there can be similar transactions throughout the relevant period, yet, at the same time it has been further observed that this however, does not mean that assessment u/s 153 A can be arbitrarily made without any relevance or nexus with the seized material.

The proposition of law which emerges out in the light of the law laid down by the Rajasthan High Court in the case of "Jai Steel (India) (supra)", Hon'ble Gujarat High Court in the case of "Gopal Lal Badruka" (supra) and also by the Hon'ble Delhi High Court in the case of "Chetan Dass lachman Dass" is that where incriminating material is found during the search action, the AO while making assessment u/s. 153A can take note of other materials on record, which are relevant and connected to the material found during the search and inference can be drawn relating to other transactions of similar nature. However, when no incriminating evidence is found during search, it is not open to the AO to make re-assessment of concluded assessment in the garb of invoking the provisions of section 153A. As observed above, such an action will defeat the other relevant provisions of the Act and also the rights of the assessee accrued therein."

11. The above decision has also been followed by another co-ordinate bench of the Tribunal in the case of Atul Barot (HUF) vs. DCIT" in ITA No.2889/M/2011 & ors. decided on 26.02.2014. We agree with the view taken by the co-ordinate bench of the Tribunal in the case of 'Shri Jayendra P Jhaveri" (Supra). With utmost respect, we are of the view that the case laws cited by the Ld. DR are not applicable to the facts of the case in hand.

Further, the Special Bench Decision in the case of "All Cargo Global Logistics Ltd." (supra) and has now been approved by the Hon'ble Bombay High Court in the cases of 'All Cargo Logistics' ITA No.1969 of 2013 and 'Continental Warehousing Corporation' ITA NO. 523 of 2013 reported in (2015) 279 CTR 0389 (Bombay) decided by common order wherein it has been held that in relation to the assessments which have already been concluded, the AO was precluded from making additions on any other issue except relating or concerning to the incriminating material found during the search action. The AO cannot disturb the assessment order or reassessment order which has attained finality, unless the material gathered in the course of proceedings u/s

153A of the Act establishes that relief granted under the final assessment/reassessment was contrary to the fact unearthed during the course of 153A proceedings. Identical view has been taken by the jurisdictional Hon'ble Bombay High Court in the case of CIT Vs. Murli Agro Products Ltd. ITA No.36 of 2009 decided vide order dated 29-10-2010. In view of the above discussion, this legal issue is decided in favour of the assessee.

Admittedly the search action was carried out on 27.7.2003. The Ld. AR of the assessee has given a chart to show that the limitation period for issuing the notice u/s 143(2) in relation to AY 1999-2000 and AY 2000-01 had expired on 30.9.2001 and in relation to AY 2001-02 on 30.09.2002. The assessment in relation to above mentioned assessment years stood completed/not abated on the date of search. In view of our findings given above on the legal plea raised by the assessee, additions made by the AO u/s 153A in relation to the already completed assessments was illegal and the same are quashed for AY 1999-2000, AY 2000-01 and AY 2001-02. However for the remaining three AYs, the assessment proceedings stood abated on the date of search and the AO therefore was justified in examining all the material facts coming into his knowledge during the framing of the assessment proceedings u/s 153A of the Act.

12. Now coming to the question as to the validity of the additions on merits in relation to three Assessment years i.e. AY 2002-03, AY 2003-04 & AY 2004-05 in relation to which the assessment proceedings stood abated on the date of search. The issue of gift is involved in AY 2002-03, in respect of which the Ld. A.R. has submitted that the assessee was supposed to prove the identity of the donor, the genuineness of the transaction and the financial capacity of the donor. The assessee had already filed the gift declaration in the shape of affidavits from the donors stating that the gifts were given from their own funds. However, both the lower authorities ignored these facts. Though the assessee had stated that she was unable to bring the donors to the Income Tax Department but the AO was not supposed to make additions only on this

ground. The AO and the Ld. CIT(A) had got vast powers under the Act to summon the donors and verify the genuineness of the transactions. Regarding the another issue of deposits found in the account of Shri S.P. Purohit , the Ld. A.R. has also vehemently submitted that no presumption can be drawn that the said account belonged to the assessee. If the assessee was unable to produce said Mr. Purohit, the AO was not supposed to make additions only on this ground. The AO could have summoned the said person. He has further submitted that even otherwise the assessee has not been given proper opportunity by the AO to prove her case and that the assessee was asked to substantiate her contentions after a substantial lapse of time.

13. On the other hand, the Ld. D.R. has relied upon the finding of the lower authorities.

14. After considering the rival submissions, we are of the view that the lower authorities have not property appreciated the contentions of the assessee. The claim of the assessee has merely been rejected because the covering letter was bearing the date prior to that of execution of affidavits and that it self cannot be a ground to hold that the affidavits were forged or fictitious. The lower authorities have not examined the veracity of the affidavits and whether the gift transactions otherwise were genuine or not. Even the issue relating to finding of deposits wherein the assessee was an introducer has not been examined properly by the lower authorities. We, therefore, deem it fit to restore the matter on merits to the file of the AO for decision afresh on the above issues in relation to the assessments which stood abated on the date of search i.e. ITA Nos. 528, 529 & 530/M/2008 for AY 2002-03, AY 2003-04 & AY 2004-05 respectively. Needless to say that the AO will give proper opportunity to the assessee to present her case and submit the necessary documents and then to decide the issues as per law and facts available before him.

15. In the result appeals bearing No. ITA Nos.525, 526, 527/M/2008 for AYs 1999-2000, 2000-01, 2001-02 respectively are here by allowed; whereas ITA Nos. 528, 529 & 530/M/2008 for AYs 2002-03, 2003-04 & 2004-05 respectively are restored to the file of the AO and hence treated as allowed for statistical purposes.

Order pronounced in the open court on 28.09.2016.

Sd/-	**Sd/-**
(G.S. Pannu)	**(Sanjay Garg)**
ACCOUNTANT MEMBER	**JUDICIAL MEMBER**

Mumbai, Dated: 28.09.2016.

* Kishore, Sr. P.S.

Copy to: The Appellant
The Respondent
The CIT, Concerned, Mumbai
The CIT (A) Concerned, Mumbai
The DR Concerned Bench

//True Copy//

By Order

Dy/Asstt. Registrar, ITAT, Mumbai.