

आयकर अपीलीय अधिकरण, चण्डीगढ़ न्यायपीठ "ए", चण्डीगढ़
IN THE INCOME TAX APPELLATE TRIBUNAL, CHANDIGARH BENCH "A", CHANDIGARH
(VIRTUAL COURT)

श्री एन.के.सैनी, उपाध्यक्ष एवं श्री आर.एल. नेगी, न्यायिक सदस्य

BEFORE: SHRI N.K. SAINI, VP & SHRI R.L. NEGI, JM

आयकर अपील सं./ ITA NO. 962/Chd/2019

निर्धारण वर्ष / Assessment Year : 2014-15

Smt. Jagmohan Kaur Bajwa Legal heir Lt. Jaskiran Singh Bajwa H.No. 3077, Sector 19-D, Chandigarh	बनाम	The ITO Ward 3(1), Chandigarh
स्थायी लेखा सं./PAN NO: ACRPB9826E		
अपीलार्थी/Appellant		प्रत्यर्थी/Respondent

निर्धारिती की ओर से/Assessee by : Shri Sudhir Sehgal, Advocate
Shri Aman Parti, Advocate

राजस्व की ओर से/ Revenue by : Shri Manveet Singh Sehgal, Addl. CIT

सुनवाई की तारीख/Date of Hearing : 10/05/2021

उद्घोषणा की तारीख/Date of Pronouncement : 23/07/2021

आदेश/Order

PER N.K. SAINI, VICE PRESIDENT

This is an appeal by the Legal heir of the deceased assessee against the order dt. 26/04/2019 of Ld. CIT(A)-1, Chandigarh.

2. Following grounds have been raised in this appeal:

1. That the Commissioner of Income Tax(Appeals) erred on facts and in law in upholding the addition of Rs. 99,84,046/- u/s 69A of the Income Tax Act, 1961 in respect of the additions made in appellant's capital account which already stood disclosed in the books of accounts.
2. That the Commissioner of Income Tax(Appeals) erred on facts and in law in treating the amounts received by the appellant from his maternal cousin (through his son's account) for investing the same in purchase of an immovable property on his behalf as unsecured loan and thereby upholding the addition made by the Assessing Officer amounting to Rs. 99,84,046/- as unexplained investment.
3. The assessee craves leave to add/alter any of the ground of appeal on or before the date of hearing of appeal.

From the aforesaid grounds it is gathered that the only grievance of the assessee relates to the sustenance of addition of Rs. 99,84,046/- made by the A.O. under section 69A of the Income Tax Act, 1961 (hereinafter referred to as 'Act').

3. Facts of the case in brief are that the assessee electronically filed the return of income on 29/11/2014 declaring an income of Rs. 8,87,340/- which was processed under section 143(1) of the Act, later on the case was selected for scrutiny.

3.1 During the course of assessment proceedings the A.O. noticed that there was a substantial increase in the capital account of the assessee amounting to Rs. 1,19,44,047/-. The A.O. asked the assessee to furnish the source of increase in the capital account with supporting evidence. The assessee submitted that he had introduced capital from the funds received from Shri Hardev Singh Sahi in Indian rupees and Canadian Dollar and also furnished the copy of the ledger account. The assessee also furnished "advice of inward remittance" from Canada in Indian rupees issued from Axis Bank, Sector-16, Chandigarh and the relevant page of his HDFC Bank statement wherein Rs. 19,00,000/- was reflected as received from Shri Hardev Singh. According to the A.O. the aforesaid documents did not prove the identity, creditworthiness and genuineness of the transactions. He asked the assessee to furnish the bank statement of the persons from whom the assessee received money from Canada in Indian rupees and prove the identity and creditworthiness of the persons. The A.O. incorporated the copy of the ledger account of capital account furnished by the assessee in para 4 of the assessment order dt. 26/12/2016 which read as under:

Bajwa Construction Co. – 2013-14 Final
3027 Sector 19-D
Chandigarh
JASKARNA SINGH BAJWA
Ledger Account
1-Apr-2013 to 31-Mar-2014

Date	Particulars	Vch Type	Vch No. / Excise Inv. No.	Debit	Page 1 Credit
1-4-2013	By Opening Balance				2,05,27,337.94
9-5-2013	By HDFC BANK FUND TRF FROM HARDEV SINGH- A/C NO. 13911050011664 CH NO. 053753	Receipt	23		19,00,000.00
14-5-2013	By AXIS BANK-A/C NO. 912010066869615 AMT RECD FROM CANADA \$70000 @ 53.6 FROM HARDEV SINGH SAHI	Receipt	29		37,55,262.40
22-11-2013	By AXIS BANK-A/C NO. 912010066869615 AMT RECD IN CAD 105000@59/-	Receipt	129		62,28,784.63
10-1-2014	By CANARA BANK-2479101003230 Ch.No: 497794	Receipt	153		60,000.00
31-3-2014	By Profits Loss A/c	Journal	46		59,47,565.72
	By LIC DEPOSITED	Journal	47		4,87,197.00
	To Closing Balance			3,89,06,147.69	3,89,06,147.69
				3,89,06,147.69*	3,89,06,147.69

3.2 The A.O. was not satisfied from the submissions of the assessee and again asked to furnish the information vide letter dt. 28/11/2016 which read as under:

*"You have made an addition of Rs. **1,18,84,046/-** in your capital during the year under consideration the details of which are as under:-*

09.05.2013	Sh. Hardev Singh	19,00,000/-
15.05.2013	Sh. Hardev Singh (\$ 70000@53.6)	37,55,262/-
22.11.2013	-- (105000 @ 59/-)	<u>62,28,784/-</u>
Total		1,18,84,046/-

You are again requested to please furnish the identity, creditworthiness and genuineness. The nature of the above said transactions/payments received, sources of their income, relationship with you and confirmation of the lenders on or before 06.12.2016. Please also state whether these are interest free loan or give the details of interest paid on these loans".

3.3 The assessee submitted that Shri Hardev Singh S/o Shri Joginder Singh was his maternal cousin. In respect of his creditworthiness and genuineness of the transactions, it was stated that he (Shri Hardev Singh) was a retired officer from a Government Organization and at the relevant time was residing in Canada, he transferred Rs. 19,00,000/- interest free out of his personal savings and retirement fund. It was further stated that the balance amount was transferred by him through his son's account. It was also stated that Shri Maninder Singh Sahi S/o Shri Hardev Singh Sahi, had well established set up of his own. The assessee also furnished copies of self declaration of Shri Hardev Singh and Shri Maninder Singh Sahi.

3.4 The Assessee submitted before the A.O that advance money was given to him with motive of making some property investment in India, but since no deal could get materialized, the advance amounting to Rs. 1,18,84,046/- was to be refunded. The assessee also furnished identity of both lenders and his self declaration in the form of affidavit. According to the A.O. the assessee was frequently changing his statement with regard to the addition in his capital. He rebutted point wise, reply filed by the assessee on 14/12/2016 as under:

a) *"As per your balance sheet as on 31.03.2014 of M/s Bajwa Construction Company your proprietorship concern, your unsecured loans was at Rs. 1,43,07,185/- and as per Schedule C of this liability the name of these two persons i.e. Sh. Hardev Singh and Maninder Singh Sahi was not recorded. Hence, these are not acceptable as 'interest free unsecured loan'.*

b) As per your balance sheet as on 31.03.2014 of M/s Bajwa Construction Company your proprietorship concern, the advance received from customers was shown at Rs.45,00,000/- only and which was the business advances but you have received amount of Rs. 1,18,84,046/- from Sh. Hardev Singh and Maninder Singh Sahi and introduced it in your capital account. Hence, these are not acceptable as 'advance received from customers'. Till 06.12.2016, you have simply stated that the receipts regarding increase in capital was through bank and transferred through RTGS or Canadian dollar and provide bank statement. But bank statement itself is not a authentic document to prove the genuineness of any payment/receipts. On 06.12.2016 you have stated that Sh. Hardev Singh is your maternal cousin and is a retired officer from a Govt. Organisation and funds transfer by him is out of his savings and retirement fund. But you have not furnished any supporting documents in respect of the retirement fund or savings. Regarding Maninder Sahi you have stated that he has well established set up of his own and furnished a declaration on plain paper. Nothing was informed about his sources of income, nature of business bank statement which establish the genuineness and creditworthiness of the person. Now vide your reply received through ASK letter dated 14.12.2016, you have stated that you have taken an advance money in form of interest free unsecured loan. You are changing your stand on every hearing.

c) Reflecting the receipts of any amount in your bank statement does not prove the creditworthiness and genuineness of the receipts. The declaration submitted by you on 06.12.2016 on a simple plain paper was not proper and you were again asked to furnish an authentic confirmation to prove its genuineness. But on 14.12.2016 you have again submitted the same copy of declaration. The photocopy of declaration by Sh. Maninder Sahi submitted after cutting in it. The declarations are photocopies on the plain paper thus the authenticity and genuineness is not established. Sh. Hardev Singh, who was retired from his service in April, 2012 and has received pension of Rs. 11,050/- only but he has given Rs. 19,00,000/- to you on 09.05.2013. This document does not prove that the amount received as pension benefits is the sources of loan given to you as no such supporting bank statement placed on record. This is not confirming the genuineness of the transaction.

d) Vide notice u/s 142(1) dated **29.04.2016**, you were asked to furnish the sources of increase in capital during the year with supporting evidence. Since then, you are time and again asked the sources of increase in capital but you are unable to prove the genuineness and authenticity of the same. You are repeatedly affording opportunities to prove the increase in capital but after a lapse of almost 8 months you are failed to prove the genuineness of increase in capital. So it is not correct to say that sufficient time not allowed to you to collect the evidence. You have taken contradictory stand.

e) The affidavit submitted by you is a self serving document. The onus to prove the genuineness of the loans raised is upon you which may be discharged failing which I shall be constrained to complete the assessment ex-parte. This may please be treated as FINAL OPPORTUNITY".

3.5 In response to the above the assessee vide reply dt. 20/12/2016 submitted that the money received from Shri Hardev Singh and Shri Maninder Singh Sahi was advance money received in personal capacity, as a result of which their name had not been shown in the list of "unsecured loan" and "advance received from customers". It was further submitted that the bank statement of both lenders and copy of affidavit duly notarized from Canada proving the creditworthiness, identity of the persons and genuineness of the transactions were furnished. However the A.O. accepted only Rs.

19,00,000/- received from Shri Hardev Singh and did not accept the remaining amount of Rs. 99,84,046/- received from Shri Maninder Singh Sahi for the following reasons:

i) *The assessee was changing his explanation frequently and without any basis with regard to addition in capital for Rs.99,84,046/-.*

ii) *The assessee has submitted the photocopy of a document purported to be an affidavit of the lender as per his reply dated 20.12.2016, whereas he was asked to explain the sources of capital addition with evidence from beginning of the assessment proceedings i.e. questionnaire dated 29.04.2016.*

iii) *No cognizance can be taken, as it has not been stated that for which property the advances of Rs. 99,84,046/- had been paid by him. He had given advance for Rs. 37,55,262/- on 14.05.2013 and again on 22.11.2013. If it is presumed that he had given advance for purchase of property, an agreement must be executed, which was not furnished. If the deal could not materialize then where was the occasion to give a further payment of Rs. 62,28,784/- on 22.11.2013. This explanation is merely an afterthought and cannot be accepted. No such copy of the agreement has been produced for verification of the authenticity of the reply so furnished.*

iv) *The letter head of 'Sahi Constructions' submitted in respect of Sh. Maninder Sahi is a photocopy and on a simple plain piece of paper. The letter head of a concern must have the details of its head office e.g. contact No., e-mail ID, Fax No. its PAN or TAN number to facilitate its customer. But no details are printed on it. The document is not a registered document with any authority of Canada and not witnessed.*

v) *No documentary evidence regarding his being a 'tax payer' is furnished to show that he had sufficient sources of income to give this amount.*

vi) *The bank statement submitted is also not acceptable as it has neither the name of the account holder nor name of bank/branch. As per the assessee's statement Sh. Maninder Sahi has given loan of Rs. 37,55,262/- on 14.05.2013 and Rs. 62,28,784/- on 22.11.2013 from Canada in Indian Rupees. But from perusal of the bank statement, there is no debit or credit entry in the month of May, 2013 then how money of Rs.37,55,262/- was given by him to the assessee. Further, it is noticed that on 18.11.2013, there was a credit entry of 1,04,975 Canadian dollar in this account and on the same day 1,05,000 Canadian dollar was transferred to the assessee. The credit entry of Canadian dollar 1,04,975 was not explained.*

vii) *Moreover, perusal of bank statement, reveals that there are periodic small debit and credit entries in this account except big credit entry on 18.11.2013 . Canadian dollar 1,04,975 and later on it was transferred to the assessee. It is improbable that Sh.Maninder Sahi had advanced such a huge interest free amount with small sources of income. Hence, the creditworthiness of Sh.Maninder Sahi submitted by the assessee is not proved.*

Accordingly, the addition of Rs. 99,84,046/- was made under section 69A of the Act treating the same as unexplained investment made by the assessee.

4. Being aggrieved the assessee carried the matter to the Ld. CIT(A) and furnished the written submissions which are incorporated in para 5.1 of the impugned order and are reproduced verbatim as under:

"2. Submissions based on Ground No. 4 of appeal, which states as under that:

The learned AO, has erroneously rejected part of the assessee claim made vide submission dated 14.12.2016 and 20.12.2016 based on mere presumptions which were never offered for any further clarification or rebuttal from the assessee, hence, giving no further opportunity of being heard to rebut or cross the mere ambiguous presumptions of the learned AO, before pronouncing the impugned order dated 26.12.2016.'

In regards to above stated ground, we would like to humbly submit that: The assessee vide his reply dated 20/12/2016 submitted the requisite documentary evidence to establish the creditworthiness, identity of the lenders and genuineness of transactions. In respect to the same the Ld. AO held that the submissions of assessee for capital introduction of Rs. 19,00,000/- (from Sh Hardev Singh) is acceptable however the explanations provided regarding the balance capital received from Sh. Maninder Singh Sahi amounting to Rs. 99,84,046/- was not substantiated.

It is hereby humbly submitted that the Ld. AO erroneously rejected part of the assessee's claim based on mere presumptions without offering the assessee an opportunity of being heard to rebut these erroneous and ambiguous presumptions of Ld. AO before pronouncing the impugned order. It is also brought to notice that the said proceedings were time barred as on 31/12/2016 and the Ld. AO passed the assessment order in haste without affording the assessee an opportunity of being heard to rebut the erroneous reasons based on which the Ld. AO framed the assessment order and made an impugned addition of Rs. 99,84,046/- u/s 69A of the Income Tax Act, 1961.

The reasons stated by the Ld. AO for not accepting the submissions of the assessee in respect to the funds received from Sh. Maninder Singh Sahi are well covered and rebutted by the merits of the case in favour of the assessee which are taken up in ground No. 3 of the submissions.

3. Submissions based on Ground No. 3 of appeal, which states as under that: 'The learned AO, as per as assessment order is believed to be convinced based on the evidence submitted by the assessee on the genuineness of the claim of transaction of unsecured loan received by the assessee and identity of the said lender, Sh. Maninder Singh Sahi. But, somehow has ambiguously rejected the creditworthiness of the same, lender, Sh. Maninder Singh Sahi, without any reasonable cause or explanation.'

In regards to above stated ground, we would like to humbly submit that:

The assessee on enquiry made by the Ld. AO regarding the increase in capital duly explained that the assessee had taken an advance money from Sh. Hardev Singh and Sh. Maninder Singh Sahi (father and son) having present residence at #6792, 146B Street, Surre, BC Canada amounting to Rs. 19,00,000/- and Rs. 99,84,046/- respectively. Since the said funds were given by aforementioned persons in personal capacity to the assessee for making some investment in properties in India and the lenders being relatives to the assessee, the said funds though being interest free advances for making investment were neither recorded as unsecured loans nor as interest free advances in the balance sheet of the assessee owing to the personal nature of transaction. The assessee therefore introduced the said funds as his own capital in the business.

To further establish the creditworthiness, identity & genuineness of the lenders the assessee submitted all the requisite documents in form of his bank statement, self declaration, bank

statements of the lenders, ID and address proofs of the lenders land affidavits (duly attested by the Canadian Authorities) testifying to the facts earlier submitted by the assessee.

In addition to this the assessee further clarified that the lender Mr. Hardev Singh had advances the said funds to the assessee through his regular bank account and the balance from his son Mr. Maninder Singh Sahi's bank account, a fact clearly taken into account by the Ld. AO in assessment order dated 26/12/2016 in para No. 5.

Therefore, the Ld. AO asked the assessee to prove the creditworthiness of the lenders, in response to which the assessee submitted that Sh. Hardev Singh is the maternal cousin of the assessee and is a retired officer from government organization and at present living in Canada and the funds transferred are from his personal savings and retirement fund. The assessee also submitted that Sh. Maninder Singh Sahi was also well established on his own. The assessee had also furnished the copy of the self declaration by both Sh. Hardev Singh and Sh. Maninder Singh Sahi duly attested by Canadian Authorities testifying to the facts stated by the assessee during the proceedings to establish the creditworthiness of the assessee.

Thereafter, the Ld. AO while framing the assessment order accepted the identity & genuineness of both the lenders. While determining the creditworthiness and source of income of both the lenders the Ld. AO accepted the submissions of the assessee in respect of capital introduction of Rs. 19,00,000/- from Mr. Hardev Singh whereas quashing/ disapproving the submissions made by the assessee to prove the creditworthiness of Mr. Maninder Singh Sahi.

In respect to the same is hereby humbly submitted that the Ld. AO had accepted the submission of the assessee that 'the funds used in capital introduction amounting to Rs. 1,18,84,046/- was received from Sh. Hardev Singh through his regular bank account (Rs. 19,00,000) and the balance (amounting to Rs. 99,84,046/-) was transferred by him from his son Mr. Maninder Singh Sahi's bank account without asking any further questions or making any enquiries regarding the same.

Therefore, it is clear from the aforementioned submission that though there were two lenders as per the records, the total funds transferred were clearly belonging to Mr. Hardev Singh and a part of them were merely wired through his son's bank account. Therefore, in this case the creditworthiness of Mr. Hardev Singh is required to be established since the funds belonged to him and the creditworthiness of Mr. Maninder Singh Sahi is not relevant.

In assessment order, the Ld. AO has already accepted the credit worthiness of Mr. Hardev Singh by approving the capital introduction of Rs. 19,00,000/- and now that the fact is established that the whole funds belonged to Mr. Hardev Sing, the Ld. AO is bound to accept the credibility of remaining funds amounting to Rs. 99,84,046/-.

4. Submissions based on Ground No. 2 of appeal, which states as under that:

'The learned AO, has erroneously rejected all the possible evidence submitted on record, by assessee, to substantiate the creditworthiness of the lender of the interest free advance of Rs. 99,84,046/-, Sh. Maninder Singh Sahi, and has also further failed to call for the substantial information under provisions of section 131 of the Income Tax Act, 1961, directly from Sh. Maninder Singh Sahi, as was needed, since the learned AO was not convinced on his creditworthiness, despite such request was already made by the assessee in his submission made on December 2016.'

We draw our support from the following judgement:

ITAT Ahmedabad in the case of Karim K. Lakhani, Surat vs. Department of Income Tax on 28 November, 2013 is quoted as under for your kind reference:.....

5.... Submissions based on Ground No. 5 of appeal, which states as under that:

In regards to above stated ground, we would like to humbly submit that: The Ld. AO made the impugned addition of Rs. 99,84,046/- u/s 69A of the Income Tax Act, 1961. In respect of the same it is hereby humbly submitted that the grounds and circumstances on the basis of which the Ld. AO has made the impugned addition is in contradiction to the provisions of section 69A.

Section 69A of the Income Tax Act is quoted as under for your kind reference:-

1. It is clear from the aforementioned submission that though there were two lenders as per the records, the total funds transferred were clearly belonging to Mr. Hardev Singh and a part of them were merely wired through his son's bank account. Therefore, in this case the credit worthiness of Mr. Hardev Singh is required to be established since the funds belonged to him and the credit worthiness of Mr. Maninder Singh Sahi is not relevant.

2. In assessment order, the Ld. AO has already accepted the credit worthiness of Mr. Hardev Singh by approving the capital introduction of Rs. 19,00,000/- and now that the fact is established that the whole funds belonged to Mr. Hardev Singh, the Ld. AO is bound to accept the credibility of remaining funds amounting to Rs. 99,84,046/-.

3. The Ld. AO erroneously rejected part of the assessee's claim based on mere presumptions without offering the assessee an opportunity of being heard to rebut these erroneous and ambiguous presumptions of Ld. AO before pronouncing the impugned order.

4. The Ld. AO has erroneously rejected all the possible evidence submitted on record, by assessee, to substantiate the credit worthiness of the lender. The assessee has also further failed to call for the substantial information under the provisions of section 131 of the Income Tax Act, 1961 and therefore failed to carry out his onus to disprove the submitted documentary evidence

The reasons stated by the Ld, AO for not accepting the submissions of the assessee in respect to the funds received from Sh. Maninder Singh Sahi are rebutted point wise as under:

i) The assessee was changing his explanations frequently and without any basis with regard to addition in capital for Rs. 99,84,046/-

In regards to the same it is hereby humbly submitted that the assessee had from the initiation of the proceedings kept same stand in regards to both the capital introductions amounting to Rs. 19,00,000/- and Rs. 99,84,046/- and it is erroneous of the Ld. AO to reject the claim of the assessee on one transaction while accepting the explanation on the other, when the explanation provided in both the cases have been similar.

ii) The assessee has submitted the photocopy of a document purported to be an affidavit of the lender as per his reply dated 20.12.2016, whereas he was asked to explain the sources of capital addition with evidence from beginning of the assessment proceedings i.e. questionnaire dated 29.04.2016

The aforementioned reason is not a valid ground to reject the substantive evidence provided by the assessee to establish the identity and genuineness of the lender Sh.

Maninder Singh Sahi just because the assessee had not furnished the same during the beginning. Furthermore, the Ld. AO has accepted the similar affidavit of Sh. Hardev Singh but has somehow rejected the affidavit of Mr. Maninder Singh Sahi s/o Sh. Hardev Singh. Therefore, the aforementioned reason of the Ld. AO is erroneous in nature.

iii) No cognizance can be taken, as it has not been stated that for which property the advances of Rs. 99,84,046/- had been paid by him. He had given advance for Rs. 37,55,262/- on 14.05.2013 and again on 22.11.2013. If it presumed that he had given advance for purchase of property, an agreement must be executed, which was not furnished. If the deal could not materialized then where was the occasion was not furnished. If the deal could not materialized then where was the occasion to give a further payment of Rs. 62,28,784/- on 22.11.2013. This explanation is merely an afterthought and cannot be accepted. No such copy of the agreement has been produced for verification of the authenticity of the reply so furnished.

In respect to the same it is hereby humbly submitted that during the proceedings the assessee has clarified to the Ld. AO time and again that the said funds were given in personal capacity to the assessee by his relatives for prospective investment in property since the assessee is into the business of the same. The said funds were not for a particular property for which the agreement was ought to be entered into. Furthermore, in the affidavit furnished by the assessee he had clearly stated that the funds were advanced with the motive of making some investment in properties in India however no deal was materialized due to poor market conditions. Therefore the funds extended were not for any particular property already signed for but for the purpose of prospective investments and Ld. AO refusing to accept the explanation given by the assessee merely on presumptions and baseless grounds acted in bad faith.

iv) The letter head 'Sahi Construction' submitted in respect of Sh. Maninder Singh Sahi is a photocopy and on a simile plain piece of paper. The letter head of a concern must have the details of its head office e.g. contact no, e-mail ID, Fac No. its PAN or TAN number to facilitate its customer. But no details are printed on it. The document is not a registered document with any authority of Canada and not witnessed. The assessee had duly submitted all the requisite documents/information as desired by the Ld. AO. The aforementioned assertion of the Ld. AO is on erroneous grounds since the letterhead of the company or an entity is as per the discretion of governing body. It is erroneous on the part of the Ld. AO to reject the evidence provided on such invalid grounds. Furthermore, it has been already established that since the entire funds belonged to Mr. Hardev Singh, therefore, the credit worthiness of Sh. Maninder Singh Sahi is irrelevant to the case of the assessee and therefore the contentions raised against the aforementioned document too are not relevant.

v) No documentary evidence regarding his being a 'tax payer' is furnished to show that he had sufficient sources of income to give this amount. As has been prove in the point no. 2 of the submissions, the entire funds transferred belonged to Mr. Hardev Singh and a part of it was wired through the bank account of his son Sh. Maninder Singh Sahi. Therefore, as per the facts and circumstances of the case the credit worthiness of Sh. Hardev Singh was required to be established. Since the credit worthiness of Sh. Maninder Singh Sahi is not relevant to the case and therefore documentary evidence regarding his being 'tax payer' was not required to be furnished to show that he had sufficient sources of income to give this amount.

vi) The bank statement submitted is also not acceptable as it has neither the name of the account holder nor name of the bank/ branch. As per the assessee's statement Sh. Maninder Singh Sahi has given loan of Rs. 37,55,262/- on 14.05.2013 and Rs. 62,28,784/- on 22.11.2013 from Canada in Indian rupees. But from perusal of the bank statement, there is no debit or credit entry in the month of May, 2013 then how money of Rs. 37,55,262/- was given by him to the assessee.

Further, it is noticed that on 18.11.2013, there was credit entry of 104975 Canadian Dollar in this account and on the same day 105000 Canadian Dollar was transferred to the assessee. The credit entry of Canadian dollar 104975 was not explained. In respect to the same it is hereby humbly submitted that in point no. 2 of our submission it is already established that entire funds transferred belonged to Sh. Hardev Singh and a part of them were wired to the assessee through Mr. Maninder Singh Sahi's (s/o Sh. Hardev Singh) bank account. Therefore the credit entry of 104975 Canadian dollar were transferred by Sh. Hardev Singh to Sh. Maninder Singh Sahi's bank a/c who in turn transferred the said funds to the assessee on behalf of Sh. Hardev Singh.

vii) Moreover, perusal of bank statement, reveals that there are periodic small debit and credit entries in this account except big entry on 18.11.2013 Canadian dollar 104975 and later on it was transferred to the assessee. It is improbable that Sh. Maninder Singh Sahi had advanced such a huge interest free amount with small sources of income. Hence, the creditworthiness of Sh. Maninder Singh Sahi submitted by the assessee is not proved.

In respect to the same it is hereby humbly submitted that in point no. 2 of our submission it is already established that entire funds transferred belonged to Sh. Hardev Singh and a part of them were wired to the assessee through Mr. Maninder Singh Sahi's (s/o Sh. Hardev Singh) bank account. Therefore the credit entry of 104975 Canadian dollar were transferred by Sh. Hardev Singh to Sh. Maninder Singh Sahi's bank a/c who in turn transferred the said funds to the assessee on behalf of Sh. Hardev Singh."

4.1 The Ld. CIT(A) after considering the submissions of the assessee observed that the A.O. had accepted the explanation of the assessee for Rs. 19,00,000/- received from Shri Hardev Singh as funds from pension funds being retired Government employee, but the advances received from his son could not be accepted for the following reasons :

(i) In the balance sheet as on 31.03.2014 of M/s Bajwa Construction Company-proprietorship concern of the appellant the unsecured loans appear at Rs.1,43,07,185/-. However in the 'Schedule C of this liability the name of these two persons i.e. Sh. Hardev Singh and Sh. Maninder Singh Sahi and introduced it in the capital account has not been recorded. No evidence of Sh. Maninder Singh Sahi being having well established set up of his own in Canada has been filed before the AO or during appellate proceedings. That is why the AO held that only bank statement does not establish the genuineness and creditworthiness of Sh. Maninder Singh. Later on the appellant conveniently changed the stance that he has taken an advance money in the form of interest free unsecured loan from Sh. Maninder Singh through his father, (ii) The appellant has just submitted a copy of simple declaration from Sh. Maninder Singh and his father and copy of Affidavits from these two persons and copy of Passport, banks statement and also affidavit of the appellant. These documents do not establish the creditworthiness and genuineness of the transaction. The photocopy is not an admissible evidence in the court of law. Reference in this regard be made to judgement delivered by the Hon'ble Supreme Court in the case of Moosa S.Madha & Azam S.Madha Vs.CIT 89 ITR 65 (SC) according to which photocopies have very little evidentiary value. This issue was also examined by the jurisdictional ITAT Chandigarh Bench in the case of Simranpal Singh Gill Vs. DCIT, Circle-VI, Ludhiana in ITA No.119/Chd/2010 for AY 2008-09 dated 29th April 2011 wherein it is held that it is well settled principle of law of evidence that copy of a document should not be admitted in evidence in the absence of original, (iii) The emphasis of the appellant that he has discharged his onus and onus is shifted to the AO is misconceived in the facts and circumstances of the case. Here, appellant is changing his pleas before the AO. Further, Sh. Maninder Singh is resident of Canada and the appellant conveniently expecting from the AO that he should call Sh. Maninder Singh u/s 131 of the Act. It is trite law that it is the assessee who has to

explain bonafide of his claim beyond doubt before the Income Tax Authorities. The appellant has miserably failed to establish creditworthiness and genuineness of Sh. Maninder Singh with any supporting evidence. The case law relied by the appellant is on different facts, (iv) The pertinent point which is conveniently missing in the arguments of the appellant is that the this payment was made to the appellant for some property which property is only known the appellant or Sh. Hardev Singh and his son] and amount will be paid back if deal is not struck. On this issue both the parties are silent. Neither any deal has come to light till disposal of this appeal nor has money been paid back. This smokescreen has not been touched by the appellant. It is strange that more than One Crore rupees have just been thrown away by the father and son duo that too when father is retired government employee who must be knowing the value of his money. This act defies Human Probability. As laid down in CIT vs. Durga Prasad More [(1971)] 82 ITR 540], the apparent must be considered as real until it is shown that there are reasons to believe that the apparent is not the real and the tax authorities are entitled to look at the surrounding circumstances to find out the realities and the matter has to be considered by applying the test of human probabilities. Similar view has been held in the case of Sumati Dayal vs. Commissioner of Income-tax [1995] 80 TAXMAN 89 (SC). It is in these facts and circumstances that the explanation given by the appellant is merely an afterthought and cannot be accepted.

4.2 The Ld. CIT(A) observed that the A.O. was generous enough to accept the explanation of the Father i.e; Shri Hardev Singh for Rs. 19,00,000/- and this act of the A.O. could not be said precedence to explain the advances received from his son Shri Maninder Singh Sahi. Accordingly the addition made by the A.O. was sustained.

5. Being aggrieved the assessee filed the present appeal.

6. Ld. Counsel for the Assessee reiterated the submissions made before the authorities below and further submitted that the deceased assessee was engaged in the business of sale and purchases of houses, after purchase of the old houses some renovation, if required was carried out and then the same was sold off. It was stated that the deceased assessee received a sum of Rs. 19,00,000/- from Shri Hardev Singh, his maternal uncle who had been in the Government service and after his retirement, he was settled in Canada where his son Shri Maninder Singh Sahi was carrying on construction business and was the resident & citizen of Canada. Shri Hardev Singh had given the sum of Rs. 19,00,000/- from his regular bank account and furnished the copy of bank account. It was further stated that the A.O. accepted that the said amount had been given by Shri Hardev Singh to the deceased assessee for purchase of some property.

6.1 It was submitted that Shri Maninder Singh Sahi S/o Shri Hardev Singh also sent certain amounts i.e; Rs. 37.55 lacs and Rs. 62.28 lacs which were credited in the capital

account of the deceased assessee. The said amount was also given for purchase of the property and the assessee furnished numerous evidences showing the identity & creditworthiness of the depositor and genuineness of the transactions, a reference was made to page no. 20-22 of the assessee's paper book to substantiate that the amount of Rs. 19,00,000/- was sent by Shri Hardev Singh for purchase of property. A reference was also made to page nos. 23-25 which is the copy of the letter dt. 07/10/2016 alongwith proof of inward remittances of the amount sent by Shri Maninder Singh Sahi from Canaa for the purchase of some property. It was contended that all the transactions were through regular banking channels, a reference was made to page no. 26 of the assessee's paper book which is the copy of letter dt. 06/12/2016 describing the capacity and identity of Shri Hardev Singh. The Ld. Counsel drew our attention towards page nos. 30 to 32 which is the declaration of Shri Maninder Singh Sahi alongwith proof of the remittances, a reference was also made to page no. 33 to 34 which is the coy of letter wherein the sources of Shri Hardev Singh and Shri Maninder Singh Sahi had been shown in the bank statement, the ID address had been furnished and the purpose of sending the money by Father and son i.e Shri Harvinder Singh & Shri Maninder Singh Sahi had been mentioned which was to make some investment in property in India.

It was stated that both of them were residing outside India, in Canada but had given complete address. It was stated that the assessee made a request that if the A.O. wanted some more information, he may write to them or may have issued summons, a reference was made to page no. 74 of the assessee's paper book. It was submitted that the deceased assessee furnished the duly attested affidavit before the A.O. copy of which is placed at page no. 36 to 37 wherein the details of amount received, purpose and then as to why the same could not be invested in the property because of poor sentiments, had been mentioned and it had also been stated that the total amount received was refunded. Reference was also made to page no. 44 to 46 of the assessee's paper book for the explanation that since the amount was received in a personal capacity from the relatives so it was disclosed in the capital account and not as an advance from customers.

6.2 It was further explained that Shri Maninder Singh Sahi was a resident and citizen of Canada doing construction business for the past many years and the amount sent by him had been earned abroad. It was emphasized that notarized affidavit from Canada of Shri Maninder Singh Sahi had also been furnished, a reference was made to page no. 47 which is copy of self declaration by Shri Maninder Singh Sahi. It was submitted that the copy of the affidavit of Shri Hardev Singh is placed at page no. 48 and notarized affidavit from Canada by Shri Maninder Singh Sahi is placed at page no. 49 of the assessee's paper book. It was submitted that in the bank statement, copy of which is placed at page no. 51 of the assessee's paper book which revealed that the amount in question had been debited. It was stated that the affidavit had been filed, the same should be accepted unless or until there was some contrary evidence, the reliance was placed on the judgment of the Hon'ble Apex Court in the case of Mehta Parikh Vs. ITO reported in 30 ITR 181.

6.3 It was reiterated that the assessee requested to the A.O. vide a letter (copy of which is placed at page no. 34 of the assessee's paper book) for issuing the summons to Shri Hardev Singh and Shri Maninder Singh Sahi for calling more information as the A.O. may desire and that complete addresses of the aforesaid persons were given but the A.O. had done nothing therefore the addition made by the A.O. and sustained by the Ld. CIT(A) was not justified. Reliance was place on the following case laws :

- *CIT Vs. Orissa Corporation (P) Ltd. [1986] 159 ITR 78 (SC)*
- *Add. CIT Vs. Hanuman Aggarwal [1985] 151 ITR 150 (Patna)*
- *DCIT Vs. Rohini Builders [2002] 256 ITR 360 (Guj)*
- *M/s Suraj Stones Corporate Ltd. Vs. ITO, Bengaluru in ITA No. 52/Bang/2020 vide order dt. 18/02/2021 (ITAT Bangalore)*
- *Orient Trading Co. Ltd. Vs. CIT reported in 49 ITR 723 (Mum)*
- *Shri Chunni Lal reported in 211 ITR 11 (Statue) (P&H)*

6.4 It was submitted that the deceased assessee apart from declaration from the depositors had also furnished evidences in the form of bank pass book of Shri Maninder Singh Sahi in Canada coupled with the remittance advices which were not doubted, therefore the reliance placed by the Ld. CIT(A) upon the Judgment of Human Probability did not hold good when documentary evidences in the form of remittance

certificates, bank pass book, copy of passport were furnished by the assessee and also a request was made to issue summons under section 131 of the Act, if the A.O. had any doubt. The reliance was placed on the following case laws:

- *Daulat Ram Rawat Mal reported in 87 ITR 349 (SC)*
- *Sarogi Credit Corporation Vs. CIT [1976] 103 ITR 344 (Patna)*

6.5 It was further stated that the addition under section 69A of the Act could have been made if unexplained income which was not recorded in the books of account but in the present case amount had been recorded in the book of account and even the source had been explained, therefore the addition made by the A.O. and sustained by the Ld. CIT(A) was not justified. Reliance was placed on the following case laws :

- *DCIT Vs. M/s. Himland Agro Foods Ltd., & Others in ITA No. 743, 745 & 747/Chd/2013 (Chd Trib) order dt. 17/01/2017*
- *ITO Vs. Sukamal Sikdar in ITA No. 146/Kol/2012 (Kolkata Trib)*
- *ITO Ward 3(3), Surat Vs. Shri Karim K. Lakhani in ITA No. 220/Ahd/2010 (Ahd Trib) order dt. 13/12/2013*
- *Sarogi Credit Corporation Vs. CIT [1976] 103 ITR 344 (Patna)*
- *Jaypee timber & Veneer Mills (P.) Ltd. vs. CIT (1983) 12 Taxman 191 (Gauhati)*
- *Smt. Sarika Jain Vs. CIT, Bareilly (2017) 84 taxmann.com 64 (Alld)*
- *Suraj Stones Corporation Ltd. Vs. ITO in ITA No. 52/Bang/2020 order dt. 18/02/2021 of SMC "C" Bench, Bangalore.*

Copies of the aforesaid orders were furnished which are placed on record.

7. In his rival submissions the Ld. DR strongly supported the orders of the authorities below and reiterated the observations made by the Ld. CIT(A) in para 5.2 of the impugned order. It was further submitted that the evidences in the form of bank statement was not sufficient to prove the creditworthiness particularly when the simple declaration had been furnished. It was submitted that since the assessee failed to establish the creditworthiness and the genuineness of the transaction, the Ld. CiT(A) was justified in sustaining the addition made by the A.O.

8. In his rejoinder the Ld. Counsel for the assessee submitted that the amount received by the deceased assessee was credited in the capital account and since the

firm in which the deceased assessee was doing the business, was a partnership concern, it was immaterial whether the amount was credited in the capital account of the proprietor or was shown separately as an advance for investment, reference was made to page no. 19 of the assessee's paper book which is the copy of the capital account of the deceased assessee.

9. We have considered the submissions of both the parties and perused the material available on the record. In the present case it is not in dispute that the assessee received Rs. 19,00,000/- from his relative Shri Hardev Singh through banking channels and also received Rs. 99.84 lacs (Rs. 37.55 lac + Rs. 62.29 lacs) from Shri Maninder Singh Sahi S/o Shri Hardev Singh through banking channel. The aforesaid amounts were credited in the capital account of the deceased assessee, copy of which is placed at page no. 19 of the assessee's paper book. The A.O. accepted the amount of Rs. 19,00,000/- received from Shri Hardev Singh but had not accepted the amount of Rs. 99.84 Lacs received from his son Shri Maninder Singh Sahi although both of them were residing in Canada, were related to the assessee and sent the amount through banking channel.

9.1 In the present case the A.O. invoked the provisions of Section 69A of the Act while making the impugned addition. The provisions contained in the said section read as under:

" 69A. Where in any financial year the assessee is found to be the owner of any money, bullion, jewellery or other valuable article and such money, bullion, jewellery or valuable article is not recorded in the books of account, if any, maintained by him for any source of income, and the assessee offers no explanation about the nature and source of acquisition of the money, bullion, jewellery or other valuable article, or the explanation offered by him is not, in the opinion of the Assessing Officer, satisfactory, the money and the value of the bullion, jewellery or other valuable article may be deemed to be the income of the assessee for such financial year."

9.2 In the instant case the entries relating to the advances received from Shri Hardev Singh and his son Shri Maninder Singh Sahi from Canada were recorded in the books of accounts and the assessee also explained that this amount was received as an advance for making the investment in the property by the said persons and the assessee was engaged in the property business. The A.O. therefore was not justified in invoking the provisions of Section 69A of the Act particularly when the entries were

recorded in the books of accounts maintained by the assessee and the explanation relating to the purpose of receiving the advances was given, identity of the person from whom amount was received, was not in doubt, the entries were through banking channel and it is not the case of the A.O. that the assessee went to Canada then put his money in the account of the depositor i.e; Shri Hardev Singh and Shri Maninder Singh Sahi which was remitted back, therefore, the addition made by the A.O. and sustained by the Ld. CIT(A) was not justified particularly when the credit of Rs. 19,00,000/- in the similar circumstances from Shri Hardev Singh had been accepted but the advance amounting to Rs. 99,84,046/- received from his son Shri Maninder Singh Sahi was doubted and added to the income of the assessee. In our opinion the A.O. was not justified in blowing hot and cold in the same wind pipe.

9.3 On a similar issue the ITAT Chandigarh Bench "B" Chandigarh in ITA No. 825/Chd/2007 for the A.Y. 2004-05 in the case of Shri Ashok Kumar Prop. M/s Shree Shankerjee Rice & Genl. Mills, Sangrur Vs. ACIT, Circle, Sangrur vide order dt. 18/11/2009 held as under:

19. The onus on the assessee in respect of any cash loan received during the year is to establish the identity, creditworthiness and genuineness of the transactions u/s 68 of the Act. The assessee before us has discharged his onus of complying with the three conditions in respect of loan received during the year. The identity of the person being father of the assessee stands established in view of the statement recorded during the course of assessment proceedings. The credit worthiness of the person is also established by the series of evidence filed, wherein in addition to the agriculture income earned by him, the father of assessee has shown the receipt of money by way of return of loans, which were advanced as per registered mortgage deed, placed before us in the paper book. Further, the said amount then being transferred to the bank account of the father of the assessee from where the cheques have been issued to the propriety concern of the assessee establishes the genuineness of transaction. In the totality of facts and circumstances of the case, the genuineness of transactions stands established. The amounts have been advanced through account payee cheques and we find no merit in the addition being made on this account. Their lordships of Hon'ble Supreme Court in CIT Vs. Chuni Lal [211 ITR (8T) 11] had held that cash credits received through bank account of wife, son and daughter in law could not be added unless it is proved that they were benamidars of the assessee. In the facts of present case, father of assessee has proved the availability of cash in hands. The requirement of law is not to prove the source of source of cash credit. Accordingly, we direct the Assessing officer to delete the addition of Rs. 35 lakhs credited to the books of the assessee, being on account of loan received from the father of the assessee. Thus the grounds No. 8 & 9 raised by the assessee are allowed."

9.4 In the present case also the assessee furnished the details relating to the source of advance received by him, the amount in question was received from Shri Maninder Singh Sahi S/o Shri Hardev Singh of Canada which was received through banking

channel, the assessee furnished all the details and informed the address of the person from whom the amount was received and also requested the A.O. to summon the person if there was any doubt. But the A.O. had not taken any step for issuance of the summon under section 131 of the Act, therefore the addition made by the A.O. and sustained by the Ld. CIT(A) was not justified.

A similar view has been taken by the ITAT, Bangalore "SMC" Bench in the case of M/s Suraj Stones Corporation Ltd. Vs. ITO in ITA No. 52/Bang/2020 order dt. 18/02/2021 wherein the relevant findings have been given as under:

9. I have carefully considered the rival submissions. It is clear from the orders of the revenue authorities that they not made any reference to the documentary evidence filed by the assessee. The case of the Revenue appears to be that M/s. Sneha International was rotating cash by transferring funds to various entities. M/s. Sneha International received cash and thereafter transferred funds to M/s. Sherawali Corporation and M/s. Venkata Industries who in turn transferred funds to the Assessee in the form of RTGS bank Transfer. The claim of the Assessee was that the receipts by the Assessee from the aforesaid two parties was for sale of shares of a company by name Mag Impex Ltd., was not disbelieved either by the AO or the CIT(A). As far as the assessee is concerned, he has filed confirmation of Sherawali Corporation and Venkata Industries. Copies of which are at pages 32 and 33 of the Paper Book. The CIT(A) has ignored this confirmation on the ground that the signature of the confirming parties were barely visible. The address of the confirming parties are very much available in the confirmation and if any doubt persisted on the veracity of the confirmation, then the proper course would have been to issue summons to the confirming parties to find out the truth or otherwise of the transactions on sale of shares on account of which monies were received by the assessee through banking channels. Without resorting to such process, I am of the view that the CIT(A) has confirmed the addition made by AO ignoring the evidence available on record. In my view the evidence filed by the assessee satisfactorily explains the credits in question and the impugned addition has been made ignoring the material on record on the basis of surmises and conjectures. There is an allegation that it is Assessee's money which went to Sneha International and that was deposited by Snehal International in a bank account and from that bank account funds were transferred to M/S.Sherwali Corporation and M/S.Venkata Industries, but there is no evidence to substantiate such allegation.

10. As far as the decision cited by the learned DR is concerned in the decision rendered in the case of Mohana Kala (supra), the Hon'ble Supreme Court has emphasized that the assessee did not contend with the material and circumstances available on record not justifying credit being treated as income. In the present case, I am of the view that the assessee has produced material evidence to show that the sum in question was received on account of sale of shares and no evidence has been brought on record to counter the plea of the assessee. In the case of Vikram Singh (supra), the Hon'ble Delhi Court held that the facts and circumstances of the case established that transactions were dubious. As already stated, no such evidence has been brought on record in the present case except to make an allegation that Sneha International was involved in rotating cash and the bank transactions in question had been made by Sneha International in favour of M/S. Sherwali Corporation and M/S. Venkata Industries after depositing such cash in their bank account. The learned Counsel has rightly placed reliance on the decision of the Hon'ble Supreme Court rendered in the case of Orissa Coporation Pvt. Ltd., 159 ITR 78 (SC) and Hon'ble Patna High Court in the case of ACIT Vs. Hanuman Agarwal 151 ITR 150 (Patna) for the proposition that without issuing summons under section 131 of the Act to a party who filed confirmation, no adverse inference can be drawn by the AO. In the light of the facts and

circumstances of the case, I am of the view that the addition made by the AO and sustained by the CIT(A) deserves to be deleted and the same is directed to be deleted. Appeal of the assessee is accordingly allowed.

9.5 In the present case also the assessee received the impugned amount through banking channel from Shri Maninder Singh Sahi of Canada for making the investment in the property. The assessee also furnished the relevant details to the A.O. and also requested to summon the concerned parties under section 131 of the Act but the A.O. did not accede to the request of the assessee and made the addition, therefore, the addition made by the A.O. and sustained by the Ld. CIT(A) was not justified. Moreover the assessee furnished an Affidavit dt. 01/12/2016 before the A.O. copy of which is placed at page no. 36 to 37 of the assessee's paper book and read as under:

I, Jaskiran Singh Bajwa, S/o Late Sh. Joginder Singh Bajwa, having a permanent residence at # 3077, Sector 19D, Chandigarh, **PAN: AHDPB1S73D**, do hereby solemnly affirm & declare as under that -

1. I have taken an **advance money** in form of interest free unsecured loan from father and son namely **Sh. Hardev Singh** s/o Sh. Joginder Singh Sahi, resident of village - Pambra, P.O-Bhunga, District-Hoshiarpur (PB), having present residence at #6792, 146B Street, Surrey, BC, Canada of **Rs 19,00,000** /- in my HDFC account no 05971000013800 on 9th May 2013 and from **Sh. Maninder Singh Sahi** s/o Sh. Hardev Singh, of **Rs 99,84,046/-** via AXIS bank on following date and transaction ID's.

Date	Transaction ID	Amount
14/05/2013	S84376008	37,55,262
22/11/2013	S86406704	62,28,784
Total		99,84,046/-

2. Further, the above said **advance money** was given by the above mentioned father and son, namely Sh. Hardev Singh and Maninder Singh Sahi, to me, with the motive of making some investment in properties in India. But since, no deal could get materialized because of the poor market sentiments & conditions and hence, I shall be repaying back the above said advance of the total amount of Rs 1,18,84,046/- to Sh. Hardev Singh and Maninder Singh Sahi, soon as per the availability of funds.

3. Further, the above said advance money was given to me by Sh. Hardev Singh and Maninder Singh Sahi, out of free-will and without any intention evade any kind of taxes.

I have taken an **advance money** in form of interest free *unbt5oult,^* loan from father and son namely **Sh. Hardev Singh** s/o Sh. Joginder Singh Sahi, resident of village - Pambra, P.O-Bhunga, District-Hoshiarpur (PB), having present residence at #6792, 146B Street, Surrey, BC, Canada of **Rs 19,00,000** /- in my HDFC account no 05971000013800 on 9th May 2013 and from **Sh. Maninder Singh Sahi** s/o Sh. Hardev Singh, of **Rs 99,84,046/-** via AXIS bank on following date and transaction ID's.

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2. Further, the above said **advance money** was given by the above mentioned father and son, namely Sh. Hardev Singh and Maninder Singh Sahi, to me, with the motive of making some investment in properties in India. But since, no deal could get materialized because of the poor market sentiments & conditions and hence, I shall be repaying back the above said advance of the total amount of Rs 1,18,84,046/- to Sh. Hardev Singh and Maninder Singh Sahi, soon as per the availability of funds.

3. Further, the above said advance money was given to me by Sh. Hardev Singh and Maninder Singh Sahi, out of free-will and without any intention to evade any kind of taxes.

9.6 The assessee also furnished the declaration from Shri Maninder Singh Sahi alongwith copy of the Passport (copies of which are placed at page no. 52 and 53 of the assessee's paper book). The assessee also furnished the confirmation from Axis Bank Ltd. to substantiate that the deposits in the bank account of the assessee was received in foreign currency from Shri Maninder Singh of Canada (copy of which is placed at page no. 55 and 56 of the assessee's paper book). The A.O. did not doubt the contents of the affidavit furnished by the deceased assessee when he was alive before the A.O. and declaration from the depositor as well as confirmation from the bank, the contents of the aforesaid documents were not doubted, therefore, the impugned addition made by the A.O. and sustained by the Ld. CIT(A) was not justified, in view of the ratio laid down by the Hon'ble Apex Court in the case of Mehta Parikh & Co. Vs. ITO [1956] 30 ITR 181 held as under :

" as the cash book of the appellant was accepted, and the entries therein were not challenged, and neither further account nor voucher were called for, and the persons who gave the affidavit were not cross examined, it was not open to the Revenue to challenge the correctness of the cash book entries or the statement made in the affidavit."

9.7 In the present case also the entries were made in the books of account maintained by the assessee and the entries in question appeared in the ledger account of the assessee, those were appearing in the bank account. The assessee also furnished an affidavit, the statement made therein was not doubted, therefore by keeping in view the ratio laid down by the Hon'ble Apex Court in the aforesaid referred to case, the addition made by the A.O. and sustained by the Ld. CIT(A) was not justified. We therefore, delete the addition of Rs. 99,84,046/- made by the A.O. and sustained by the Ld. CIT(A).

10. In the result, the appeal of the Legal heir of the deceased assessee is allowed.

(Order pronounced in the open Court on 23/07/2021)

Sd/-

आर.एल. नेगी

(R.L. NEGI)

न्यायिक सदस्य/ Judicial Member

AG

Date: 23/07/2021

Sd/-

एन.के.सैनी,

(N.K. SAINI)

उपाध्यक्ष / VICE PRESIDENT

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

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