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

श्री संदीप गोसाई, न्यायिक सदस्य एवं श्री विक्रम सिंह यादव, लेखा सदस्य के समक्ष
BEFORE: SHRI SANDEEP GOSAIN, JM & SHRI VIKRAM SINGH YADAV, AM

आयकर अपील सं./ITA. No. 808/JP/2018
निर्धारण वर्ष/Assessment Years : 2008-09

Shri Shyam Gidwani 3-N, A-16, Jawahar Nagar, Jaipur.	बनाम Vs.	The ITO, Ward-6(1), Jaipur.
स्थायी लेखा सं./जीआईआर सं./PAN/GIR No.: AGBPG 9944 Q		
अपीलार्थी/Appellant		प्रत्यर्थी/Respondent

निर्धारिती की ओर से/ Assessee by : Shri Mahendra Gargieya (Adv.) &
Shri Devang Gargieya (Adv.)
राजस्व की ओर से/ Revenue by : Shri A.S. Nehra (Add.CIT)

सुनवाई की तारीख/ Date of Hearing : 04/10/2021
उदघोषणा की तारीख/Date of Pronouncement : 21/10/2021

आदेश/ ORDER

PER: VIKRAM SINGH YADAV, A.M.

This is an appeal filed by the assessee against the order of ld. CIT(A)-2, Jaipur dated 15.03.2018 for the assessment year 2008-09.

2. Briefly the facts of the case are that based on review of the AIR information, the Assessing Officer observed that the assessee has made cash deposit of Rs. 22,97,600/- in his bank account maintained with ICICI Bank. Given that the assessee has not filed any return of income, the AO believed that income to the extent of Rs. 22,97,600/-

has escaped assessment and reasons were recorded and notice U/s 148 was issued on 18.03.2015. In response, the assessee filed his return of income declaring total income of Rs. 79,950/- and thereafter, after calling for information/explanation from the assessee, the assessment was completed U/s 147 r.w.s. 143(3) vide order dated 23.10.2015 at an assessed income of Rs. 15,77,550/- by making addition of Rs. 14,97,600/- U/s 69A of the IT Act.

3. Being aggrieved, the assessee carried the matter in appeal before the ld. CIT(A) who has since confirmed the addition so made by the Assessing Officer. Again the said findings and order of the ld CIT(A), the assessee is now in appeal before us.

4. In ground No. 1 & 2, the assessee has challenged the assumption of jurisdiction by the Assessing officer U/s 147 of the Act.

5. In this regard, the ld. AR submitted that the law mandatorily requires the Assessing officer to obtain prior approval of the PCCIT/CCIT/CIT before issuance of notice u/s 148, where such notice is issued after lapse of 4 years from the end of the relevant assessment year and from the JCIT in case the notice u/s 148 is issued before 4 years from the end of the relevant assessment year. It was submitted that it is also established principle of law that if a particular authority has been designated to record his/her satisfaction on any particular issue, then it is that authority alone who should apply his/her independent mind to record his/her satisfaction. The specific designation of Pr. CIT/CCIT/CIT w.r.t

obtain sanction before issuing of notice u/s 148 after 4 years, has been enacted by the legislation with a particular intent.

6. It was submitted that in the instant case, notice u/s 148 (which is w.r.t A.Y. 2008-09) was issued on 18.03.2015 i.e. beyond the period of 4 years, hence as per Section 151, approval of Pr. CIT/CCIT/CIT should have been obtained. However, a bare perusal of reasons recorded (received with AO's letter dated 12.04.2021) shows that such an approval has been taken from ld. JCIT, Range - 6, who is not the authorized & competent authority u/s 151 to accord such a sanction. Hence, the impugned notice u/s 148 and the consequently, impugned assessment order passed u/s 147 must be quashed on this ground itself in absence of requisite approval from the competent authority U/s 151 of the Act.

7. In support of his contentions, reliance was placed on the Hon'ble Delhi High Court decision in case of CIT vs. SPL's Siddhartha Ltd. (2012) taxmann.com 138, Hon'ble Rajasthan High Court in case of Dhadda Exports vs. ITO (2015) 58 taxmann.com 176 and Hon'ble Mumbai High Court decision in case of Miranda Tools (P.) Ltd. vs. ITO (2020) 114 taxmann.com 584. It was submitted that in the aforesaid decision of Hon'ble Bombay High Court, an earlier decision in case of CIT vs. Aquatic Remedies (P.) Ltd. [2018] 96 taxmann.com 609 again passed by the Hon'ble Mumbai High Court has been considered and an appeal filed by the Department against the said decision before the Hon'ble Supreme Court has since been dismissed and case decided in favour of the assessee.

8. Per contra, the ld. DR has relied on the order of the lower authorities and it was submitted that the reopening of the assessment was done after recording of the reasons that the income to the tune of Rs 22,97,600 has escaped assessment and after obtaining prior approval of the JCIT who was the competent authority U/s 151 of the Act. It was submitted that once an approval has been taken from the competent authority, the AO was not in breach of law and there is no infirminity in the action of the AO in assumption of jurisdiction u/s 147 where the AO has recorded specific reasons based receipt of information that the income has escaped assessment. The ld DR accordingly supported the order of the lower authorities.

9. We have heard the rival contentions and perused the material available on record. The proposition which has been advanced by the ld A/R and raised for our consideration is that the Assessing officer has failed to sought the authorization from the relevant and competent authority prior to issuance of notice u/s 148 of the Act and the impugned notice u/s 148 and the consequently, the assessment order passed u/s 147 therefore be quashed and set-aside. What is therefore required to be seen is the law as applicable prior to the issuance of notice u/s 148 and requirement therein in terms of authority which was competent to authorize the issuance of such notice.

10. It is noted that the provisions of section 151 have undergone a change and substituted by the Finance Act, 2015, w.e.f. 1.06.2015. Undisputedly, in the instant case, the notice U/s 147 of the Act was

issued on 18.03.2015 and in terms of unamended law as existing prior to issuance of notice u/s 148 and applicable in the instant case, the provisions of section 151 read as under:-

> *"151. Sanction for issue of notice.-(1) In a case where an assessment under sub-section (3) of section 143 or section 147 has been made for the relevant assessment year, no notice shall be issued under section 148 [by an Assessing Officer, who is below the rant of Assistant Commissioner [or Deputy Commissioner], unless the [joint] Commissioner is satisfied on the reason recorded by such Assessing Officer that it is a fit case for the issue of such notice:*
>
> *Provided that, after the expiry of four years from the end of the relevant assessment year, no such notice shall be issued unless[Principal Chief Commissioner or] the Chief Commissioner or [Principal Commissioner' or Commissioner is satisfied, on the reasons recorded by the Assessing Officer aforesaid, that it is a fit case for the issue of such notice.*
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> *(2) In a case other than a case falling under sub-section (1), no notice shall be issued under section 148 by an Assessing Officer, who is below the rank of [Joint] Commissioner, after the expiry of four years from the end of the relevant assessment year, unless the [Joint] Commissioner is satisfied, on the reasons recorded by such Assessing Officer, that it is a fit case for the issue of such notice."*

11. Admittedly, in the instant case, no assessment u/s 143(3) or section 147 has been made for the impugned assessment year prior to issuance of notice u/s 148 of the Act and the impugned notice u/s 148 has been issued after the expiry of period of 4 years from the end of the impugned assessment year i.e. AY 2008-09. The provisions of Section 151(2) of the Act will be applicable in the instant case and in

terms of which, the prior approval of the JCIT is required to be obtained before issuance of notice U/s 148 of the Act that it is a case fit case for such issuance of such notice and thus, JCIT has been designated as the competent authority. During the course of hearing, a report was called from the AO and on review of the report provide by ITO, Ward 6(1), Jaipur dated 12.04.2021, it is noted that the approval U/s 151 of the Act has been obtained from the Joint Commissioner of Income Tax, Range-6, Jaipur. Therefore, it is manifest from the record that the approval has been taken from the JCIT who was the competent authority at the relevant point of time before issuance of notice U/s 148 of the Act.

12. The contention advanced by the ld A/R that approval from Pr. CIT/CCIT/CIT should have been obtained in the instant case as the notice u/s 148 has been issued after lapse of 4 years from the end of the relevant assessment year is apparently guided by the amended law which, as we have noted above, is made effective by the legislature w.e.f 1.06.2015 and there is nothing in law which provides that the same will be applicable retrospectively. The amended law is not applicable in the instant case as it is a settled legal proposition that the law as applicable on the date of issuance of notice has to be seen and not the law which has been amended subsequently as the authorization of the competent authority has to be obtained prior to issuance of such notice and not post-facto and it is only the authority who is competent at the relevant point in time which can authorize such action. Therefore, the contention so advanced cannot be accepted.

13. We have also gone through the decision of the Hon'ble Rajasthan High Court in case of Dhadda Exports (supra) heavily relied upon by the ld A/R. In that case, the facts of the case were that the original assessment was completed u/s 143(3) and thereafter, notice u/s 148 was issued after expiry of four years from the end of the relevant assessment year and in terms of proviso to section 151(1), the approval of CCIT or CIT has to be taken whereas the AO had sought approval of the JCIT and in that context, the Hon'ble High Court held that where specific provisions have been inserted in terms of proviso to section 151(1), the Assessing officer cannot find escape route by taking recourse to section 292B of the Act and the notice so issued therefore was held to be invalid in eyes of law. The relevant findings of the Hon'ble High Court are respectfully noted as under:

> *"11. The objection to show cause-notice under Section 148 of the IT Act has been rejected by the Income Tax Officer by impugned order dated 15.01.2015 citing, apart from various reasons, also the reason that required sanction of Commissioner of Income Tax was not taken due to oversight that assessment of the assessee firm had already been completed under Section 143(3). It was stated that mistake was committed inadvertently and is curable by recourse to Section 292B of the IT Act. That plea is liable to be rejected because when specific provision has been inserted to the proviso to Section 151 (1), as a prerequisite condition for issuance of notice, namely, sanction of the Commissioner or the Chief Commissioner, the assessing officer cannot find escape route for not doing so by relying on Section 292B. The Delhi High Court in CIT Vs. SPL's Siddhartha*

Limited, has while holding that when a particular authority has been designated to record his/her satisfaction on any particular issue, then it is that authority alone who should apply his/her independent mind to record his/her satisfaction and satisfaction so recorded should be 'independent' and not 'borrowed' or 'dictated' satisfaction, rejected contention of the revenue that obtaining approval from the authority other than the one who was competent to grant such approval, was mere irregularity committed by the Income Tax Officer. And that it was rectifiable under Section 292B of the IT Act cannot be accepted as such irregularity is not curable under Section 292B.

12. In the opinion of this court also, resort to Section 292B of the IT Act cannot be made to validate an action, which has been rendered illegal due to breach of mandatory condition of the sanction on satisfaction of Chief Commissioner or Commissioner under proviso to sub-section (1) of Section 151. This is an inherent lacunae affecting the very correctness of the notice under Section 148 and is such which is not curable by recourse to Section 292B of the IT Act."

14. In the instant case, as against provisions of section 151(1) read with proviso thereto, the provisions of section 151(2) are applicable as no assessment has been completed earlier either u/s 143(3) or section 147 and in terms of mandatory condition prescribed under section 151(2), the Assessing officer has duly sought and obtained approval from the JCIT who was the competent authority as so prescribed under

law before issuance of notice u/s 148 of the Act. This is thus no oversight on part of the Assessing officer and no inherent lacunae affecting the very correctness of the notice issued under Section 148 of the Act. Therefore, the said decision is distinguishable on facts and doesn't support the case of the assessee. Similar is the case with the other decisions relied upon by the ld A/R which stand distinguishable on facts. Therefore, the contention so advanced by the ld A/R cannot be accepted and the same is hereby dismissed.

15. Another contention which has been raised by the ld A/R is that a specific request was made to the AO vide letter dated 10.01.2017 to supply copy of the reasons recorded prior to issuance of notice u/s 148 but no response was given by the AO and reliance was placed on various Court decisions in support of the proposition that mandatory requirement to communicate the reasons has not been followed by the AO which renders the subsequent proceedings as invalid in eyes of law.

16. In this regard, firstly, it is noted that the AO in the assessment order has stated that "the reasons for reopening were duly conveyed to the assessee" and therefore, on this basis itself, where the reasons have been duly communicated to the assessee, the contention so advanced by the ld A/R deserve to be rejected.

17. Having said that, it is noted that the assessment was completed u/s 147 r/w 143(3) vide order dated 23.10.2015 and after completing of the assessment proceedings, the assessee is claiming to have requested the AO vide his letter dated 10.01.2017 to supply copy of the reasons.

We therefore find that during the entirety of the assessment proceedings, the assessee has neither sought copy of the reasons so recorded nor any objections have been filed against such reasons during the assessment proceedings and therefore, where the assessee has not sought and has infact participated in the assessment proceedings, we don't find there is any prejudice which has been caused to the assessee and even there is no violation of any of the directions so laid down by the Courts in this regard. Thus, the contention so advanced cannot be accepted.

18. Another contention which has been raised by the ld A/R is that the AO had no reason to believe but reason to suspect that the income has escapement assessment and there is no honest application of mind and it was clearly a case of borrowed satisfaction. We have gone through the reasons so recorded by the Assessing officer and find that the AO was having sufficient material in his possession for formation of prima facie belief that the income has escaped assessment in the hands of the assessee. In the result, the contention so advanced cannot be accepted.

19. In the result, ground no. 1 and 2 of assessee's appeal are dismissed.

20. Now, coming to the merits of the case and ground of appeal no. 3 taken by the assessee. In this regard, the ld A/R submitted that based on the AIR information, when asked as regards the deposits of Rs.22,97,600/- in the bank account, the assessee produced a cash book

with detailed narration of the entries made therein. The AO tabulated self-explanatory chart of such deposits at pg 2 & 3 of the assessment order. The explanations furnished w.r.t. various deposits, was accepted to the extent of Rs.4 lakhs being the gifts received by the assessee from his father and also the advance of Rs.4 lakhs received towards the sale of property G-8, Raj Plaza, Raja Park Shop, Jaipur. However, the explanation w.r.t. the remaining balance of Rs.14,97,600/- was disbelieved and rejected as per chart below:

S.No.	Particulars	Amount (Rs.)	Source
1.	Opening Balance	3,20,000/-	Cash Book (AO Pg-3)
2.	Deposited by Smt. Dimple (Wife of the assessee) out of her past savings)	6,00,000/-	Home Tuitions, Cash Gifts received on Festivals Stridhan
3.	Balance Amount (various amounts deposited in Bank).	5,77,600/-	Out of Bank Withdrawals
	Total	14,97,600/-	

Accordingly, an amount of Rs.14,97,600/- was added u/s 69A as unexplained income of the assessee for the given year. In the first appeal, the assessee filed detailed written submission dated 09.02.2017 and additional written submission dated 22.02.2017, however, the ld. CIT(A) summarily confirmed the addition vide order dated 15.03.2018 in appeal no. 363/15-16.

21. It was submitted that the lower authorities rejected the contention of the availability of opening cash in hand of Rs.3,20,000/- simply saying that the assessee failed to file any documentary evidence in support and that the assessee was not filing ROI regularly which does not appear to be a correct fact. It is submitted that the assessee was already filing ROI in the past as well. The recent being in AY 2006-07, when the ROI was filed on dated 15.09.2006 declaring total income of Rs.96,355/-.

22. It was submitted that it was mainly out of a gift of Rs.3 Lakhs received from the mother through her bank account vide cheques no. 769252 and 769251 in the F.Y. 2004-05 and 2005-06 respectively and even a copy of bank statement of the assessee showing the deposit of Rs.3,00,000/- was submitted before the AO vide letter dated 05.10.2015, and even reproduced and admitted by the AO at Pg 3. However, since the same was not available while appearing before the CIT (A), a specific request was made to the AO vide letter dated 10.01.17 to supply a copy of such bank statement but unfortunately there was no response given by the AO. Unfortunately, even the CIT (A) has comfortably ignored these facts and instead of calling for the assessment records, wrongly stated that Bank account of the assessee, showing corresponding credit, was not produced, which fact is contrary to the record available before AO.

23. It was submitted that the lower authorities have completely ignored such crucial evidences, which directly prove the source of the

opening balance. It is a fact that neither the AO nor the CIT(A) made any enquiry directly from the bank to ascertain the truth of the claimed transfer of gift amount from mother of the assessee. In absence of categorical rebuttal of cogent evidences though available on record, there is no scope of any assumption or presumption. If the revenue fails to discharge the onus shifted to them they are bound to accept the explanation and un-rebutted evidence furnished by the assessee. Hence, opening balance of Rs. 3,00,000/- was fully established. The rest minor amount of Rs.20,000/-, was out of the past savings of the assessee. The impugned addition to this extent, therefore, deserves deletion.

24. It was submitted that the wife of the assessee is aged 28 yrs and belongs to Sindhi community. It is a matter of common knowledge in Sindhi community the parents and other relatives from both the sides are used to give handsome gifts to her daughter/daughter-in-law on various occasions. Moreover, ladies are bold and open minded and are normally engaged in some income earning activity.

25. It was submitted that there apart, she had been taking batch tuitions of the children upto 8th standard since last several years. Alist of students was submitted. The ld. AO rejected the contention simply saying that it seems to be an afterthought story, which is not at all a valid ground to reject the explanation in as much as an evidence was submitted by the assessee which must have been rebutted or controverted by the AO and could not be ignored merely on suspicion. It is a fact that AO did not make any enquiry from any of the tutors /

students even though their mobile numbers were given. In absence of categorical rebuttal of cogent evidence available on record, there is no scope of any assumption or presumption. In addition, she was in receipt of customary gifts from both the sides on different occasions, regular pin money, which could constitute her Stridhan, the very fact of cash deposit by her, is the evidence of availability of past/current savings. The habit of savings in Indian society and particularly by the Women is well known in the world. The cash found and got exchanged during demonetization period is the best example. Thus, in any case, the human probability preponders in favor of the assessee keeping in mind the entirety of the facts and circumstances that, a lady of 38 years from sindhi community, must have saved at least to the extent claimed.

26. It was also submitted that a reading of the impugned order suggest that the AO proceeded on mere suspicion and started with a negative mind in as much as the explanation w.r.t. the source of Rs.6 lakhs from the wife was also rejected in a few words. Similarly, he doubted the deposit of the bank of Rs.22,97,600/- saying that it was beyond imagination that a low paid employee was able to make savings of such a huge amount. Thus, the AO proceeded with a preconceived notion that the deposits made in the bank account was completely sourceless and that has certainly the acceptance of a valid and plausible explanation put forth by the assesse before him.

27. It was submitted that the assessee has been working since last several years. Belonging to Sindhi community where there is a tradition of entering into business at an early age, the appellant also started from

the age of 15 years and continued till he was 29 years in relevant assessment year and has been earning salary. He was in receipt of salary income of Rs. 84,000/- as evident from ROI filed on 15.09.2006 for AY 2006-07 and ROI filed on 26.08.2015 for AY 2008-09 (in response to notice u/s 148 of the Act. There apart, the current year income was Rs. 1,00,460/-.Thus, taking a fair average at the rate of Rs. 65,000 p.a. for the period of 14 years after reducing his out of pocket expenses he was in receipt of Rs. 8.50 lakhs.

28. It was further submitted that family of the appellant consisted of four members being himself, wife, one son around 4 years and father, who is residing their own house. Looking to their simple habits and no club membership nor other lavish expenses, being from sindhi community, their monthly expenses was Rs. 10,000 p.m. /1,20,000 p.a. which was met by the father only. Thus, the assessee could save Rs. 8.50 lakhs. Even assuming the contentions in the hands of wife of Rs. 6 lakhs is not accepted in full, the saving in the hand of the husband of around Rs. 3 lakhs (approx.) (Rs. 8.50 lakhs less Rs. 5.70 lakhs) was available for deposit.

29. It was submitted that the ld. AO completely ignored that it was not only deposits in the bank account but at the same time, the assesse also kept on making withdrawals from the same very bank account and the amount so withdrawn were certainly available with the assesse. The AO proceeded one way only completely ignoring the fact of withdrawal. Even assuming there was no evidence at all of the source, if the AO wanted to make use of the material i.e. bank account and the deposits

made therein, such material must have been used in the best possible manner to make a best judgment assessment. If he could rely on a part of the evidence, which was used against the assesse, he couldn't have ignored the other part of the same very evidence, simply because that other part was to the favor of the assessee. Based on the same very bank account, a chart has been prepared which shows the continuous cash deposits and cash withdrawals leading to a peak of Rs.16,66,100/- on dated 04.12.2007, out of which a sum of Rs.8,00,000/- has been accepted by AO (being the advance received of Rs.4 lakhs and gift received from father for Rs.4 lakhs) resulting in the remaining peak of Rs. 8,66,100/-. Out of this remaining amount, opening balance available of Rs.3,20,000/- of which a sum of Rs.3,00,000/- received on account of gift from mother duly supported by copies of cheques(PB 19-20), if considered, leaves a mere sum of Rs. 5,66,100/- which otherwise sourced from the savings of his wife. The ld. CIT (A) is silent on this aspect. In support, reliance was placed on the following decisions:-

- Sind Medical Stores vs. CIT (2015) 117 DTR 78 (Raj.)
- Chetan Gupta vs. ACIT (2013) 144 ITD 344 (Del.)
- Smt. Maina Devi v/s ITO (2005) 98 TTJ 21 (JD)
- ACIT v/s Ram Gopal Manda (2008) 40 TW 16 (Jd)
- Thyarmal Bal Chand 165 ITR 453 (Raj).

30. It was submitted that the AO completely ignored the settled law that u/s 68, 69 etc. only a discretion has been conferred upon the AO to be exercised judiciously but he is not always obliged to make the addition if the explanation is not found satisfactory. Kindly refer CIT v/s

P. K. Noorjahan (1999) 237 ITR 570 (SC). In view of the above facts of availability of sufficient cash, the impugned addition may kindly be deleted in full.

31. Per contra, the ld. DR has relied on the order of the lower authorities and our reference was drawn to the findings of the ld CIT(A) at para 3.3 of her order which read as under:-

> *"3.3 …….It is seen that the AO has accepted an amount of Rs. 8 Lacs for which the sources had been explained, however regarding the balance amount the AR could not produce and documentary evidence for the claim made by it regarding the opening balance. As has been correctly observed by the AO regular returns of income are not being filed by the assessee and the claim of gift from the mother could not be proved. The copies of cheques produced in the present proceedings were illegible and the corresponding bank account of the assessee in which the same were deposited were also not produced. In view of the same, the explanation for this amount cannot be accepted. Again as regards the amounts given by the wife, no details whatsoever evidencing the availability of Rs. 6 Lakhs with her were produced either during the assessment proceedings or in the appellate proceedings, only general submissions regarding gifts, stridhan and tuitions were made. The balance amounts were explained through past savings and again were not supported by any evidences. As per the ITR filed for assessment year 2006-07 the assessee had only shown salary income of Rs. 84,000/- and income from other sources of 12,000/-, it is unimaginable how with such meager income, past savings of these amounts could be accumulated.*
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> *As regards the alternate plea taken by the AR regarding the peak credit, firstly this theory would apply when the deposits made are from explained scources whereas in the case of the appellant, the major deposits have remained unexplained. Reliance is placed on*

the decision of [2012] 25 taxmann.com 440 (Delhi) in the ITAT, Delhi bench 'E' Manoj Kumar Jain vs. ITO, the head note is reproduce below:-

"Section 69 of the Income-tax, 1961- unexplained investments – Assessment year 2006-07- where assessee could not explain source of amount deposited in bank, addition made under section 69 was justified [in favour of Revenue]

"Thus, it is clearly evident that the appellant could not explain the sources of the cash deposits made during the year in the savings bank account , the addition of the same as unexplained income under section 69A by the AO, is conformed. Ground of appeal is dismissed."

32. We have heard the rival contentions and perused the material available on record. The issue under consideration relates to source of cash deposits of Rs 14,97,600/- in the bank account maintained by the assessee.

33. Firstly, it has been claimed that an amount of Rs 3,20,000/- has been deposited out of opening cash in hand as on 1.04.2007 and the source of such opening cash in hand has been claimed to be receipt of gift of Rs 3,00,000/- from the assessee's mother in the financial year 2004-05 and 2005-06. The ld CIT(A) has returned a finding that claim of gift from the mother couldn't be proved and copies of cheques produced were illegible and corresponding bank account of the assessee in which the same were deposited were also not produced. It has been claimed before us that the copies of cheques as well as bank statement of the assessee showing deposit of cheque were submitted before the AO and the same has not been considered by the ld CIT(A). We accordingly remand the matter back to the file of the AO to verify the

said claim of the assessee and decide as per law after providing reasonable opportunity to the assessee.

34. Secondly, it has been claimed that an amount of Rs 6,00,000/- has been deposited out of tuition fee receipts from assessee's wife and in support of such contention, a list of students has been submitted along with their phone mobile numbers before the Assessing officer and no enquiry or categorical rebuttal has been done by the Assessing officer. If we were to consider the contention so advanced by the ld AR and look at the list of eight students along with tentative fees of Rs 800-1000/- shown against their name, we find that it adds up to a figure of Rs. 96,000/- on the higher side and still, the remaining amount remain to be unexplained. The explanation which has been submitted is that the assessee's wife has been teaching for past several years and she has been receiving the tuition fees from the students besides there are other household savings which have been handed over to the assessee for deposit during the year. We find that such an explanation has to be supported with certain credible facts and figures for each of the past years and should be balanced and not one-sided in terms of receipts, expenditure and savings for each of the past years and availability thereof. And therefore, a mere explanation without reasonable corroboration with facts and figures remains merely an assertion and which cannot be accepted on face value. In the result, the explanation so submitted in support of source of deposit of Rs 6 lacs cannot be accepted and is hereby dismissed.

35. Regarding the balance amount of Rs 5.77 lacs, it has been claimed to be out of past savings. We find that where the assessee has already claimed deposits of Rs 3.2 lacs out of opening cash in hand, the same is nothing the past savings which is available at the beginning of the year. In such a situation, we failed to understand how the assessee is claiming source of cash deposits out of opening cash in hands and past savings twice. In any case, no credible evidence has been placed on record in terms of past savings as so claimed and the contention so advanced is hereby dismissed.

36. Regarding alternate plea of working out the peak credit, it has been claimed that there are deposits which have been made out of earlier withdrawals during the year and the same has been ignored by the Assessing officer. In absence of any findings recorded by the AO, we set-aside the matter to the file of the AO to examine the said claim of the assessee and decide as per law after providing reasonable opportunity to the assessee.

In the result, the appeal of the assessee is partly allowed for statistical purposes.

Order pronounced in the open Court on 21/10/2021.

Sd/-	Sd/-
(संदीप गोसाई)	(विक्रम सिंह यादव)
(Sandeep Gosain)	(Vikram Singh Yadav)
न्यायिक सदस्य/Judicial Member	लेखा सदस्य/Accountant Member

जयपुर/Jaipur
दिनांक/Dated:- 21/10/2021.

*Santosh

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

1. अपीलार्थी/The Appellant- Shri Shyam Gidwani, Jaipur.
2. प्रत्यर्थी/ The Respondent- ITO, Ward-6(1), Jaipur.
3. आयकर आयुक्त/ CIT
4. आयकर आयुक्त/ CIT(A)
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, जयपुर/DR, ITAT, Jaipur.
6. गार्ड फाईल/ Guard File {ITA No. 808/JP/2018}

आदेशानुसार/ By order,

सहायक पंजीकार/Asst. Registrar