INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH "E": NEW DELHI
BEFORE SHRI H. S. SIDHU, JUDICIAL MEMBER
AND
SHRI PRASHANT MAHARISHI, ACCOUNTANT MEMBER
(Through Video Conferencing)

ITA No. 7129/Del/2017
(Assessment Year: 2014-15)

Om Perkash, D-81-B, 1st Floor, Krishna Park, Devil Road, Khanpur, New Delhi PAN: CGAPP7828M	Vs.	ITO, Ward-31(4), New Delhi
(Appellant)		(Respondent)

Assessee by :	Shafiq Khan, Adv
Revenue by:	Shri Gayasuddin Ansari, Sr. DR
Date of Hearing	18/11//2020
Date of pronouncement	28/12/2020

O R D E R

PER PRASHANT MAHARISHI, A. M.

1. This is an appeal filed by the assessee against the order of the ld CIT(A)-11, New Delhi dated 18.01.2017 for the Assessment Year 2014-15.

2. The assessee has raised the following grounds of appeal:-

"1. That the impugned Assessment Order dated 19-12-2016 passed by Ld. Assessing Officer, Ward 31(4), New Delhi is bad in law because whimsical and arbitrary additions has been made which was subsequently affirmed/upheld by Ld. CIT(Appeal)ll, New Delhi without any justifiable basis/rational approach although instruction as set out in Notification No. 73/16/68/IT/A.II dated 03-02-1969 issued by Ministry of Finance (Department of Revenue & Insurance), New Delhi were duly met out/complied.

2. That the Ld. Assessing Officer, Ward 31(4), New Delhi erred in law and in fact in making addition of Rs.49,50,000/-(Forty Nine Laces Fifty Thousand Only)by treating ""^Cash Deposit as Unexplained Cash Credits U/s.68^of The Income Tax, 1961 although all pertinent evidence regarding Source and arrangements of funds were duly explained and placed on record to the satisfaction of the Ld. Assessing Officer which was wrongly and injudiciously affirmed/upheld by the Ld. CIT(Appeal)l 1, New Delhi.

3. That the Addition of Rs.49,50,000/- (Forty Nine Laces Fifty Thousand Only) made by the Ld. Assessing Officer is required to be deleted for being illegal, unjustified ,arbitrary, exorbitant and without any basis or

justification which was fairly and correctly appraised/examined by Ld. CIT(Appeal-ll), New Delhi while passing order dated 04-10-2017.

4. *That the learned Assessing Officer , Ward 31(4), New Delhi has erred in law and in fact in charging interest under section 234A/B/C and D of the Income Tax Act, 1961.*
5. *That the learned Assessing Officer erred in law and in fact in initiating penalty proceedings under section 271(l)(c) of the Income Tax Act, 1961.*
6. *That the Appellant craves leave to add, modify, alter, delete or raise any other ground at the time of hearing of appeal.*
7. *That any other ground which may be raised with the permission of this Hon'ble Court."*

3. The facts of the case shows that assessee an individual assessed as a resident filed his return of income on 13 March 2015 declaring total income of ₹ 266,074 which was processed. The case of the assessee was selected for scrutiny under CASS for the reason that **cash deposits and saving bank account is more than the turnover**. During the year the assessee was engaged in the business of trading and manufacturing of bags and other related goods and declared income of ₹ 366,074 Under the head income from business of profession and claimed deduction of ₹ 1 lakh Under Chapter VIA .

4. On the issue of cash deposits , During the assessment proceedings the assessee stated that he had migrated from Pakistan to India on 17th of March 2013 to permanently settle and brought cash of ₹ 50 lakhs and gold, out of which cash of ₹ 20.90 lakhs and ₹ 27.50 lakhs was deposited in India into bank account number 7152 of ICICI bank and account number 2145 of United Bank of India respectively and filed the intimation/declaration to the income tax department on 9/05/2013 as per CBDT circular number 73A/2169 – I (A – 11) dated 20/2/1969.

5. The learned assessing officer asked the assessee to prove the genuineness of the facts regarding the details regarding the type of currency in which the cash of ₹ 50 lakhs was brought into India, the details of checkpoints where the cash of ₹ 50 lakhs was checked during immigration in the year 2013 and the details of the person from where the aforesaid currency was exchanged to the Indian currency. The assessee did not reply but sought adjournment. He did not comply with the notices of the learned assessing officer. Therefore the learned assessing officer issued the final show cause notice on 14/12/2016 asking assessee as to why the amount of ₹ 49.50

lakhs be added to his declared income in absence of details and the source and evidence of cash deposits of the above sum. The assessee did not comply with that show cause notice also and therefore the learned assessing officer made an addition of ₹ 4,950,000 holding as Under:-

> "9. Keeping in view the detailed facts, mentioned above, it can be said that the assessee has miserably failed (i) to prove the legal channel of transferring of funds in India,, (ii) to produced any villains of carriage, conversion/exchange and/or details of checkpoints where the aforesaid amount was checked and (iii) source of cash deposits in his bank accounts. Therefore, the provisions of Section 68 of the income tax act are clearly attracted in this case. The onus lies upon the assessee to prove the channel, source and genuineness of cash deposits in his bank accounts. The facts of the case clearly establish that the assessee has unexplained credit in his bank account in the shape of cash deposits. Since the assessee has failed to prove the genuineness of cash deposit of ₹ 50 lakhs mentioned above, the sum of ₹ 49.50 lakhs (in a sense of exempt it of ₹ 50,000/– as per CBDT circular number 73A/2169 – 90 (A – 11) dated 20/2/1969) is assessed to tax as unexplained cash credit u/s 68 of the income tax act."

6. Consequently the assessment order was passed u/s 143 (3) read with Section 144 of the income tax act on 19 December 2016 determining the total income of the assessee at ₹ 5,216,074/–.

7. The assessee aggrieved with the order of the learned assessing officer preferred an appeal before the learned CIT – A, who dealt with the whole issue as Under:-

> "4.2.1 The AR was asked vide order sheet entry dated 07.06.2017 to explain the source of funds and also to establish the link between the money claimed to have been brought from Pakistan and the cash deposited in bank accounts in India. The AR has vide his letter dated 18.09.2017 submitted as under:
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> "Regarding our reply/explanation to Money and Jewellery brought into India from Pakistan by the assessee namely Sh. Om Perkash and its subsequent compliance as per Notification No. 73/16/68/IT/AM dated 03-02-1969 issued by Ministry of Finance (Department of Revenue & Insurance), New Delhi, this is humbly submitted that the assessee had arrived from Quetta (Pakistan) to

India on 17-03-2013 and brought Cash of Rs.50 Laces and Gold Jewellary weighing 105.10 Gms(Approx.) which was duly declared with ITO Ward 23(3), New Delhi on 09-05-2013. (Copy of Declaration dated 09-05-2013 alongwith all Annexures is already placed on records as Annexure-3 with our detailed Reply dated 01-06- 2017).This is further submitted that as per Circular No. 5[F.No. 73A/2/69-IT(A-n),dated 20- 02-1969 the persons migrating from West Pakistan(vide Ministry of Finance Press Note dated 03-02-1969) can claim upto Rs. 50,000/-which shall be freely admitted by the Income Tax Authorities whereas claim above Rs. 50,000/- shall require adducing of evidence in support of claim for its Unking of transfer of Cash & Jewellery to India. Para 3 of the Circular No. 5[F.No.73A/2/69-Tr(A-lI\, dated 20-02-1969 read as under: -

"3. If the money has been brought into India through banking channels or in the form of assets like plant and machinery or stock-in-trade, for which the necessary import permits had been obtained, no questions at all are asked by the Income-tax Officers as to the origin of the money or assets brought in. It is only in case where the money is claimed to have been brought from outside otherwise than through banking channels and there is no evidence regarding the transfer of the money, that the department has to make enquiries about the source thereof. Even in these cases, having regard to the difficulties experienced by persons migrating from Pakistan, Burma and East African countries, instructions have been issued to the Income-tax Officers that such claims should be freely admitted up to the limit of Rs. 50,000 in each case provided the following conditions are satisfied:

1. The assessee migrated to India on or after the dates mentioned below from the countries shown against each and had no source of income in India:

	30-7-1962	*Mozambique [vide Ministry of Finance Press Note, dated 22-5-1967 (Circular No. 8, dated 22-5-1967printed as Annex I)).*
	1-1-1963	*Zanzibar, Kenya, Tanzania and Uganda [vide Ministry of Finance Press Note, dated 22-5-1967 (Circular No. 8, dated 22-5-1967 printed as Annex I)].*
	1-1-1964	*East Pakistan and Burma [vide Ministry of Finance Press Note dated 15-6-1964/22-5-1965 (Circular Nos. 16D, dated 15-6-1964 and 11, dated 22-5-1965printed as Annex 11 and Annex III respectively)}.*
	1-10-1965	*West Pakistan [vide Ministry of Finance Press Note, dated 3-2-1969).*

2. He had sufficient resources in the foreign country.

3. He had no source of income either in India or in any foreign country, other than the country from which he migrated, prior to migration and he was not assessed as *resident"in India either for the assessment year preceding the year in which he migrated or for earlier years.

4. The amount brought in has been duly introduced in the books regularly maintained in India and an intimation of such introduction is given to the Income-tax Officer within two months of the migrant's arrival

4. Cases not covered by preceding paragraph, namely;

a. where the money (in the case of Mozambique, Zanzibar, Kenya, Tanzania, Uganda, East Pakistan and Burma) and money and/or the personal jewellery in the case of West Pakistan claimed to have been brought exceeds Rs. 50,000; or

b. where the assessee had some sources of income either in India or in any foreign country, other than the one from which he had migrated, prior to migration; or

c. where the assessee was assessed as resident in India either for the assessment year preceding the year of his/her migration or in the earlier years, will not be entitled to any special concession.

Thus, any claim by such migrants that the funds or the jewellery have been brought from the abovementioned countries, will be accepted only if the persons concerned produce adequate evidence to show that they had sufficient funds/wealth in those countries and that the transfer of the cash/jewellery to India can directly be-linked with the said funds or wealth. In other words, these migrants will have to lead proper evidence like any other assessees, about the source of the cash/jewellery alleged to have been brought by them from these countries. In support of the claim that they had sufficient funds in those countries, they might produce before the income-tax authorities in India their bank accounts in those countries as also copies of the assessment orders passed in their cases by the income-tax authorities of those countries. The migrants would also then be required to prove that the amounts brought into India can directly be linked with the funds which they had possessed in those countries."

This is humbly submitted that in compliance to the abovesaid notification dated 03-02- 1969, the assessee had filed declaration on 09-05-2013 with Ld. The Income Tax Officer , Ward 23(3), New Delhi

alongwith all annexures which are also annexed herewith the accompanying reply.(Copy of declaration dated 09-05-2013 alongwith all annexures is annexed herewith).This is further submitted that the assessee had produced all documentary evidence during assessment proceeding in support of his claim and linking the same with such transfer of Cash and Jewellary vide reply /letter dated 08-07-2016 which the Ld. Assessing Officer, Ward 31(4)did not accept and made arbitrary and illegal addition of Rs. 49,50,000/This is further humbly submitted and reiterated that Cash Deposits in two Saving Bank Accounts (ie. ICICI Bank Ltd. (SB. 072201507152) and United Bank of India-SB-A/ C No. 1481010132145) were made out of Cash of Rs. 50 Laces brought from Pakistan after arrival on 17th March,2013. The details and particulars of the Cash Deposits into Saving Bank Accounts are summarised as under:-

Name of Bank	Mode	Date of Deposit	Amount (Rs.)
United Bank of India	Cash	17-04-2013	9,90,000/-
United Bank of India	Cash	22-04-2013	4,00,000/-
United Bank of India	Cash	23-04-2013	7,00,000/-
	Total		20,90,000/-

Name of Bank	Mode	Date of Deposit	Amount(Rs.)
ICICI bank Ltd.	Cash	06-05-2013	5,00,000 /-
ICICI bank Ltd.	Cash	06-05-2013	4,50,000/-
ICICI bank Ltd.	Cash	07-05-2013	9,50,000/-
ICICI bank Ltd.	Cash	08-05-2013	8,00,000/-
	Total		27,50,000/-

This is humbly submitted that it was pleaded before the Ld. Assessing Officer that Cash brought into India at the time of arrival in India on 17-03-2013 were procured/ realized from the disposal/realization from moveable and immoveable property and the evidence/ documents in this regard were also furnished for the perusal of the Ld. Assessing Officer .This was also submitted before Ld. Assessing Officer that the Indian Currency were procured by the assesee from the various money changer in Pakistan and the same was brought into India. This was also submitted that had it been in the information and knowledge of Pakistani Agency that the assessee is leaving the country and is taking out such huge Cash and other precious Items, he could have been killed by either local goons/criminals or Police Officials. The assessee also discussed about the fear and apprehension to life and property of the minority Hindus Hiring in Pakistan. The assesee also discussed about the injustice and atrocities done to Hindu Minority in Pakistan. He also discussed how inhumanely, the people of minority are treated in Pakistan. The assessee further disclosed that coming into India from Pakistan was not an option but compulsion due to threat of life and property. The assessee further submitted before the Ld. Assessing Officer that many of his close relatives and other family have already migrated into India to settle and start a new life. The Assessee further submitted that after arriving into India he had disclosed the

Money and Gold possessed by him before the Income Tax Officer Ward 23(3), New Delhi by filing declaration on 09-05-2013. The assessee also discussed that money brought and deposited into Saving Bank Accounts belongs to him and nothing thereof has been collected from illegal and dishonest methods. The Ld. Assessing Officer instead of apprising the facts and circumstances of the case suspected the amount deposited into Saving Bank Accounts to the tune of Rs. 49.50 Laces as undisclosed/ unverifiable income and added the same to the Returned income although all pertinent details and source were placed on record.

This is further submitted that after arrival in India ,the assessee was desperate in buying some commercial property to start business activities therefore the amount brought in was deposited as early as possible into Saving Account on different time and occasion/as per convenience and subsequently was withdrawn as per requirements . This is further submitted that the assessee had also made payment of Rs.21 Laces on 11-05-2013 to the vendor of commercial property bearing No.5989, Gali Sikligran, Nabi , New Delh.i-55 for Sale Deed executed on 30-05-2013. This is further submitted/clarified that out of Cash withdrawal some amount was re-deposited on 27-06-2013 with ICICI Bank Limited and some amount was also spent in the renovation/reconstruction of the purchased commercial property."

4.3 I have gone through the facts of the case and the written submissions made by the AR. It is seen that the main contentions of the appellant are as under:

i. It is contended that the source of cash deposit was duly explained at the time of assessment and it was also shown that the appellant had intimated ITO, Ward-23(3), New Delhi on 09.05.2013 about the cash and gold jewellery brought from Pakistan.

ii. The appellant had migrated to India on 17.03.2013 and had brought cash of Rs. 50 lakhs with him, which was deposited in the two bank accounts during the months of April & May 2013. Since the cash was brought to India in the month of March 2013, it is contended that no addition can be made in the AY 2014-15.

iii. No addition u/s 68 of the Act can be made by the AO in respect of the cash deposits in bank as bank passbook/statement is not a book of account.

iv. The AO should not have made the addition merely on the ground that the appellant was not able to furnish the details of the money declared at the check post, the details of the dealer from whom the money was converted into Indian currency. It is submitted that the money was converted into Indian currency from various money changers in Pakistan and the same was brought into India through unofficial channels as it was not possible for the appellant to bring the money from Pakistan through official channel.

4.4 On perusal of the complete facts of the case it is observed that the appellant had migrated from Pakistan to India on 17.03.2013 to permanently settle in India. The appellant deposited

cash of Rs. 20,90,000/- in three installments in his bank account in United Bank of India in the month of April 2013. The appellant has further deposited sum of Rs. 27,50,000/- in cash in his bank account in ICICI Bank in four installments between 06.05.2013 and 08.05.2013. The appellant had submitted a declaration/intimation to ITO, Ward- 23(3), New Delhi on 09.05.2013 as per which the appellant had declared that cash of Rs. 50 lakhs alongwith gold jewellery weighing about 105.10 grams were brought by him on his arrival from Pakistan.

4.4.1 As per CBDT Circular No. 5 dated 20.02.1969, in case the money and/or personal jewellery brought by migrants from Pakistan exceeds Rs. 50,000/-, the claim of the appellant needs to be accepted only if the persons concerned produce adequate evidence to show that they had sufficient funds/wealth in that country and that the transfer of the cash or jewellery to India can directly be linked with the said funds or wealth. The AO has rightly questioned the link of money brought to India from Pakistan with the cash deposits made in the two bank accounts. The AO has also rightly observed that the appellant has failed to provide any such link as he has not been able to furnish the details of any declaration made at the check-post at the Indo-Pak Border at the time of arrival in India and also failed to provide any evidence in respect of the conversion of Pakistani currency to Indian Rupees. The contention of the appellant that the money was brought to India through unofficial channels cannot be accepted blindly by the Department in the absence of any evidence in this regard. Moreover, the declaration has been made by the appellant before the Department only after the cash was deposited in the bank accounts. It has been stated that the appellant wanted to buy a property in India and that is the reason of depositing cash in the bank accounts. It appears that the declaration filed with the Department by the appellant is an after-thought to justify the cash deposits. In actual, no evidence has been produced by the appellant either at the time of assessment proceedings or appellate proceedings to show any nexus between the money brought from Pakistan (if any) and the cash deposited in the bank accounts. It is also contended that the appellant had sold his property in Pakistan by way of which the appellant has tried to explain the source of money brought from Pakistan. A perusal of the copy of the agreement to sell a property in Pakistan shows that it is just an agreement on a Rs. 10 stamp paper and is not a registered sale deed. It cannot be accepted as a foolproof evidence in respect of the sale of property and receipt of sale consideration by the appellant. Moreover, the question here is about the source of cash deposits in the bank accounts and not the source of money brought from Pakistan. No evidence has been placed on record to prove the link/nexus between the money brought from Pakistan and the cash deposits.

In this regard, reference is made to the decision of Chennai ITAT in the ease of Sushila Ramasamy Vs. ACIT (ITAT Chennai 'C' Bench) in Appeal Number ITA No. 1616/Mds/2007 vide Order dated

02/04/2009, in which Hon'ble ITAT has held that-

12. The CBDT Circular No.Sjn F. No. 73A/2(69)-JT (A-II) dated 20.02.1969, heavily relied upon by both the parties, reads as under.

"Migrant assesses-Money remitted to India through banks - Inquiries by Income-tax Officers regarding origin of money-Instructions regarding.

It has been represented to the Board that persons of Indian origin residing abroad but intending to return to India and settle here permanently, apprehend that the money brought in or remitted from abroad by such persons might be subjected to income-tax in India. The apprehension appears to be due to hack of information regarding the correct legal position about the tax ability of the remittances of money from abroad. The general position, in this regard, is clarified below:

2. Money brought into India by non-residents for investments or other purposes is not liable to Indian income-tax. Therefore, there is no question of a remittance into the country being subjected to income-tax in India The question of assessment to tax arises only when there is no evidence to show that the amount, in question, in fact represents such remittance. In other words, in the absence of proper supporting evidence, the tax payers story that the money has been brought into India from outside may be disbelieved by the Income tax Officer who may then proceed to hold that the money had in fact been earned in India.

3. If the money has been brought into India through banking channels or in the form of assets like plant and machinery or stock-in-trade, for which the necessary import permits had been obtained, no questions at all are asked by the Income-tax Officers as to the origin of the money or assets brought in. It is only in cases where the money is claimed to have been brought from outside otherwise than through banking channels and there is no evidence regarding the transfer of money, that the department has to make inquiries about the source thereof. Even in these cases, having regard to the difficulties experienced by persons migrating from Pakistan, Burma and East African countries, instructions have been issued to the Income-tax Officers that such claims should be freely admitted up to the limit of Rs.50,000 in each case provided the following conditions are satisfied:-

(a) The assessee migrated to India on or after the dates mentioned below from the countries shown against each and had no source of income in India:

(i) 30-07-1962 Mozambique (vide Min. of Finance Press Note dated 22-5-1967).

(ii) 1-11-1963 (Sic.) Zanzibar, Kenya, Tanzania and Uganda (vide Min. of Finance Press Note dated 22- 05-1967).

(iii) 1-1-1964 East Pakistan and Burma (vide Min. of Finance Press Note dated 25-6-1964 /22-5-1965).

(iv) 1-10-1965 West Pakistan (vide Min. of Finance Press Note dated 3-2-1969).

(b) He had sufficient resources in the foreign country.

(c) He had no source of income either in India or in any foreign country, other than the country from which he migrated, prior to migration, and he was not assessed as 'Resident' in India, either for the assessment year preceding the year in which he migrated or for earlier years; and

(d) The amount brought in has been duly introduced in the books regularly maintained in India and an intimation of such introduction is given to the Income-tax Officer within two months of the migrant's arrival.

4. Cases not covered by the preceding paragraph, namely,

(a) where the money (in the case of Mozambique, Zanzibar, Kenya, Tanzania, Uganda, East Pakistan and Burma) and money and / or the personal jewellery (in the case of West Pakistan) claimed to have been brought exceeds Rs.50,000; or

(b) where the assessee had some sources of income either in India or in any foreign country, other than the one from which he had migrated, prior to migration; or

(c) where the assessee was assessed as Resident in India either for the assessment year preceding the year of his/ her migration or in the earlier years, will not be entitled to any special concession. Thus any claim by such migrants that the funds or the jewellery have peen brought from the above mentioned countries, will be accepted only if the persons concerned produce adequate evidence to show that they had sufficient funds/ wealth in those countries and that the transfer of the cash / jewellery to India, can directly be linked with the said funds or wealth. In other words, these migrants will have to lead proper evidence like any other assessees, about the source of the cash/ jewellery alleged to have been brought by them from these countries. In support of the claim that they had sufficient funds in those countries, they might produce before the Income-tax authorities in India their bank accounts in those countries as also copies of the assessment orders passed in their cases by the Income-tax authorities of those countries. The migrants would also then be required to prove that the amounts brought into India can directly be linked with the funds which they had possessed in those countries."...

15. We now proceed to examine and discuss the CBDT Circular No.5 dated 20.02.1969 (supra) which was relied upon by both the parties. It is seen that this Circular talks of two situations: one, where the fact, that money or assets were brought from abroad, is conclusively proved, and two, where the fact, that money or assets were brought from abroad, cannot be conclusively proved by the non-resident In paragraph 2 and in first part of paragraph 3, it talks about the first situation.

*15.1 In paragraph 2 it says, "Money brought into India by non-residents for investment or other purposes is not liable to Indian income-tax. Therefore, there is no question of a remittance into the country being subjected to income-tax. The question of assessment of tax arises only when there is no evidence to show no in that the amount, in question, in fact represents such remittance. *. We see no ambiguity in what the circular says in paragraph (2). The obvious logic is that in the case of remittances by banking channel the onus on the assessee u/s 69 stands discharged, and therefore section 5(2)(b) does not apply. The above clarification given in the Circular is obvious from a plain reading of the provisions of the Act.*

15.2 And in the first part of paragraph 3 the scope of what is stated in paragraph (2) is expanded to include assets brought into India. It says, if the money has been brought into India through banking channels or in the form of assets like plant and machinery or stock- in-trade, for which the necessary import permits had been obtained, no questions at all are asked by the 1TV's as to the origin of the money or assets brought in…..".

15.3 The second part of paragraph (3) and of paragraph (4) talk about the second situation where the fact, that money or assets were brought from abroad cannot be conclusively proved by the non-resident. In cases of 'no evidence' for transfer of money, some concessions have been allowed in the Circular subject to conditions specified therein."

In the present case also, there is no evidence of money brought through banking channels from Pakistan to India. The appellant has not been able to discharge his onus to prove the nexus between the money brought from Pakistan and the cash deposits in the bank accounts. Thus the source of cash deposits in bank accounts remains unexplained.

4.4.2 It is also to be noted that the appellant has deposited cash in two bank accounts on various dates and after the cash deposits, has filed a declaration before the department. In case the money was brought from Pakistan and the same money was deposited in the bank accounts, nothing prevented the appellant to deposit the whole cash in bank account(s) at one time. There was no need to

deposit the cash in two bank accounts on various dates. It is not the case that the appellant had got money converted to Indian Rupees after arriving in India. The appellant has himself stated in the submission that the money was converted into Indian currency from various money changers in Pakistan and the money in Indian currency was brought to India. This human behavior of the appellant that he deposited cash in various installments and furnished declaration after the deposit of cash and not soon after coming to India and has not declared the money brought by him even at the Indian side of the border at the time of arrival, shows that there is no link between the cash brought (if any) from Pakistan and the cash deposits made in the bank accounts. As per various judgments, the AO must look into human behaviour and human probabilities before arriving at a conclusion as these play an important role in understanding the real nature of the transactions. In my view, it will be appropriate here to discuss the position of law propounded by the Apex Court in the case of Sumati Dayal vs. CIT, 214 ITR 801(SC), in which the Hon'ble Supreme Court has held as under: ’

> "that the true nature of transaction have to be ascertained in the light of surrounding circumstances. It needs to be emphasized that standard of proof beyond reasonable doubt has no applicability in determination of matters under taxing statutes. It is also well settled that tax authorities are entitled to look into surrounding circumstances to find out the reality of the transaction by applying the test of human probability. This was the principle laid down by the Hon’ble Supreme Court in the case of CIT Vs. Durga Prasad More 82 ITR 540 (SC) .”

In the case of CIT v. Durga Prasad More [19711 82 ITR 540, the Hon'ble Supreme Court has made a reference to the test of human probabilities in the following situation as under: -

> *It is true that an apparent must be considered real until it is shown that there are reasons to believe that the apparent is not the real In a case of the present kind a party who relies on a recital in a deed has to establish the truth of those recitals otherwise it will be very easy to make self-serving statements in documents either executed or taken by a party and rely on those recitals. If all that an assessee who wants to evade tax is to have some recitals made in a document either executed by him or executed in his favour then the door will be left wide open to evade tax. A little probing was sufficient in the present case to show that the apparent was not the real The taxing authorities were not required to put on blinkers while looking at the documents produced before them. They were entitled to look into the surrounding circumstances to find out the reality of the recitals made in those documents.*

12. Now coming to the question of onus, the law does not prescribe any quantitative test to find out whether the onus in a particular case has been discharged or not It all depends on the facts and circumstances of each case. In some cases, the onus may be heavy whereas in others, it may be nominal There is nothing rigid about it Herein the assessee was receiving some income. He says that it is not his income but his wife's income. His wife is supposed to have had two lakhs of rupees neither deposited in banks nor advanced to others but safely kept in father's safe. Assessee is unable to say from what source she built up that amount. Two lakhs before the year 1940 was undoubtedly a big sum It was said that the said amount was Just left in the hands of the father-in-law of the assessee.

The Tribunal disbelieved the story, which is prima facie a fantastic story. It is a story that does not accord with human probabilities. It is strange that the High Court found fault with the Tribunal for not swallowing that story. If that story is found to unbelievable, as the Tribunal has found, and in our opinion rightly, then the position remains that the consideration for the sale proceeded from the assessee and therefore it must be assumed to be his money. %s

13. It is surprising that the High Court has found fault with the Income-tax Officer for not examining the wife and the father-in-law of the assessee for proving the Department's case. All that we can say is that the High Court has ignored the facts of life. It is unfortunate that the High Court has taken a superficial view of the onus that lay on the Department..,.

...Science has not yet invented any instrument to test the reliability of the evidence placed before a court or tribunal. Therefore, the courts and tribunals have to judge the evidence before them by applying the test of human probabilities. Human minds may differ as to the reliability of a piece of evidence. But, in that sphere, the decision of the final fact-finding authority is made conclusive by law"

In the present case, the circumstances enumerated above relating to the deposit of cash in various installments in two bank accounts, furnishing of no evidence to establish the link between money brought from Pakistan and that deposited in bank accounts does not accord with human probabilities. Further, the appellant has failed miserably to discharge his onus to furnish any neutral and independent evidence to prove the nexus between money brought from Pakistan and that deposited in bank accounts. The declaration made by the appellant before the ITO is nothing but self-serving document. From this, it is quite apparent that the cash deposits in the bank accounts have been made from the income earned by the

appellant from undisclosed sources. The onus is on the appellant to prove the said nexus and to satisfactorily explain the source of deposits made by him where he has failed miserably.

4.4.3 It is further contended by the AR that the AO should have made the addition in the assessment year 2013-14 as the appellant had brought the money from Pakistan at the time of arriving in India on 17.03.2013. In this respect, it is pointed out that the AO has made the addition in the A.Y. 2014-15 as the cash deposits in the bank accounts which have been found to be unexplained, have been made in the months of April and May 2013 corresponding to the A.Y. 2014- 15. As already stated above, the question here is about the source of cash deposits in the bank accounts and not the source of money brought from Pakistan. Accordingly, this contention of the appellant is not found to have any basis.

4.4.4 Further, the AR has also contended that no addition u/s 68 of the Act can be made by the AO in respect of the cash deposits in bank as bank passbook/statement is not a book of account. In this regard, it is pointed out that the addition should have made by the AO in respect of the unexplained cash deposits in bank accounts u/s 69 of the Act by treating the same as unexplained investments and not as unexplained cash credits in the books of account. However, it is also to be noted that wrong mentioning of a section or provision of the Act in the assessment order is not fatal and it does not vitiate the assessment proceedings and also does not form a ground for nullifying the additions made by the AO. In this context, reference is made to the decision of Hon'ble Guwahati High Court in the case of Commissioner of Income-Tax vs. Smt. Amiya Bala Paul on 25 August, 1999 in which it has been held that-

> *"Hence, merely wrong mention of the provisions of law, namely Section 55A, in the requisition calling for the report of the Valuation Officer would not vitiate the report. From the above two decisions relied upon by the assessee it is clear that the assessing authority has power to call for report about the cost of construction from the Valuation Officer and while doing so, if the provision of law has been wrongly mentioned, it would be wholly immaterial, e.g., while calling for the valuation report about the cost of construction Section 55A is mentioned, it would not make any difference so long as the report is regarding cost of construction, as such power vests under another provision.*
>
> *22. In view of the decisions referred to in this judgment and in the discussion held above, we are of the view that the assessing authority would be quite competent to call for the report on the valuation of the cost of construction from the Valuation Officer in view of the provisions under Sections 131, 133(6) and 142(2} of the Income-tax Act. These are the enabling machinery provisions which vest ample powers in the assessing authority, any wrong mention of provision on the requisition memo will not be material. "*

Similarly, Hon'ble AP High Court has held in the case of Action for Welfare & Awakening vs Dy. CIT on 28 March, 2003 that:-

> *"Thus, mere mentioning of a wrong provision itself would not be fatal to the assessment proceedings when the assessing officer was justified in his action under some other provisions of the Act. The jurisdictional facts should attract the provisions of law. The assessing officer observed that the assessee violated the provisions of section 13(l)(c)(ii) read with sections 13(2)(b)and 13(3)(cc) of the Act inasmuch as the FDRs in the name of the assessee worth Rs. 16 lakhs were pledged as security to the bank enabling Smt. Rama Anantram, one of the Members of the assessee to avail the loan without adequate security and consideration, thus misutilizing the funds of the Trust. The department never proceeded on the footing that Smt. Rama Anantram was a relative. It is argued by the revenue that the exemption under section 11 of the Act is applicable to a trust, which deals itself with all fairness, If any unfairness is detected in the return submitted by the assessee, section 13 of the Act takes away the benefit conferred under section 11 o f the Act to a Trust.*
>
> *9.Learned counsel for the appellant gave emphasis that wrong provisions of taw were invoked under the facts set out by the assessing officer. As stated supr4 the learned counsel for the revenue fairly conceded that there is a mistake in the application of provision of law, but the jurisdictional fads take care of the right provision of law, i.e. Section 13(l)(c)(ii)read with sections 13(2)(b) and 13(3)(cc) of the Act, as there is no change in the fads recorded by the assessing officer. It is well-settled that mention or application of a wrong provision of law to a given facts of a case itself does not make the authority incompetent to deal with the factual-situation unless and until there is no proinsion, which can take care of the jurisdictional facts."*

Further, Hon'ble Supreme Court has decide in the case of P.K.Palanisamy vs. N.Arumugham & Anr on 23 July, 2009 that -

> *"13. A contention has been raised that the applications filed by the appellant herein having regard to the decisions of the Madras High Court could not have been entertained which were filed under Section 148 of the Code. Section 148 of the Code is a general provision and Section 149 thereof is special. The first application should have been filed in terms of Section 149 of the code. Once the court granted time for payment of deficit court fee within the period specified therefore, it would have been possible to extend the same by the court in exercise of its power under Section 148 of the Code. Only because a wrong provision was mentioned by the appellant, the same, in our opinion, by itself would not be a ground to hold that the*

application was not maintainable or that the order passed thereon would be a nullity.

It is a well settled principle of law that mentioning of a wrong provision or non- mentioning of a provision does not invalidate an order if the court and/or statutory authority had the requisite jurisdiction therefore.

Also, in Ram Sunder Ram v. Union of India & Ors. [2007 (9) SCALB 197], it was held:

".....It appears that the competent authority has wrongly quoted Section 20 in the order of discharge whereas, in fact, the order of discharge has to be read having been passed under Section 22 of the Army Act It is well settled that if an authority has a power under the law merely because while exercising that power the source of power is not specifically referred to or a reference is made to a wrong provision of law, that by itself does not vitiate the exercise of power so long as the power does exist and can be traced to a source available in law [see N. Mani v. Sangeetha Theatre and Ors. (2004) 22 SCC 278). Thus, quoting of wrong provision of Section 20 in the order of discharge of the appellant by the competent authority does not take away the jurisdiction of the authority under Section 22 of the Army Act. Therefore, the order of discharge of the appellant from the army service cannot be vitiated on this sole ground as contended by the Learned Counsel for the appellant."

4.4.5 As the Commissioner of Income Tax Appeals is vested with all the powers commensurate with the powers of the assessing officer, I hereby rectify the mistake of mentioning wrong provision of the Act as made by the AO while making the addition. Accordingly, the addition made by the AO may be treated as having been made u/s 69 of the Act as the source of cash deposits in bank accounts remains unexplained and needs to be treated as unexplained investment within the realm of section 69 of the Act.

4.4.6 Therefore, based upon all the facts, the surrounding circumstances and the test of human probabilities along with the legal position as discussed above, I am of the opinion that the source of the cash deposits in the bank accounts of the appellant remains unexplained and hence, the addition made by the AO treating the same as income from undisclosed sources is hereby confirmed and the grounds of appeal are dismissed."

8. Thus assessee aggrieved with the order of the learned CIT – A has preferred this appeal before us.

9. The main claim of the assessee is that the issue is squarely covered in favour of the assessee by the notification number 73/16/68/IT/A –II dated 3/2/1969 issued by the Ministry of Finance (Department of revenue and insurance), New Delhi which are duly met by the assessee as assessee is

coming from Pakistan, the source of the fund is not required to be explained. With respect to the addition of ₹ 4,950,000 by treating the cash deposit as unexplained cash credit u/s 68 of the income tax act although all relevant evidences regarding the source and arrangement of funds are duly explained by the assessee and placed on record to the satisfaction of the AO as well as the learned CIT – A. Therefore the only grievance is with respect to the addition of ₹ 4,950,000 made by the learned assessing officer with respect to the cash deposit in the bank account of the assessee.

10. Coming to the first ground of appeal, the learned authorised representative submitted that during the course of Assessment and Appellate proceedings, the Appellant/ Assesse placed on records the evidence documents pertaining to the Source of Cash Deposits of Rs. 49.50 Laces in two Saving Bank Accounts one maintained with ICICI Bank having S.B. A/ c. no. 072201507152 and another at United Bank of India having S.B.Ajc. No. 1481010132145),which were duly explained for thoughtfulness of Ld. Assessing Officer & Ld. CIT(Appeal) .This was submitted before the Ld. Assessing Officer and also reiterated before the Ld. CIT(Appeal) that the Appellant arrived in India on 17th March, 2013 and brought Cash of Rs. 50 Laces and Gold Jewellary weighing 105.10 Gms. which was subsequently declared before ITO, Ward 23(3), New Delhi on 09-05-2013 in terms of Board Circular F.No.73/16/68-IT(A-II), dated 03.02.1969 (within 2 months of arrival in India) and in this regard a Copy of Declaration filed on 09-05-2013 with ITO Ward -23(3), New Delhi with all Annexure was also filed. It was specifically asserted before Ld. Assessing Officer and Ld. CIT(Appeal) -11, New Delhi that the Source of Cash Deposits pertained to preceding the previous year's i.e. Assessment Year 2013-14 and thus the query of Source of Cash Deposits into Saving Bank Accounts is unrelated to the year under consideration i.e. A.Y. 2014-15 which was altogether rejected/ discarded by Ld. CIT(Appeal)-11, New Delhi Ld. CIT (Appeal) while passing Appeal Order failed to recognize and distinguish that the Ld. Assessing Officer had suspected upon the Source of Money brought in India which was declared in then subsequent Assessment Year i.e. on 09.05.2013 and which is also the relevant assessment year under consideration in which Cash of Rs.49.50 Laces were deposited into two Saving Bank Account. Ld. CIT (Appeal) while

passing Order miserably failed to appreciate that the unexplained income if any pertained and belongs to preceding Assessment Year i.e. 2013-14 viz. Financial Year in which the Appellant brought the money in India i.e. 17.03.2013 and not the Assessment Year 2014-15 in which cash was deposited. This is humbly submitted that in Assessment Year 2014-15, the Appellant/ Assessee was though resident in India, but was not an ordinary resident and as per proviso to section 5 of the Act, only income in India was taxable in the hands of assessee and that the theory of probability, wherein jewellery which was brought into India by the assessee has been accepted but the cash declared has not been accepted. Ld. CIT (Appeal) while passing Appeal Order completely disregarded the concept of Accrual/ Arising and Deemed to Accrue/ Arise ,Receipt concept for recognition of Income as enshrined and built-in U/s 9 of The Income Tax Act, 1961 and hence in view of same the impugned order passed is liable to be set aside /quashed on this ground only. During course of Assessment and Appellate proceedings, the Appellant replied/ answered satisfactorily to all the quarries raised by the Ld. Assessing Officer and Ld. CIT(Appeal)and specifically explained the helplessness and involvedness in bringing money through official channel in India because of prevailing atrocity, anarchy and hatred for minority in Pakistan and .This was also explained before the Ld. Assessing Officer and Ld. CIT(Appeal) had it been in the information and knowledge of Pakistani Agency that the Appellant is carrying such huge Cash and Gold Ornaments, it could have jeopardized his life. During Assessment and Appellate proceedings and it was duly explicated that the Cash Deposit of Rs. 27,50,000/- into Saving Bank Account maintained at ICICI Bank (A/c. no. 072201507 152) and Rs. 20,90,000/- into SB Account maintained at United Bank of India (A/c. No. 1481010132145) pertains to money brought from Pakistan(Quetta) after disposing off /realizing money/funds from moveable and immoveable properties, Realization from Business transactions in Pakistan for which necessary documents were also placed on records. This is humbly submitted that in view of Board Circular F.No.73/16/68- IT(A-II), dated 03.02.1969 no enquiries could be made from such migrant Appellant/ Assessees and they were not required to produce any documentary evidence for their claim of transfer of monies, etc. This is

humbly submitted that that there were no banking channels between India and Pakistan and thus, there was no way in which migrants could transfer and bring their monies and personal belongings to India. It was humbly submitted before both Ld. AO and Ld. CIT (A) that Hindus in Pakistan were suppressed class and were under the tremendous religious compulsions and inhuman treatment was given to them by the Pakistanis. In the circumstances, the Hindus do not disclose their migration to India, because they fear for their life, safety and security of their families. It was further pointed out that safe passage was allowed to them neither by the civilians nor by the Pakistan authorities. Further, there was no rule of law so far as income tax and other revenue laws were concerned and they were hardly any obligations to file regular returns, etc. since that lead to disclosing the financial position, which was again exploited with kidnappings, extortions and death threats. It was pointed out that keeping these aspects in mind, the Board had instructed the Department that the persons migrating from West Pakistan to India need not be required to produce documentary evidence in support of their claim for the transfer of ® monies and personal jewellery brought by them and their family, subject to certain conditions. The sources of cash brought in India were duly explained to both Ld. AO and CIT(A) which were not relied and the contention of the Appellant/ Assessee was abhorrently discarded. This is humbly submitted that the Appellant/ Assessee had sufficient resources in Pakistan to which the monies and the personal jewellery brought in India could be reasonably attributed, thus, the conditions laid down in Board's Circular in this regard were suitably satisfied. This is humbly submitted that as per the Board's instructions, the ITO was barred from enquiring as to how the migrant assessee had remitted the money and would not be necessary to establish that the remittances were made only through bank. The ITO could only make enquiries with regard to ascertaining the quantum and satisfying himself with available resources in the country, although same were brought to India through irregular channels. Where resources were established to have been available in the migrant's country, then the manner in which those resources are repatriated to India though not by recognized channel, same would not be questioned but, would be accepted.

This is humbly submitted that the Hon'ble High Court of Madras in S.R. Lakshmanan Vs. CIT (1990) 186 ITR 453 (Mad) after going through Circular of the Board dated 05.08.1971 issued in respect of repatriates from Ceylon had held that the predominant idea of issuing the Circular was to avoid resulting into inconvenience to repatriates. The Hon'ble High Court of Madras confirmed that if resources were established to have been available in migrant's country, then the manner in which those resources were repatriated to India, though not by recognized channel, same would not be questioned, but would be accepted. The Reserve Bank of India vide letter dated 01.05.1999 addressed to the Asst. Director, (FERA) with reference to letter dated 09.07.2009, wherein it is stated that it would be rather unjust to invoke the provisions of FERA against Indian repatriates from Pakistan after demolition of Babri Masjid for exchange of currency. The Board's Circular dated 03.02.1969 divides migrant assessees into two categories viz. (i) those who bring into India cash/ jewellery up to Rs. 5O,OOO /- and (ii) those who bring into India cash/ jewellery exceeding Rs. 5O,OOO /-. Further in view of Board's instruction that there was no requirement for migrant assessee to produce documentary evidence in support of their claim for transfer of money and jewellery brought by them subject to two conditions; (a) that she/ he had sufficient resources in West Pakistan to which the money I jewellery brought into India could be reasonably attributed and (b)she/he gives intimation about the money I jewellery brought by him/her and all his/her family members and its introduction in the books of account, within two months from his/ her arrival. The truthfully all relevant documents/ details to establish existence of sufficient resources in West Pakistan, to which money and jewellery could be reasonably attributed which unjustifiably disregarded by Ld. AO and Ld. CIT(A). Hon'ble High Court of Madras in S.R. Laxmanan Vs. CIT (supra) held as under:-

> "It is evident from the said Circular No. 73/16/68-IT(A-H) dt.:03/02/1969, that the migrant assessees from Pakistan are not required to produce documentary evidence in support of their claim for transfer of money and personal jewellery brought by them and their family from Pakistan subject to the following conditions: i) The

person had resources in Pakistan to which the money/jewellery brought into India could reasonably attributed. ii) The intimation should be given to the concerned ITO within a period of two months of the date of his or her arrival in India and; iii) In the case of persons who have already migrated to India by 31/03/1969, the aggregate value of cash and personal jewellery brought by the migrants and his family members does not exceeds Rs.SO,OOO /-. iv) Where the amount of money /value or jewellery brought into India exceeds Rs. 5O,OOO/- he or she will be required to produce adequate evidence to reasonably justify the ITO that he or she had sufficient resources in Pakistan to cover such money I personal jewellery. The circular is very clear. As per the Circular, the ITO I AO is barred from enquiring as to how the migrant assessee has remitted his money's and it would not be necessary to establish his remittance are made only through banks. However, the ITO I AO can make enquiries with regard to ascertaining the quantum and satisfying himself that sufficient resources were available with the migrants in his country of origin to cover the amount of cash or jewellery brought in."

11. Ld. CIT (Appeal) while passing Appeal Order and making abovesaid observation failed to appreciate the live link between the specification in Copy of Agreement to Sell dated 02.01.2013 and declaration filed with ITO Ward 23(3), New Delhi on 09.05.2013 whereby admittedly Cash amount of Rs.50 Laces brought into India was specifically highlighted. Both the Ld. AO and Ld. CIT (Appeal) failed to analyze that it was impossible for the Appellant to declare money at the check-post at the Indo-Pak Border at the time of arrival in India and to produce the specification /details in respect of the conversion of Pakistani currency to Indian Rupees because of prevalent circumstances and which was also barred in view of Board Circular dated No.73/16/68-IT(A-II) dt.:03/02/1969. Both Ld. AO and Ld. CIT (Appeal) suspected the conduct and manner of depositing of Cash into Saving Bank Account and miserably failed to appraise that a person arriving in India only on 17.03.2013, how can generate unaccounted money within short span of period of 40 to 50 odd days and has deposited the same funds into his

Saving Bank Account. Both Ld. AO and Ld. CIT (Appeal) miserably failed to envisage the facts and circumstance of the case that it took some time for the Appellant to obtain PAN Card (issued on 03.04.2013) and thereafter to open Saving Bank Account and then deposited money brought into India from Pakistan. Ld. CIT (Appeal) while passing Appeal Order suspected and presumed that the declaration has been made by the appellant before the Department only after the cash was deposited in the bank accounts. This is pertinent to mention here that the declaration filed with concerned ITO was accompanied by all the pertinent details I evidence and therefore it is incorrect to assume that there was any malafide intention on the part of the Appellant to mis-declare or conceal any materials facts from department so as to contravene the law of the land. This was specifically reiterated before the Ld. CIT(Appeal) that the Appellant wanted to buy a property in India and that is the reason of depositing cash into bank accounts but in all deterrence the Ld. CIT(Appeal) suspected and assumed that the declaration filed with the Department by the appellant is an after-thought to justify the cash deposits and in actual, no evidence has been produced by the appellant either at the time of assessment proceedings or appellate proceedings to show any nexus between the money brought from Pakistan (if any) and the cash deposited in the bank accounts. Both at the time of assessment and Appellate proceedings, it was reiterated that the Appellant had brought money into India out of proceeds from Sale of immoveable/moveable properties/other receipts/withdrawals from Banks to which the Ld. CIT (Appeal) suspected and presumed that the appellant has tried to explain the source of money brought from Pakistan out of Sale from immovable property. Ld. CIT (Appeal) while passing Order suspected about the authenticity of Agreement to Sell and denied to admit same as an evidence by presuming that it is just an agreement on a Rs. 10 stamp paper and is not a registered sale deed and it cannot be accepted as a fool proof evidence in respect of the sale of property and receipt of sale consideration by the appellant. Ld. CIT(Appeal) while passing order further injudiciously presumed that the question here is about the source of cash deposits in the bank accounts and not the source of money brought from Pakistan and no evidence has been placed on record to prove the link/ nexus between the

money brought from Pakistan and the cash deposits. The Ld. CIT (Appeal) while passing order miserably failed to identify and find link of Cash Deposited into Saving Bank Account with money brought from Pakistan. Ld. CIT(Appeal) failed to construe that only money brought from Pakistan was deposited into SB Account and there was no other source for Appellant to deposit money into his SB Account. Ld. CIT (Appeal) while passing Appeal misconstrued and misdirected himself in suspecting the Source of Cash deposited into Saving Bank Accounts although all pertinent details such as Agreement for Sale ,declaration filed with the concerned AO(with all annexures) were placed on records. LD. CIT (Appeal) while passing order further suspected as to why the whole money was not deposited in one go. This is humbly submitted that the Appellant/ Assessee had deposited the money as per convenience and availability because part funds had to be retained for constriction and purchased of property. Evidently Ld.CIT(Appeal) while passing Appeal Order suspected about the Source deposited into Saving Bank Account without any basis or justification and completely discarded the instruction of Board Circular dated 03.02. 1969. **Considering the above submission, this is humbly submitted that the Assessment Order passed by the Ld. Assessing Officer which was subsequently affirmed by Ld. CIT (Appeal) may kindly be set aside/quashed/ suitably modified or alternatively the additions made may kindly be deleted as the same were made in haste and in negligently manner and also without giving adequate opportunity to the Appellant/ Assessee to prove & establish his contention.**

12. Coming to the second ground of appeal that That the Ld. Assessing Officer, Ward 31(4), New Delhi erred in law and in fact in making addition of Rs.49,50,000/-(Forty Nine Laces Fifty Thousand Only)by treating Cash Deposit as Unexplained Cash Credits U/s . 68 of The Income Tax, 1961 although all pertinent evidence regarding Source and arrangements of funds were duly explained and placed on record to the satisfaction of the Ld. Assessing Officer which was wrongly and injudiciously affirmed/ upheld by the Ld. CIT(Appeal) 11, New Delhi, the learned authorised representative submitted that In the present case the Appellant produced all relevant documents for consideration of Ld. Assessing Officer and Ld. CIT(Appeal)

which were rejected under suspicion and without any justifiable grounds and hence the addition made to the retuned income in such manner is liable to be deleted. The Source of cash (Deposit into Saving Bank Accounts were duly explained and corroborated with documentary evidence but the Assessment and Appellate Authority without considering the facts and circumstances, documentary evidences placed on records and also ignoring Notification No. 73/16/68/IT/A.II dated 03-02-1969 issued by Ministry of Finance (Department of Revenue & Insurance), New Delhi made and upheld the exorbitant addition of Rs.49 .5O Laces to the returned ® Income. In Ms. Reena H. Mirchandaniv. Asstt. CIT (2000) 66 TTJ (Del)(TM) 91, it has been held that the presumption under section 69A is a rebuttable presumption and the same is to be applied where the assessee offers no explanation about the nature of source of money. Supreme Court in the case of CIT v. P.K. Noorjahan (1999) 237 ITR 570 (SC) has held that under section 69 the Income Tax Officer is not obliged to treat the source of investment as income whenever explanation regarding it is not satisfactory. Reliance is placed on the decision of Hon'ble Supreme Court and Hon'ble Delhi High Court in the cases of CIT vs. Smt. P. K. Noorjahan reported in 237ITR 570 (SC), Roshan Di Hatti vs. CIT - 107 ITR 938 (SC), CIT vs. Value Capital Services Ltd. - 307 ITR 334 (Del.), CIT vs. Real Time Marketing (P) Ltd. - 306 ITR 35 (Del.) and CIT vs. Kamdhenu Steel and Alloys Ltd. - 248 CTR 33 (Del.) wherein is was held that where the assessee's explanation is prima facie reasonable then it cannot be rejected merely on suspicion. It has been held that the word may in section 69 cannot be interpreted to mean shall and that discretion is conferred on Income Tax Officer under section 69 to treat the source of investment as income of the assessee, if assessees explanation is found to be not satisfactory, the said discretion has to be exercised keeping in view the facts and circumstances of the particular case.It was observed by Appex Court in case of *Dhakeshwari Cotton Mills; SC in 87 ITR 349 *that Addition cannot be made merely on the basis of conjectures and surmises. The department cannot draw inferences and assume that there has been some illegality in the assessee's transaction in the absence of any material in its possession Refer Mad HC in 34 ITR 328 & Ker HC in 117 ITR 371. Mere suspicion however strong cannot take the place of evidence as was held in

case of Shaw and Bros. vs. CIT (1959) 37 ITR 271 (SC). In case of *CIT vs Kamdhenu Steel and Alloys Ltd., Vijay Foils (P) Ltd.,* JH Finvest (P) Ltd., North Delhi Construction and Investment (P) Ltd.,Laxman Industrial Resources Ltd. and Ors.Gupta Citi Shelters Ltd., Infomediary India (P) Ltd. and Ors. Vs CIT Citation 206 Taxman 254 it was held that to make the assessee responsible, there has to be proper evidence. It is equally important that an innocent person cannot be fastened with liability without cogent evidence. Considering the above submission, this is humbly submitted that the Assessment Order passed by the Ld. Assessing Officer which was subsequently affirmed by Ld. CIT(Appeal)may kindly be set aside I quashed/ suitably modified or alternatively the additions made may kindly be deleted as same are violative in nature and one which does not fall under purview of section 69 of The Income Tax Act, 1961.

13. He further submitted that exorbitant addition of Rs.49,50,000/-(Forty Nine Laces Fifty Thousand Only) by treating Cash Deposit as Unexplained Cash Credits U/s s.68 of The Income Tax, 1961,although all pertinent evidence regarding Source and arrangements of funds were duly explained and placed on record to the satisfaction of the Ld. Assessing Officer which was wrongly and injudiciously affirmed/upheld by the Ld. CIT(Appeal)ll, New Delhi. Evidently erroneous and injudicious approach adopted by Ld. AO and subsequently affirmation by Ld. CIT(Appeal) has thus kept the Appellant under hardship and undue financial burden. The Appellant till now has paid substantial amount on account of unjustified demand and has been harassed by the Income Officials by freezing account and threatening to take coercive actions. The unsympathetic approach by the Assessing Officer and affirmation by Ld. CIT(Appeals) has virtually led the Appellant on verge of collapse.

14. In the end he submitted that the issue before the coordinate benches squarely covered in favour of the assessee by the decision of the Pune bench in case of Income-Tax Officer,, vs Smt. Sangeeta Kotoomal Esrani ITA No.1565/PUN/2015 where addition made by the learned assessing officer on identical facts have been deleted and therefore the issue is not squarely covered in favour of the assessee and the appeal of the assessee should be allowed.

15. Therefore, in view of the above submission of the learned authorised representative it was submitted that the addition made by the learned assessing officer and confirmed by the learned CIT – A deserves to be cancelled.

16. The learned departmental representative vehemently supported the order of the learned assessing officer and the learned CIT – A stoppage was submitted that when the assessee has deposited cash into his bank account, he is supposed to explain the source of such deposit, the manner in which such money has been brought into India, and all other relevant queries raised by the learned assessing officer. He further stated that the learned assessing officer and learned CIT – A has already granted him the relief as provided under the circular of ₹ 50,000. Therefore the sums of ₹ 50 lakhs are deposited in the bank account, the assessee has been granted deduction of ₹ 50,000. He therefore submitted that whether the assessee comes from Pakistan or remains in India does not matter, if the amount is deposited in his bank account and for which the source in the nature of such receipts are not explained by the assessee, the addition has rightly been made. He further referred to the assessment order and stated that assessee is a resident assessee and therefore the provisions of Section 68/69A applies. He submitted that there is no infirmity in the order of the lower authorities.

17. We have carefully considered the rival contentions and perused the orders of the lower authorities. The simple facts stated in this appeal is that assessee has migrated from Pakistan to India on 17th of March 2013. On migration he submitted a declaration of money and the jewelry brought from that country as per notification number 73/16/68/IT?A-II dated 3 February 1969 stating that he has deposited ₹ 50 lakhs i.e. cash of ₹ 2,090,000 with ICICI bank serving bank account number 072201507152 and ₹ 2,750,000 with United Bank of India savings bank account number 1481010132145. Such declaration was submitted on ninth of May 2013 to the income tax Ofc, Ward 23 (3), New Delhi. Along with the above declaration assessee submitted the photocopy of the bank statement of ICICI Bank and United Bank of India along with his passport number AF3960572 and copy of the residential permit as well as application for extension of visa. Assessee also

submitted the copy of its permanent account number and copy of the bank statement of MCB Quetta and UBL Bank Quetta , Pakistan. He further submitted the copy of the income tax return for year 2011 and 2012 as well as the copy of tax registration certificate of Pakistan. To prove the source of the deposit of ₹ 50 lakhs in the bank account assessee submitted that he brought this money through illegal channel into India and deposited the same in these bank accounts. The source of the fund is the copy of sale agreement of property at Quetta , Pakistan For Pakistan Rs. 11,000,000. The learned assessing officer relying upon the notification number 73 dated 3/2/ 1969 allowed the assessee the benefit of ₹ 50,000 and made the addition of ₹ 4,950,000 as unexplained cash deposited in the bank account. The learned CIT – A also confirmed the above addition. Before us the learned authorised representative have relied upon the decision of the coordinate bench in case of income tax officers versus Sangeeta Kottomal Esrani ITA No.1565/PUN/2015. Further the decision relied upon by the assessee However the facts of that case are quite distinct as in that case there was sufficient proof of cash withdrawal from the bank in Pakistan as mentioned in para number eight of the order, however there is no such evidence available in the present case. The fact in this case shows that the assessee claimed that he has sold the property in Pakistan for Pakistan Rs 1.10 Crores and from that some the amount is deposited to the extent of Rs (INR) 50 lakhs in the banks in India. Assessee has submitted that paper is placed at page number 73 – 75 and onwards substantiates the source of the money. However those documents are neither in English nor in Hindi but in Urdu. These documents also does not show the flow of money received by the assessee of Pakistani ₹ 1.10 crores and how much money was converted into Indian currency. Therefore it is apparent that the source of fund is required to be established by the assessee

18. Further assessee has produced the copies of the bank statement from the banks in Pakistan where assessee was holding his account. The above sum deposited by the assessee in the Indian bank is also cannot be linked with the transaction of the assessee in Pakistani banks as there was no withdrawal of the sum from the banks in Pakistan.

19. Further assessee has produced the bank account where the above sum is deposited. We have perused the bank account number 7152 with the ICICI bank Ltd wherein the assessee has deposited cash in the month of may 2013 of ₹ 2,750,000. However immediately assessee has withdrawn cash of ₹ 6 lakhs on 10th of May 2013 subsequently further cash was deposited of ₹ 9 lakhs in the month of December 2013 which was immediately withdrawn in the month of February 2013. Similarly in the case of savings bank account number 2145 assessee has deposited cash in the month of April 2013 and similarly cash was withdrawn subsequently. Therefore the bank account submitted by the assessee shows that there is a deposit of the sum which was withdrawn in cash later on substantially.

20. It is undoubtedly an established fact that Hindus in Pakistan are a persecuted minority. Even revenue does not deny the fact. Therefore it may be possible that the assessee might have brought this sum from Pakistan through unofficial channels. However that does not go against the assessee because it is claimed by the assessee that there is no official channel available for transfer of funds from Pakistan to India.

21. Further assessee has submitted at page number 64 and 65 of the paper book and agreement for sale of property of house number D – 11 – 3 – 3 Faize Mohammad Road , Quetta, Pakistan to one Mr Inayatulah for Pakistani Rs 1.10 Crore . However as per clause number two of the agreement the assessee received cash of 50 lakhs Pakistani rupees on 2 January 2013. Assessee brought 50 lakhs of Indian rupees in India through unofficial channel as claimed by the assessee. However, it is a matter of common knowledge as per information available in public domain; generally the exchange rate for one Indian rupee is ₹ 1.75 Pakistani rupees. Therefore it is highly improbable that a person gets ₹ 50 lakhs of Pakistani rupees and deposited in Indian bank ₹ 50 lakhs INR in Indian banks. In view of this assessee is also required to explain that where from he got the money and how much, what is the conversion rate at that prevail in time i.e. how many Pakistani rupees he paid for getting 50 lakhs Indian rupees for depositing in the bank account. The assessee is required to show the source of that some.

22. As before the assessing officer assessee could not submit all the requisite details, the assessee submitted details according to his understanding

before the CIT A, but without any enquiry, the evidence produced by the assessee were rejected. The assessee is not an Indian resident but has come from Pakistan as persecuted hindu community,,, therefore naturally the assessee will not have the sufficient or foolproof evidences. This fact has also been considered in this notification number 5 dated 29/05 /1969 wherein it is provided that any claim by such migrants that the funds or the jewellery have been brought from the abovementioned countries, will be accepted only if the persons concerned produce adequate evidence to show that they had sufficient funds/wealth in those countries and that the transfer of the cash/jewellery to India can directly be linked with the said funds or wealth. In other words, these migrants will have to lead proper evidence like any other assessees, about the source of the cash/jewellery alleged to have been brought by them from these countries. In support of the claim that they had sufficient funds in those countries, they might produce before the income-tax authorities in India their bank accounts in those countries as also copies of the assessment orders passed in their cases by the income-tax authorities of those countries. The migrants would also then be required to prove that the amounts brought into India can directly be linked with the funds which they had possessed in those countries. Even it is also the request of the assessee that the learned assessing officer has not considered the evidence placed before him in view of the above circular therefore the matter should go back to the assessing officer. The revenue did not contest the above claim of the assessee. Even otherwise for the reasons stated above, we set-aside the whole issue back to the file of the learned assessing officer with a direction to examine the evidence produced by the assessee and test them in accordance with notification number 5 as stated above. In view of this ground number 1, 2, 3 are set-aside to the file of the learned assessing officer, the assessee is directed to produce before the assessing officer adequate evidence in terms of the above said notification, AO shall examine them, provide a proper opportunity of hearing to the assessee and then decide the issue in accordance with the law.

23. Ground number four is with respect to charging of interest and ground number five is with respect to initiation of penalty proceedings, ground

number four is consequential in nature and ground number five is premature, therefore both these grounds are dismissed.

24. Accordingly, appeal of the assessee is allowed for statistical purposes.

Order pronounced in the open court on 28/12/2020.

-Sd/-	-Sd/-
(H. S. SIDHU)	(PRASHANT MAHARISHI)
JUDICIAL MEMBER	ACCOUNTANT MEMBER

Dated: 28/12/2020
A K Keot

Copy forwarded to

1. Applicant
2. Respondent
3. CIT
4. CIT (A)
5. DR:ITAT

ASSISTANT REGISTRAR
ITAT, New Delhi