

**IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH "A" NEW DELHI**

Before Shri P N Parshar and Shri P M Jagtap

**ITA No. 279/Del/07
A. Y. 2003-04**

**Ms Mayawati
C-i/11, Humayun Road
New Delhi - 110003
(Appellant)**

**Dy Commissioner Of Income-tax
Central Circle -11, New Delhi
(Respondent)**

**ITA No. 422/Del/2007
A. Y. 2003-04**

**Dy Commissioner Of Income-tax
Central Circle -11, New Delhi
(Appellant)**

**Ms Mayawati
C-i/11, Humayun Road
New Delhi - 110003
(Respondent)**

Appellant by : Dr. Rakesh Gupta Adv., Sh. Ashwani Taneja FCA & Sh. Tarun Kumar Adv.

Respondent by : Shri B Koteshwara Rao

ORDER

Per: P N Parashar:

These cross appeals, arising out of the order of the learned CIT(Appeals) dated 15.11.2006 for A.Y. 2003-04 are being decided by a common order for the sake of convenience.

2. Dr. Rakesh Gupta Advocate, along with Shri Ashwani Taneja FCA and Shri Tarun Kumar Advocate, appeared for the assessee whereas Shri B. Koteshwara Rao Sr. DR represented the revenue.

ITA No. 422/Del/2007 (Department's appeal):

3. In this appeal the revenue has taken following grounds:

"On the facts and in the circumstances of the case the Ld. CIT(A) has erred in:

1. deleting the addition of Rs. 2,00,000/- made on account of claim of gift from Shri Pankaj Jain by the assessee which was not found genuine by the AO.

2. deleting the addition of Rs. 40,68,450/- and Rs. 22,03,850/- made on account of claim of gift of property from Shri Ashok Jain & Veena Jain respectively which were not found genuine by the AO."

4. Before adjudicating these grounds, we consider it proper to narrate the factual background and the orders passed by the departmental authorities in relation to the main issues involved. The facts of the matter as culled out from the material brought on record, are as under:

4.1. The assessee filed return of her income for the assessment year under consideration declaring total income at Rs. 13,29,090/-. This income consisted of income from salary, house property, agriculture, fisheries and other sources. The return was filed on 6-8-2003. A notice u/s 143(2) was issued by the AO, in response to which necessary details were filed on behalf of the assessee.

4.2. A search was conducted by the officers of Narcotics Control Bureau on 6th August 2003, and during the course of search, from the premises belonging to M/s Manu Tours and Travels, a concern, owned by Shri Raj Kumar, the brother of the assessee, some papers of importance to the Income Tax Department were also found. On the strength and information gathered from the search, the Addl. Director of Income-tax (Investigation), New Delhi, conducted a survey u/s 133A of the Income-tax Act on the above premises of Sri Raj Kumar i.e. at EA-44, Inder Puri, New Delhi. In the said survey no material relating to the assessee was however found.

4.3. In the assessment order, the AO, after making reference to various gifts received by the family members of the assessee, also noted the gifts received by the assessee during the assessment year under consideration. Details of these gifts are as under:

Sl. No.	Donor's name & address	Amt. & Rs.	Cheque No.	Date	Bank
1.	Mr Pankaj Jain R/o KD-5, Kavi Nagar, Ghaziabad	200000	171816	07.12.2002	Andhra Bank, Navyug Market, Ghaziabad.
2.	Sh. Ajay	1000000	921359	07.12.2002	PNB, G.T.

	Agarwal, R/o KF-21, Kavi Nagar, Ghaziabad.		Road, Ghaziabad.
3.	Sh. O.P. 100000 592985 15.01.2003 Khadaria, R/o B 1 -D, DDA Flats, SFS Gulabi Bagh, Delhi.		State Bank of India, University Branch, Delhi.

DETAILS OF IMMOVABLE ASSETS RECEIVED

Sl. No.	Donor's Name & Details of address property	Value (Rs.) as per Gift deed
1.	Smt. Veena Jain, C-58, R/o KD-5, Kavi Inderpuri, Nagar, New Delhi Ghaziabad.	16.11.2002 2203850
2.	Sh. Ashok Kumar C-57, Jain, R/o KD-5, Inderpuri, Kavi Nagar, New Delhi Ghaziabad.	26.12.2002 4068450

Sri Ashok Jain & smt. Veena Jain are spouse and Sh. Pankaj Jain is nephew of Sri Ashok Jain. Sri Ashok Jain is a professional Advocate and Sh. Pankaj Jain is a practicing Chartered Accountant and a partner of M/s P. Jain & Co.

4.4. The Addl. Director of Income-tax (Inv.) Unit No. 1 had recorded the statements of two donors namely, Smt. Veena Jain w/o Shri Ashok Kumar Jain; and Shri Pankaj Jain. The AO however separately recorded statements of all these three donors namely Sri Ashok Jain, Smt. Veena Jain and Sri Pankaj Jain. He also made further enquiries from the assessee regarding the gifts. So far as the gift made by Shri Pankaj Jain is concerned, after reproducing the statement of Shri Pankaj Jain recorded by the Addl. Director of Income-tax (Exemptions) (Inv.) and after noting the details of other gifts given by him, the A.O. observed that the entire amount gifted by him during various years to the assessee and her family members was out of the amount received from M/s Blue Bells Finance Co. After recording this fact, the AO also observed that it is surprising that the donor made gifts out of the loan taken from this concern. Further, the AO observed that there was no occasion for making the gift as there was no relationship between the donor and the donee. According to him, the gift was an arranged gift and was only an accommodation entry. For

disbelieving the gift, he also made reference to the decision in the case of Shreelekha Banerji Vs. CIT, 49 ITR 112 and the decision in the case of Seth Kale Khan Mohd. Haneef Vs. CIT. 34 ITR 669 (MP) and the decision in the case of CIT Vs. Krishna Mining Co., 83 ITR 860. He further held that the burden of proving the source of the credit entries was on the assessee, and once the entry is found in the books of account of the assessee then she was under legal obligation to explain the nature of such entry and that the AO is not required to specifically prove as to what was the source from which the deposit was made. He further concluded that merely establishing the identity of the creditor is not enough and that the assessee has also to prove the capacity of the creditor as well as the genuineness of the gift. He was also of the opinion that merely by filing of the confirmatory letter, the assessee cannot be said to have discharged the onus that lies upon her nor the proof of payment by a/c payee cheque is enough. By placing reliance on the ratio of decision in the case of CIT Vs. Korely Trading Co., 232 ITR 820 he also observed that mere filing of the income-tax details of the creditor is not enough to prove the genuineness of the credit. The AO, on the basis of the above observations, issued a letter dated 16.2.2006 to the assessee and intimated her that he was not satisfied about the genuineness of the gift as also about the creditworthiness of the donors and therefore proposed to assess the to add amount of gift as her income from undisclosed sources.

4.5. In compliance to the letter dated 16.2.2006 the assessee filed written reply dated 25.3.2006 through which she tried to establish the genuineness of the gift as well as the creditworthiness of the donor to make the gift. She also filed family photographs of the family members of the donors to show the close relationship between the donor and the donee.

4.6 The AO not being convinced held the gift to be an arranged gift and added the amount of gift as income of the assessee u/s 68 of the Income-tax Act. In doing so the AO also rejected the explanation of the assessee submitted through letter dated 28.3.2006. The assessee had also quoted several authorities to support her version but the AO observed that the said authorities' decisions on which reliance was placed by the assessee were not applicable to the facts of the case.

4.7. So far as the gift of immovable property made by Smt. Veena Jain and Shri Ashok Kumar Jain is concerned the explanation of the assessee before the AO was that gifts of immovable property cannot be assessed u/s 68 of the I.T. Act. The AO, however, made reference to section 56(1) of the Income-tax Act and held as under:

"The assessee has claimed that the gift of immovable properties can not be assessed u/s 68 of the I.T. Act. In this connection it will be appropriate to produce below the provisions of section 56(1) of the I.T. Act.

"Income of every kind which is not to be excluded from the total income under this Act shall be chargeable to income-tax under the head "Income from other sources", if it is not chargeable to income-tax under any the heads specified in section 14, items A to E."

In this case there is no doubt that the assessee has received the following amounts during the year under consideration:

1. Cash Rs. 2,00,000/-
2. Immovable properties worth Rs. 62,72,300/-

This section clearly states that income of every kind which is not to be excluded from the total income under this act shall be chargeable to income tax under the head Income from other sources if it is not chargeable to income tax under the head specified in Section 14 items A to E. The assessee has offered an explanation that since it is a gift it is not chargeable u/s 68 of the I.T.Act.

Section 68 of the I.T. Act, states that where any amount is found credited in the books of an assessee maintained for any previous year shall be charged to Income tax as income of the assessee of that previous year. There is no doubt that the amount has been found credited in the books maintained by the assessee for her business activity and therefore the cash of Rs. 2,00,000/- received by her will be charged to Income Tax u/s. 68 read with section 56 (1) of the I.T. Act.

So far as the receipt of the immovable properties are concerned the assessee offered an explanation and the explanation furnished by her has not been accepted by me as mentioned above and therefore the same will be charged to tax u/s. 69 of the I.T. Act, the amount shown (as so called gifts in the form of cash or in the form of immovable properties) are in fact assessee's own money generated from undisclosed sources. Therefore, additions are made under the head income from other sources (as discussed above) read with section 69 (investment from undisclosed sources)."

(at page 26 and 27 of Assessment order)

4.8. Thus the AO made addition of Rs. 2,00,000/- on account of cash gift made by Shri Pankaj Jain and addition of Rs. 40,68,450/- on account of gift of

immovable property i.e. C-57, Inder Puri, New Delhi made by Shri Ashok Kumar Jain and addition of Rs. 22,03,850/- on account of gift of immovable property no. C-58, Inder Puri, New Delhi made by Smt. Veena Jain.

4.9. It may be pointed out here that although the assessee had shown other two gifts of Rs. 1,00,000/- and Rs. 10,00,000/- received by her from Shri Ajay Agarwal and Shri O.P. Khaderia respectively, the details of which have been given in the chart reproduced in the assessment order, which has also been reproduced by us as above, but the AO has not discussed anything about these two cash gifts totaling to Rs.11,00,000/- and has made no addition on account of the same which means that the A.O. has accepted these two gifts as genuine gifts fulfilling all the requisite conditions necessary for providing the identity and creditworthiness of the donors and genuineness of the gifts. It may further be pointed out here that in relation to these two gifts also, the explanation of the assessee, conveyed to the A.O. vide letter 25.3.2006, and available at page 59-64 of paper book, was similar. The AO has not made any attempt to distinguish these two gifts from the other three gifts which were rejected by him. It may also be pointed out that those two donors were also not related to the assessee nor there was any specific occasion for them for making gift to the assessee. Thus, the AO has not adopted a consistent and uniform approach while examining and considering the transactions of five gifts received by the assessee during the year. He has accepted two gifts as genuine and rejected three gifts as non genuine without distinguishing the main features of these gifts. This only demonstrates a self contradictory and inconsistent approach of the AO.

4.10 The assessee challenged the additions made by the AO before the learned CIT (Appeals). During appellate proceedings, the learned CIT (Appeals) obtained a Remand Report from the AO to know the net worth of the donors. On the basis of this Remand Report, the net worth of the three donors whose gifts were not accepted, was found to be as under:

(i)	Shri	Ashok	Jain	:	Rs.	1,14,74,817
(ii)	Smt.	Veena	Jain	:	Rs.	1,32,14,312
(iii)	Shri Pankaj Jain : Rs. 1,36,01,314					

4.11. After reproducing the above figures on page 3 of his order, the learned CIT (Appeals) has observed that net worth of Shri Ashok Kumar Jain was Rs. 1,14,74,817/- who gifted immovable property worth Rs. 40,68,450/- Net Worth of St. Veena Jain was Rs. 1,32,14,312/- who gifted Rs. 22,03,850/- and Net Worth of Shri Pankaj Jain was Rs. 1,36,01,314/- who made gift of Rs.2,00,000/-.

4.12. The learned CIT (Appeals) has considered the entire material in great detail in the appellate order. He has narrated the grounds on which the AO has rejected the creditworthiness of the donors and the genuineness of the gift

transaction. He has narrated the submission of the assessee by making reference to the authorities on which reliance was made by the assessee for assailing the order of the AO and after considering the same, he has deleted the additions.

4.13. The learned CIT (Appeals) has firstly considered the common ground relating to all the three gifts and additions made on account of the same. These common points raised by the assessee before him are as under:

1. The appellant on various occasion asked the assessing Officer to supply the copies of the statements given by the donors, however the same were not supplied to the appellant in clear violations of the principles of natural justice.

2. The appellant has cited certain decisions of various Tribunals, High Courts during the course of the assessment proceedings however the assessing officer without appreciating that it is obligatory to point out by good and acceptable reasoning as to how the facts and circumstances of one case happens to be different from other case rejected the ratios of the cited judgments merely by claiming that decisions referred by the learned counsel are not applicable to the facts of the case.

It is our considered opinion that it obligatory on the part of every assessing authority to point out by good and acceptable reasoning as to how the facts and circumstances of one case happens to be different from other case, It is totally improper to close the doors to a litigant by a casual treatment of some statements moving towards a conclusion that the precedents on which such litigant relied are different from his case. Such brushing conclusions can never be called legal.

3. The learned assessing officer has not acted in judicial spirit and in accordance with rule of justice, equity and has acted with bias. He has delivered irrelevant details, instances, statements to pass an irrational order. The whole assessment order is null and void on this only ground as well. (Surender Kumar Jain Vs. Deputy Commissioner of Income Tax - 2004 TTJ (Nag) 285.

(at page 23 and 24 order of CIT(A))

4.14. Thereafter the learned CIT (Appeals) took up the main grounds on which the AO held the gift to be non-genuine. These grounds were that there was no occasion to make the gift and that there was no relationship between the donor and the donee for justifying the making of the gift. On these grounds the observations of the learned CIT (Appeals) are as under:

"Before proceeding further it would not be out of place to highlight the fact that on one hand the AO has rejected the Gifts of Shri Ashok Jain, Smt. Veena Jain and Shri Pankaj Jain on the ground that the Donor and donee were not related, but on the other hand the AO in the same assessment proceedings, has accepted the Gifts of Shri O.P. Khadaria and Shri Ajay Agarwal where also there was no "occasion" to make Gift. The Donor and donee were also not related to each other and natural love and affection, between the Donor and the donee, arose on account of man made relationship.

It is also not a requirement, of either of the Gifts Tax Act or the Transfer of Property Act that a gift can only be made "on an occasion" and the donor and the donee must be relatives. I hold so based on the decisions in 2004 TTJ 0692 (Delhi) and 2003 TTJ 0992 (Vishakhapatnam). In view of the above, I am of the opinion that the gifts received by the assessee cannot be questioned on the ground of no "occasion" and no "relationship".

It would also be relevant to mention that the only requirements for gift are that there should be transfer, by one person to another, of any existing movable or immovable property. Further the transfer should be voluntary, and, should be made without consideration of any money. The same should be out of natural love and affection and the donee must also accept the said gift.'

(at page 24 and 25 order of CIT (A))

4.15. Thereafter, the learned CIT (Appeals) has framed the following issues:

"(1) Whether the gifts of immovable properties received by the assessee from Shri Ashok Jain and Smt. Veena Jain were

(2) Whether the gift received by the assessee of Rs. 2,00,000/- from Shri Pankaj Jain was genuine."

(at page 25 order of CIT (A))

4.16 Coming to the gift relating to property no. C-57 Inder Puri, New Delhi made by Shri Ashok Kumar Jain, the learned CIT (Appeals), after considering the documentary evidence, including the details of income-tax affairs of the donor, his bank account, has affidavit certifying the gift, his statement recorded by AO and confirmation about the giving of the gift, his relationship with the donee and the evidence regarding creditworthiness of the donor, as obtained by him by seeking Remand Report from the AO and also after considering the

registration of the immovable property, on transfer in the names of donor, and thereafter in the name of the donee at the time of the making of the gift, the learned CIT (Appeals) held that genuineness of the gift transaction is conclusively established and the identity and the capacity of the donor also stood established. He has opined that once the donee furnishes the gift deeds and affidavits of the donors, it is sufficient to prove the genuineness of the gift. In support of this conclusion he placed reliance on the decisions in the cases of Commissioner of Tax Vs. R.S. Sibal (Delhi Court), 269 ITR 429; and Murlidhar Lahorimal Vs. CIT, 2000 CTR 109 (Guj.); and Nek Kumar s. ACIT, 274 ITR 567 (Raj.) The learned CIT (Appeals) has also observed that as against the overwhelming evidence adduced by the assessee no evidence has been placed on record by the AO to prove that the transaction of gift was sham or benami. On the point of burden for proving the genuineness of the gift, the learned CIT (Appeals) has made following observations:

"I am also of the opinion that once the initial burden of proving the genuineness of the gift and the creditworthiness of the donor was discharged by the assessee the onus shifted on the AO to prove if he so alleges, that it was on the contrary an investment of the assessee. For this view I rely on the following judicial pronouncement.

98 ITR 280 (Allahabad)

Not only that, I am also of the opinion that when a particular explanation furnished by the assessee and evidence in support thereof is adduced, the onus shifts on the AO to falsify the said material or bring new material on record. Mere rejection of good explanation does not convert good proof into no proof. For this proposition I derive sanction from:-

49 ITR 112 (SC)

152 ITR 504 (Delhi)

Further, the AO's rejection of the explanation offered by the assessee as well as the inference as to the genuineness of the Gift and creditworthiness of the Gift and creditworthiness of the donor cannot by itself lead to any inference regarding the non genuineness of the gift, unless some tangible material, or some evidence is led in support of his claim that the property gifted was assessee's income earned from undisclosed sources. On this count also the AO has failed miserably, compelling me to infer that he has rejected the claim of the assessee without any valid reason.

Further as regards applicability of Section 69, I am of the opinion that it is not the assessee who has made the investment. The donor has paid the stamp duty twice the assessment of the donor has not been disturbed, the donor and the donee are both accepting the factum of the gift. Further the gift is also evidenced by documentary evidences like gift deeds, sworn affidavits, declarations before AO etc. the donor has also given explanation for immediate source of Gift. In view of the totality of facts, in my opinion the donee has discharged not only the burden but also the onus cast on him. On the other side the AO has failed miserably to lead any evidence in support of his claim, forcing me to conclude that the assessment is based on conjectures and surmises.

(at page 27 and 28 order of CIT (A))

4.17. The learned CIT (Appeals) thereafter considered the gift of property of C-58, Inder Puri made by Smt. Veena Jain. After considering the details of her income-tax affairs, her bank account, her affidavit certifying the gift, her statement recorded by the AO and her relationship with the donee, the learned CIT (Appeals) examined the requisite conditions of the gift i.e. identity of the donor, the creditworthiness of the donor and the genuineness of the transaction of gift in the context of various authorities and has accepted the gift to be genuine. In doing so he has also considered the fact that for registering the transaction relating to transfer of this property in the name of the donor and thereafter in the name of the donee on the occasion of gift the stamp duty was paid twice. The learned CIT (Appeals) also held that section 69 of the Income-tax Act is not applicable because there is no proof that the assessee had made any investment in the property gifted to her. The conclusion drawn by the learned CIT (Appeals) regarding this is similar as made in the case of gift of Sri Ashok Jain, therefore we see no need to reproduce the same.

4.18. So far as the gift of Rs. 2,00,000/- is concerned, the learned CIT(Appeals) accepted this gift also as genuine and deleted the addition of Rs. 2,00,000/- by observing as under:

"ISSUE NO.2 : GIFT OF Rs. 2,00,000/- :

As regards Gift received from Shri Pankaj Jain, it is seen that he is Chartered Accountant by profession and is assessed to tax since last so many years. I find that he has placed details of his income tax assessment and bank account, and has also filed affidavit certifying the above Gift. He has also appeared before the A.O. for statement on oath where again he has confirmed giving of the

Gift. He has also established that he has been meeting the assessee, and his family members, on family functions since last so many years. I also find that he has given the Gift vide Account Payee Cheque No. 171816 dated 17.12.2002 drawn on Andhra Bank for Rs. 2,00,000/-. I also agree with his submissions that reciprocation of Gifts is not mandatory and its creditworthiness has been accepted now by the A.O. himself in the Remand Report. I also find that A.O. has erred in giving a finding that Gift was given in "Cash", and also that entire Gift was made out of amount received from "M/s Blue Bell Finance Co." when in fact the gift has been given through A/c Payee Cheque, and out of Repayment of deposits of the Donor lying with the said M/s Blue Bell Finance Company.

In the light of the above, the genuineness of the Gift is conclusively established, in as much as the identity and capacity of the Donor, as well as factum of Gift stand established. It is also trite law that once the Donee furnishes the Gift Deeds and Affidavits of the donors, they suffice to prove the genuineness of the Gift. For this view I rely on the following judicial pronouncements.

269 CTR 429 (Delhi)

200 CTR 109 (Gujarat)

274 ITR 575 (Rajasthan)

I am also of the opinion that once the initial burden of proving the genuineness of the Gift and the creditworthiness of the Donor was discharged by the assessee the onus shifted on the A.O. to prove, if he so alleges, that it was on the contrary an investment of the assessee. For this view I rely on the following judicial pronouncement.

49 ITR 112(SC)

98 ITR 280 (Allahabad)

Not only that, I am also of the opinion that when a particular explanation furnished by the assessee and evidence in support thereof is adduced, the onus shifts on the A.O. to falsify the said material or bring new material on record. Mere rejection of good explanation does not convert good proof into no proof. For this proposition I derive sanction from : 49 ITR 112 (S.C.)

152 ITR 504 (Delhi)

Further, the A.O's rejection of the explanation offered by the assessee as well as the inference as to the genuineness of the Gift and creditworthiness of the Donor cannot by itself lead to any inference regarding the non genuineness of the Gift, unless some tangible material, or some evidence is led in support of his claim that the property Gifted was assessee's income earned from Undisclosed Sources. On this count also the A.O. has failed miserably, compelling me to infer that he has rejected the claim of the assessee without any valid reason.

103 ITR 344

As regards applicability of Section 68, I am of the opinion that the Gift could not have been dated u/s 68 because the Gifted amount has been directly deposited into the bank account of the assessee. In such facts, the law on the point has been laid down in CIT Vs. Bhai Chand. Gandhi 141 ITR 67, 69 Bombay - that Statement of Affairs is not Books of Accounts, hence addition u/s 68 cannot be made.

I am also of the opinion that as the Gifts cannot be charged u/s 68, the A.O. has tried to take shelter u/s 56 of I.T. Act by stating in the Assessment Order that the Gifts are charged u/s 68/69 r.w.s. 56(1). While doing so he has forgotten that Section 68 and 69 are deeming provisions and not charging Section. So they cannot be read together. And this is not a case where Section 56 would apply as the assessee is not having any Income from Other Sources.

Keeping in view the totality of facts the addition of Rs. 2,00,000/- is also deleted, as the Gift is genuine."

(at page 31 and 33 order of CIT(A))

5. The learned DR has supported the grounds of revenue for challenging the order of the learned CIT(Appeals) and for this purpose he has mainly placed reliance on the order of AO.

6. The assessee on the other hand has filed paper books which contains copies of various documents which are available on the file of the A.O. and CIT(A) and case laws.

6.1 The assessee has also filed synopsis of submissions consisting of 17 pages. For supporting the order of the learned CIT(Appeals) the assessee has also placed reliance on the various authorities in support of the written submissions.

6.2. Besides the above, at the time of hearing the learned counsel for the assessee made reference to so many other authorities to show that the assessee had discharged the burden which lay upon her to prove the genuineness of the gift.

7. We have carefully considered the facts and circumstances relating to this matter and the rival submissions. The following facts remain undisputed:

(1) The assessee had, received five gifts during the year under consideration which were considered by the AO.

(2) Out of these three gifts were received in the form of cash, totaling to Rs. 13,00,000/- out of which the above gifts to the tune of Rs. 11,00,000/- have been accepted to be genuine by the AO.

(3) The third gift which was rejected by the AO, was received by the assessee from Sri Pankaj Jain. The main features relating to this gift are as under:

(a) The gift has been made through a/c payee cheque;

(b) The donor had confirmed the gift;

(c) The assessee had filed gift deed as well as the affidavit of the donor confirming the gift.

(d) The donor is assessed to tax. His statement was recorded both by the Addl. Director of Income-tax (Inv.) and the AO.

(e) The AO has not disputed the identity of the donor

(f) There is no material to show that the amount of Rs. 2,00,000/- gifted by this donor was the money given by the donee in any form at any time.

7.1. So far as the gifts of two immovable properties are concerned, the following facts are undisputed:

(i) These properties have been purchased by the donors through registered sale-deeds;

(ii) Donors have filed the gift deeds which are registered. At the time of registration of the gift deeds, stamp duty had been duly paid.

(iii) Both of the donors are assessed to tax.

(iv) The donors have confirmed the making of gift by filing affidavits before the AO. -

(v) The donors have also filed evidence in the terms of photographs to show their intimacy with the donee.

(vi) The AO has not doubted the identity of the donors,

(vii) The transactions of purchasing the property by the donors have not been treated to be sham transaction by the department,

(viii) The transactions relating to transfer of the property through the gift to the donee have not been found to be benami or sham in law.

(ix) The A.O. has not made any enquiries by examining the witnesses of the Registered Gift Deed.

7.2 In the setting of factual background narrated as above and in the context of the undisputed facts recorded as above, we consider it proper to discuss the nature of gifts received by the assessee and the findings of the departmental authorities in relation thereto for deciding the grounds of appeal taken before us.

7.3. As the issue involved in both the grounds of appeal relates to genuineness of gift of movable and immovable properties, we deem it proper to consider the requirement of law in relation to validity of such gifts.

7.3.1. In this regard we consider it necessary to refer to Chapter VII of the Transfer of Property Act 1882 which deals with gifts of movable and immovable properties. Section 122 defines 'gift' as under:

"Gift" defined.

122. "Gift" is the transfer of certain existing movable or immovable property made voluntarily and without consideration, by one

person, called the donor, to another, called the donee, and accepted by or on behalf of the donee.

Acceptance when to be made.

Such acceptance must be made during the lifetime of the donor and while he is still capable of giving.

If the donee dies before acceptance, the gift is void "

7.4. Section 123 of the Transfer of Property Act deals with the procedure relating to Transfer of the Property gifted. This provision is as under:

"123. For the purpose of making a gift of immovable property, the transfer must be effected by a registered instrument signed by or on behalf of the donor, and attested by at least two witnesses.

For the purpose of making a gift of movable property, the transfer may be effected either by a registered instrument signed as aforesaid or by delivery

Such delivery may be made in the same way as goods sold may be delivered"

7.5. In view of the above definitions, following are the essential elements of gift:

- (1) Donor's intention to make a gift;
- (2) The gift should be made voluntarily and without consideration, by the donor;
- (3) Delivery of actual or constructive possession;
- (4) Acceptance of the gift by the donee or on his behalf.

7.6. In addition to the above, gift of immovable property has to be through a registered document, and transfer of immovable property is to be effected by a registered instrument signed by or on behalf of the donor and attested by at least two witnesses, whereas in the case of movable property such gift should be effected either by registered instrument or by delivery.

7.7. In the case of CIT, U.P., Lko. Vs. Shyamo Bibi, Kanpur AIR 1967 (Alld) 82, the Hon'ble Allahabad High Court has observed that whether the transaction is gift or not is to be examined in the light of section 122 and 123 of Transfer of Property Act. The Hon'ble Court has also observed that there is no warrant for

the saying that the law contained u/s. 123 of Transfer of Property Act does not apply when an Income Tax Authority has to decide whether there was a gift or not. The relevant observations of the Hon'ble Court are as under:-

"(5) Section 123 of the Transfer of Property Act lays down the law governing all gifts made for whatever purpose and it is to be applied whenever the question arises whether there was a gift or not. Regardless of whether the question arises in a suit by a donee to recover possession or in a suit to define his title or in an income tax assessment proceeding it has to be answered with reference to the provisions of section 123 T.P. Act. There is no warrant for saying that the law contained in Section 123 T.P. Act does not apply when an income -tax authority has to decide whether there was a gift or not. Consequently there has to be a delivery, if a gift is not made by a registered document. A question may arise whether a certain act done by the alleged donor amounts to delivery of property to the alleged donee but it cannot be said that delivery is not required at all."

7.8. The definition of gift is not given in the Income-tax Act. In general terms, gift consists in the relinquishment of one's own right of the property and creation of the right in another in that property. This concept is in consonance with the definition of gift given in para 355 of the Principles of Hindu Law by Mulla which defines gift as under:

"355. 'GIFT DEFINED

Gift consists in the relinquishment (without consideration) of one's own right (in property) and the creation of the right of another; and the creation of another man's right is completed on that other's acceptance of the gift, but not otherwise.

7.9. The definition of gift as given in Hallsbury's Laws of England volume XVIII page 364 paragraphs 692 is as under "A gift inter vivo may be defined shortly as the transfer of any property from one person to another gratuitously while donor is alive and not in expectation of death....."

7.10. On the concept of gift we consider it proper to reproduce the observations of Lord Esher, M.R. made in Cochrane's case, (1890) 25 OBD 57 (supra), which are as under:-

"..... actual delivery in the case of a 'gift' is more than evidence of the existence of the proposition of law which constitutes a gift, and I have come to the conclusion that it is a part of the proposition itself. It is one of the facts which constitute the proposition that a gift has been made, It is not a piece of

evidence to prove the existence of the proposition; it is a necessary part of the proposition, and, as such, is one of the facts to be proved by evidence. The proposition is not that the one party has agreed or promised to give, and that the other party has agreed or promised to accept. In that case, it is not doubted but that the ownership is not changed until a subsequent actual delivery..... The giving and taking..... are not evidence to prove that there has been a gift, but facts to be proved to constitute the proposition that there has been a gift."

7.11. In the case of *Devi Sharan Vs. Nand Lal*, AIR 1929 (Patna) 591 the Hon'ble Patna High Court has observed that the Hindu Law in case of gifts has been expressly abrogated by section 129 and a gift to a sentient being under Hindu law must be made in accordance with section 123 of Transfer of Property Act. The Hon'ble court has observed that "dan" i.e. gift for all material purposes is governed by the provisions of the Transfer of Property Act.

7.12. In the case of *Rashubar Putt Josh Vs. State of U.P.*, AIR 1977 page 716 the Hon'ble Court while considering the above referred definition of Hallsburry observed as under:

"The word consideration in section 122 of the Transfer of Property Act is used in the same sense as the term is defined in the Indian Contract Act Section 4 of the Transfer of Property Act provide that the chapters and sections of this Act which relate to contract shall be taken as part of the Indian Contract Act, 1972. Accordingly, the word consideration in reference to transfer of property consideration, has to be read in the light of its definition given in Indian Contract Act. It is indisputable that a transfer in consideration of natural love and affection is not a transfer for consideration with the meaning of section 2 of the Contract Act Under the law a consideration must be a good and valuable consideration. Therefore gratuitous consideration such as natural love and affection or obedience and submission by way of respect or love may at best be a meritorious or a gratuitous consideration and in no case can be a good consideration or a valuable consideration. See *Patridge V. Cobb* (1).

In English law the term 'consideration' bears the meaning given to it in the classical judgment of *Currie V. Misa* (2). Although Indian Contract Act does not say that consideration must be good or valuable to sustain a contract, it has, however always been understood that consideration means something which is of some value and is not illusory. In the light of what I have said above, it is clear that a gift being not for consideration the question of applying the proviso does not apply. The proviso applies only to a

transfer which has been made on good faith and for adequate consideration. It is important to note that the expression 'adequate' used before the word consideration' also signifies it as to be monetary consideration and not consideration of love and affection otherwise the word adequate would become redundant

7.13. In view of the above judicial pronouncement it is clear that for all intents and purposes the validity of the gift, whether of movable or immovable property, is to be examined by satisfying the conditions laid down in section 122 and 123 of the Transfer of Property Act. From the same it follows logically that for income tax purpose also the validity of gifts is to be examined in the light of the above referred provisions as has also been held by the Hon'ble Allahabad High Court in the case of CIT, U.P., Lko. Vs. Shyamo Bibi, Kanpur AIR 1967 (Alld) 82 already referred to above.

7.14. In view of the above we have to examine as to whether these legal requirements, as laid down in Section 122 and 123 of T.P. Act are satisfied in the case of gifts made to the present assessee or not. So far as the gift from Shri Pankaj Jain is concerned, the transaction was carried out through account payee cheque and reflected in the bank account of the assessee, which is as per S.B. A/c no. 9195 on Union Bank of India, Moti Bagh New Delhi. The amount of Rs. 2,00,000/- is gifted by Shri Pankaj Jain s/o Shri P.C. Jain, Kavi Nagar, Ghaziabad. The date of the entry is 7-12-02. Shri Pankaj Jain has confirmed the transaction of gift by his affidavit dated 7th December 2002. The affidavit is as under:

" Affidavit

I Pankaj Jain S/o late Shri P.C. Jain r/o. KD-5, Kavi Nagar, Ghaziabad top hereby declare on oath as under:-

1. That I have gifted a sum of Rs. 200000/- (Rupees Two lacs only) to Ms. Mayawati D/o. shri Prabhu Dass R/o. EA-44, Inderpuri, new Delhi-110012 vide cheque no. 171816 dated 07.12.2002 drawn on Andhra Bank, Navyug Market Ghaziabad.

2. That I am assed to Income tax vide permanent a/c. No. ABQPJ0118E with Income Tax Officer, Ward 1(4), Ghaziabad.

Signature unreadable

(Pankaj Jain)

Deponent

VERIFICATION

I the above named deponent do hereby solemnly affirm that the contents of this affidavit are true and correct to the best of my knowledge and belief.
Verified this on 7th Day of December, 2002 at Ghaziabad.

Signature unreadable
(Pankaj Jain)
Deponent"
(at page 6 of paper book)

7.15. Statement of Shri Pankaj Jain was also recorded on 30-12-05 on oath by the ACIT Central Circle-11. In his statement also he has again categorically deposed that he made the gift out of natural love and affection. This is stated by him in reply to question no. 12. The question put to him and the reply is reproduced as under:

"Q.NO.12: What were the circumstances under which the gifts were given by you ?

Answer: out of Natural love & affection. And regard for work done by her towards downtrodden society and in view of her stature being /may be helpful in future."

(at page 114 of paper book)

In reply to question no. 14, he stated as under:

"Q.NO.14: Whether any documentary evidence was created at the time of gift ? if yes, the reasons there of? Answer: yes, Gift deed executed."

(at page 114 of paper book)

7.15.1. His relationship with the assessee is given in answer to question no. 17, which is as under :

"Q.NO. 17: Your Statement On oath was Recorded Earlier By Add. DI (Inv.) New Delhi I am showing you the same Do you wish any thing further over and above what was stated there ?

Answer: I wish to state that I had been meeting with donees at 12, Humayun Road, New Delhi and still regularly meet them at our

family function as well as of donee's. I am showing some photographs and ready to submit if required."

(at page 115 of paper book)

7.15.1. Even in his statement recorded by A.D.I. (Inv.) for the first time, which statement has been reproduced by the AO on page 19 and 20 of the assessment order Sri Jain, in reply to question no. 19 and 20 submitted that he has made the gift through cheques, and the cheques of gifted amount were delivered to the donee, To clinch the issue we consider it proper to reproduce questions and answers from question no. 22 to 28, which are as under:

"Q. No. 22 Please explain the source through which the gifts were made to donees?

Ans: I have, made these gifts through my regular bank account, copy of which has already furnished vide letter dated 19.12.2003.

Q. No. 23 What do you understand by gifts, what do you consider the main ingredients of gift?

Ans: gift is a voluntary payment made by one person to another. According to me sweet will is the main ingredients of gift.

Q. No. 24 whether the gifts to Ms. Mayawati and her relatives were made by you voluntarily or at the behest of any other person?

Ans: The gifts were made by me at my will and it includes the common conscious of my family members.

Q.No. 25 Do you also take advice of your uncles and more particularly of Sh. Ashok Kumar before giving any gifts to Ms. Mayawati or her family members?

Ans: Yes, Sh. Ashok Kumar Jain my uncle is also one of the person whose advice I take before giving any gift.

Q.No. 26 Whether you also guide your wife Mrs. Shally Jain for making gift?

Ans: Yes, I am also one of the members of family whose advice is taken before giving any gift

Q.No. 27 The total amount of gift made by you from Dec. 1999 to July 2003 comes to Rs. 24 lacs, which is much more than the

income returned by you for A.Y. 2000-01 and onwards? Please explain and clarify?

Ans: All the gifts are made by me through my regular bank account and I have furnished the details and credits in my bank account vide letter dated 19.12.2003.

Q.No. 28 On what occasions gifts were made to Ms. Mayawati and her family members?

Ans: The above gifts have been made at my will, not at any specific occasion."

(at page 20 of Assessment Order)

7.16. The donor is a CA. His qualification is B.Com. FCA. He was filing income tax return since 1994. His net worth as reported by the A.O. to the learned CIT(Appeals) is Rs. 1,36,01,314/-.

7.17. In view of the above documentary and oral evidence on record, the requirement of law for establishing a validly executed gift of movable properties are fully satisfied inasmuch the donor gifted the amount voluntarily to the donee and has delivered the possession of the gifted property to the donee.

8. Coming to the gift of immovable properties, we have to examine the documentary evidence filed by the assessee and available on record.

9. Gift of property bearing no. C-58, Inder Puri, New Delhi. The gift deed which is a registered document, has been filed by the assessee in the paper book and is available at pages 7 to 23. The donor and the donee both have signed this deed. The gift was executed in the presence of two witnesses who have signed the deed. Photographs of donor and donee have been appended. This document is duly stamped and duly registered. Stamp duty of Rs. 1,76,308/- and transfer deed of Rs. 1,10,192/- has been put for the registration purposes. The gift has been made irrevocable and absolute and once for all. The donor transferred and conveyed the free hold property with all attending rights to the donee by way of gift together with all privilege, easement and advantages appurtenant thereto. Main clauses which relate to the transfer of rights and delivery of possession etc. are as under:

"GIFT DEED

For Rs. 22,03,850/-

Stamp Duty @ 8% Rs. 1,76,308

Transfer Duty @ 5% Rs. 1,10,192

Rs. 2,86,500

THIS DEED OF GIFT is made at New Delhi on 16/11/02 by Smt Veena Jain W/o Sh. Ashok Jain R/o KD-5, Kavi Nagar, Ghaziabad (U.P.), the Donor, her heirs, successors, executors, administrators, legal representatives and assigns) of the one part.

IN FAVOUR OF

Ms. Mayawati, D/o Prabhu Dass alias Prabhu Dayal R/o EA-44, Inderpuri, New Delhi-110012 (hereinafter referred to as "the Donee"(which expression shall mean and include, the donee, her heirs, successors, executors, administrators, legal representatives and assigns) of the Other part;

Xxx xxx xxx

In the above manner the Donor became the sole and absolute owner of the Entire Freehold property bearing no. C-58, constructed on freehold plot no. C-58, measuring 500 yds., with terrace rights, situated in the area of the village Naraina in the abadi of an approved colony, Inderpuri, New Delhi for her bona fide needs and requirements with undivided, indivisible and impartiable ownership rights in the said plot of land with absolute and unfettered powers to deal with the same in any manner she likes at her sole discretion.

WHEREAS the Donor out of her natural love and affection for the Donee, is desirous of making a gift of the Entire Freehold property bearing no. C-58, constructed on freehold plot no. C-58, measuring 500 sq. yds, with terrace rights, situated in the area of the village Naraina in the abadi of an approved colony, Inderpuri, New Delhi undivided, indivisible and impartiable ownership rights in the said plot of land in favour of the Donee absolutely and forever but without any monetary consideration and is therefore executing this Gift Deed.

NOW THIS DEED WITNESSETH" GIFT

1. The donor hereby irrevocably, absolutely and forever gifts, transfers and conveys the said Entire Freehold property bearing N. C-58, constructed on freehold plot no. C-58, measuring 500 sq. yds, with terrace rights, situated in the area of the village Naraina

in the abadi of an approved colony, Inderpuri, New Delhi and in favour of the Donee out of her love and affection. The Donor transfer the said property to the Donee by way of gift together with all the liberties, privileges easements and advantages appurtenant thereto.

2. That the transfer hereunder include the transfer of all the rights of the Donor over in the said Entire Freehold property bearing No. C-58, constructed on freehold plot no. C-58, measuring 500 sq. yds, with terrace rights, situated in the area of the village Naraina in the abadi of an approved colony, Inderpuri, New Delhi to the Donee. That the Donee shall be entitled to cause the mutation of the said property done in the concerned authority in her own name.

3. That the physical possession of the said property has been handed over by the Donor to the Donee.

4. That the donor states that this gift of the entire Freehold Property bearing no. C-58, constructed on freehold plot no. C-58, measuring 500 sq. yds., with terrace rights, situated in the area of village Narain in the abadi of an approved colony, Inderpuri, New Delhi shall be irrevocable and none of her legal heirs, successors, nominee and administrators shall have anything to do with the said property and any object raised by anyone in respect of this gift and /or the said property in any manner whatsoever shall be null and void.

5. That the Donor, after the gift of the said property, shall be left with no rights, interest or lien in the said property, which shall hereinafter become the exclusive property of the Donee.

6. That the Donee hereby accept the gift of the said property without any condition or reservation."

(at page 17 and 18 of paper book)

9.1. The donor Smt. Veena Jain filed affidavit to confirm the gift, which is as under:

"AFFIDAVIT

Before the Assistant Commissioner of Income-Central Circle-11,
New Delhi

Reg.: Income Tax Case of Ms. Mayawati, New Delhi relevant to assessment Year 2003-04

I, Veena Jain W/o. Shri Ashok Kumar Jain R/o. KD-5, Kavi Nagar, Ghaziabad declare on oath as under:

1. That my name is Veena jain, reside at KD-5, Kavi Nagar, Ghaziabad and am fully acquainted with the facts of the case.

2. That during the Financial year 2002-03 I have gifted an immovable property bearing no. C-58, Inderpuri, New Delhi Valuing Rs. 2203850/- out of natural love and affection to Ms. Mayawati D/o. Shri Prabhu Dass alias Prabhu Dayal r/o. EA-44, Inderpuri, new Delhi through registered deed dated 16.11.2002.

3. That Ms. Mayawati is Dharam Sister of my husband Shri Ashok Kumar Jain. She puts Rakhi on his hand on Raksha Bandhan festival since last 15 years.

Signature unreadable

Deponent

VERIFICATION

I, Veena Jain W/o Shri Ashok Kumar Jain solemnly affirm that the contents of above para 1,2, and 3 are true and correct to the best of my personal knowledge and belief. Nothing have been concealed. So help me God.

Signed and verified this 25th day of March, 2006 at Ghaziahad.

Signature unreadable

Deponent

(at page 106 of paper book)

Statement of this donor was recorded on 4.11.2003 for the first time by the Addl. D.I.T.(Inv.) To clinch the issue we consider it proper to reproduce, questions and answers no. 16 to 32 to show that she made the gift voluntarily and out of reverence and love and affection to the donee. The relevant portion of the statement is as under:

प्र016 पिछले सात वर्षों में आपने कभी 5000/- ₹0 या इससे ज्यादा।

राशी के गिफ्ट किसी को दिये हैं तो विवरण दीजिए।

उ0 हों मुझे केवल पीछे दो वर्ष का ध्यान है जोकि जारी किये गये सम्मन में लिखा हुआ थी जिसका विवरण निम्नलिखित है।

..... Properties No. C-58, Inderpuri, New Delhi को मैंने मायावती जी को संग्रहालय बनाने हेतु नवम्बर 2002 में दी थी, जिसकी बाजारी कीमत करीब 22 लाख है।

(2) इसके अतिरिक्त मैंने संग्रहालय बनाने हेतु जुलाई 2003 में मायावती को 5,00,000/- ₹0 चेक द्वारा गिफ्ट दिया।

प्र018 आप गिफ्ट किसी अपनी इच्छा से देती हैं या किसी की सलाह पर या किसी के आदेश पर।

उ0 मैं यह गिफ्ट अपनी इच्छा से तथा अपने पति के सलाह लेकर देती हूँ।

प्र019 यदि आप गिफ्ट देते हैं तो चुपचाप दे देते हैं बकायदा उसकी कागजी कार्यवाही करते हैं, एक सेट अपने पास रखती है।

उ0 मैं गिफ्ट के लिए कागजी कार्यवाही करती हूँ और उसका एक सेट अपने पास रखती हूँ।

प्र20 आप किसी के मांगने पर गिफ्ट देते हैं या अपनी इच्छा से।

उ0 मैं अपनी स्वेच्छा के उपरलिखित गिफ्ट दिये हैं।

प्र021 आप किसी परिचित व्यक्ति, रिश्तेदारों आदि को गिफ्ट देते हैं या अपरिचित व्यक्तियों को।

उ0 मैं केवल परिचित व्यक्तियों एवं रिश्तेदारों को गिफ्ट देती हूँ अपरिचित व्यक्तियों को नहीं।

प्र022 आप गिफ्ट देते किसी के घर या आफिस जाते हैं या जिसको गिफ्ट देता है उसको अपने घर बुलाते हैं आपने क्या किया विस्तार से बताइए।

उ0 मैं गिफ्ट देते मैं गायाती के निवास के स्थान पर गयी थी।

प्र023 आपने जिन लोगों को गिफ्ट दिये हैं उन लोगों ने आपको कितने गिफ्ट दिये हैं।

उ0 दन लोगो नें कोई गिफ्ट नहीं दिया।

प्र024 आपने जिन लोगों को गिफ्ट दिये हैं उन लोगों का नाम उनके घर का पता, उनके आफिस घर व मोबाइल नं० बताइये। उन लोगो के परिवार के अन्य सदस्यों(पत्नी) पुत्री, बच्चे, माता,पिता आदि के नाम उग्र या हुलिया बातइयें।

उ० मैंने केवल हुमायू रोड पर अपने पति के साथ (मायावती) के घर गयी थी मुझे उनका मोबाइल नं० का कोई जानकारी नहीं। उनके साथ उनके भाई और भाभी और भैया के दो बच्चे रहते थे।

प्र०२५ जिन लोगों को गिफ्ट दिया है अंतिम बार उनसे कब मुलाकात हुयी।

उ० यह मुझे याद नहीं इन लोगो से कभी कभार शादी ब्याह में मुलाकात होती है।

प्र०२६ से दिया है, या किसी व्यक्ति के माध्यम से या

उ० मैंने उनके निवास स्थान हुमायू रोड पर दिये हैं।

प्र०२७ गिफ्ट देने का विचार आपके दिमाग में कब आया, फिर यह विचार दुबारा कब आया।

उ० एक सामाजिक कार्य करने हेतु, मन में बहुत दिनों से इच्छा थी और मुझे ज्ञात हुआ कि मायावती एक संग्रहालय का निर्माण करना चाहती हैं तो मैंने तुरन्त अपनी इन्द्रपुरी स्थित प्रापर्टी जो मैंने अपने स्वयं निवास के लिए भी थी, इस शुभकार्य हेतु के लिए सोचकर तुरन्त गिफ्ट दे दिया।

प्र028 क्या आपके पास जब कुछ रुपये बच जाते हैं तो आप अपने या बच्चों के लिए कुछ खरीदना चाहेंगे या उस अमाउन्ट को किसी को गिफ्ट देना चाहेंगे।

उ0 जब कुछ रुपये बच जाते हैं, मैं परिस्थितियों के हिसाब के परिवारीजनों की सलाह से बचाना या खर्च करती चाहूँगी।

प्र029 आपने जिस को गिफ्ट दिया है क्या आपको उसके साथ पत्र व्यवहार है यदि है तो प्रस्तुत करो।

उ0 नहीं, मेरा उनके साथ कोई पत्र व्यवहार नहीं है।

प्र030 क्या गिफ्ट देने के लिए आपने किसी से उधार लिया या किसी को उधार दिया है या यह राशी बहुत समय से अपने बचत के रूप में रखी हुई थी।

उ0 कुछ राशी मैंने अपने निकट सम्बन्धियों से उधार ली तथा कुछ मेरी Accumalated Saving के रूप में मेरे पास थीं।

प्र031 क्या आपने Republic Party of India, Indian Justice Party or Lokjan Shakti Party का नाम सुना है।

उ0 मुझे उपरलिखित पार्टियों का ज्ञान नहीं है।

प्र032 आपने जिनको गिफ्ट दिया है, उनको आप पिछले कितने वर्षों से जानते हैं, क्या आपने उनके कभी सहायता ली जैसे कि लोन, उनकी कार का उपयोग करना अपने बच्चों को उनसे ट्यूशन पढ़वाना, आपके घर से कोई बीमार हो तो उनके घर से खाना आना आदि ली है।

उ0 मैं इनको पिछले 10-12 वर्षों से जानती हूँ लेकिन मैंने कभी भी इन से कोई वित्तीय सहायता अथवा और किसी रूप में कोई सहायता नहीं ली।

(at page 8-10 of assessment order)

8.2. Her statement was again recorded on 26-12-2005 and she stated in reply to question no. 12 that she made the gift out of natural love and affection. To clinch the issue we consider it proper to reproduce question and answers from question no. 11 to 14 , which are as under:

"Q.NO.11: Please explain sources of gifts made by you?

Answer: Is being submitted separately."

Q, No. 12: What were the circumstances under with the gifts were given by you?

Answer: Out of natural love and affection.

Q. No. 13: Do you have any correspondence with the donees?

Answer: On personal meetings as well as on telephone.

Q. No. 14: Whether any documentary evidence was created at the time of gift? If yes, the reasons thereof?

Answer: Affidavit & Gift Deed executed. "

(at page 112 of paper hook)

9.3. From the above documentary and oral evidence, it is clear that the donee made the gift of immovable property to the donee voluntarily. The gift was duly

registered and therefore the requirement of sections 122 & 123 of the Transfer of Property Act are fully satisfied.

10. Coming to the gift of another immovable property i.e. C-57, Inder Puri, the donor has executed the gift deed on 26-12-2002, The gift deed is available at pages 24 to 52 of the paper book. This document has also been duly stamped and duly registered and bears the signatures of Shri Ashok Jain, the donor and of the assessee, the donee. The witnesses have also signed the registered deed at the time of registration. In this deed also relevant recital are as under:

"GIFT DEED

For		Rs.		40,68,450/-
Stamp	Duty	@	8%	Rs. 3,25,477
Transfer	Duty	@	5%	<u>Rs.2.03.423</u>
<u>Rs. 5.28.900/-</u>				

THIS DEED OF GIFT is made at New Delhi on 26/12/02 by Sh. Ashok Jain S/o Late Sh. Mithan Lal Jain R/o KD-5, Kavi Nagar, Ghaziabad (U.P.), hereinafter referred to as the Donor" (which expression shall mean and include, the Donor, her heirs, successors, executors, administrators, legal representatives and assigns) of the one part.

IN FAVOUR OF

Miss Mayawati, D/o Prabhu Dass alias Prabhu Dayal R/o EA-44, Inderpuri, New Delhi-110012, hereinafter referred to as "the Donee" (which expression shall mean and include, the donee, her heirs, successors, executors, administrators, legal representatives and assigns) of the Other part;

Xxx xxx xxx

AND WHEREAS SH. ASHOK JAIN S/o LATE SH. MITHAN LAL JAIN R/o KD-5, Kavi Nagar, Ghaziabad (UP) (Donor herein) has got full rights, clear titles and absolute authority to sell and transfer the above mentioned property and there is no impediment in transferring the same.

In the above manner the Donor became the sole and absolute owner of the Entire Freehold property bearing no. C-57, measuring 500 yds., out of Khasra no. 1651 situated in the abadi of an approved colony, Inderpuri, New Delhi for his bona fide needs and requirements with undivided, indivisible an impartiable

ownership rights in the said plot of land with absolute and unfettered powers to deal with the same in any manner he likes at his sole discretion.

WHEREAS the Donor out of his natural love and affection for the Donee, is desirous of making a gift of the Entire Freehold property bearing no. C-57, constructed on freehold plot no. C-57, measuring 500 sq. yds, with terrace rights, situated in the area of the village Naraina in the abadi of an approved colony, Inderpuri, New Delhi undivided, indivisible and impartible ownership rights in the said plot of land in favour of the Donee absolutely and forever but without any monetary consideration and is therefore executing this Gift Deed.

NOW THIS DEED WITNESSETH" GIFT

1. The donor hereby irrevocably, absolutely and forever gifts, transfers and conveys the said Entire Freehold property bearing N. C-57, constructed on freehold plot no. C-57, measuring 500 sq. yds, with terrace rights, situated in the area of the village Naraina in the abadi of an approved colony, Inderpuri, New Delhi and in favour of the Donee out of his love and affection. The Donor transfer the said property to the Donee by way of gift together with all the liberties, privileges easements and advantages appurtenant thereto.
2. That the transfer hereunder include the transfer of all the rights of the Donor over in the said Entire Freehold property bearing No. C-57, constructed on freehold plot no. C-57, measuring 500 sq. yds, with terrace rights, situated in the area of the village Naraina in the abadi of an approved colony, Inderpuri, New Delhi to the Donee. That the Donee shall be entitled to cause the mutation of the said property done in the concerned authority in her own name.
3. That the physical possession of the said property has been handed over by the Donor to the Donee.
4. That the donor states that this gift of the entire Freehold Property bearing no. C-57, constructed on freehold plot no. C-57, measuring 500 sq. yds., with terrace rights, situated in the area of village Narain in the abadi of an approved colony, Inderpuri, New Delhi shall be irrevocable and none of her legal heirs, successors, nominee and administrators shall have anything to do with the said property and any object raised by anyone in respect of this

gift and /or the said property in any manner whatsoever shall be null and void.

5. That the Donor, after the gift of the said property, shall be left with no rights, interest or lien in the said property, which shall hereinafter become the exclusive property of the Donee.

6. That the Donee hereby accept the gift of the said property without any condition or reservation."

(at pages 35 to -43 of paper book)

10.1. The donor filed affidavit, which is as under:

"AFFIDAVIT

Before the Assistant Commissioner of Income-Central Circle- 11,
New Delhi

Reg.: Income Tax Case of Ms. Mayawati, New Delhi relevant to
assessment Year 2003-04

I, Shri Ashok Kumar Jain S/o. late Shri Mitthan Lal Jain R/o. KD-5, Kavi Nagar, Ghaziabad declare on oath as under:

1. That my name is Shri Ashok Kumar Jain reside at KD-5, Kavi Nagar, Ghaziabad and am fully acquainted with the facts of the case.

2. That during the Financial year 2002-03 I have gifted an immovable property bearing no. C-57, Inderpuri, New Delhi Valuing Rs. 4068450/- out of natural love and affection to Ms. Mayawati D/o. Shri Prabhu Dass alias Prabhu Dayal r/o. EA-44, Inderpuri, new Delhi through registered deed dated 26.12.2002.

3. That Ms. Mayawati is my Dharam Sister and put Rakhi on Raksha Bandhan festival since last 15 years.

Signature unreadable

Deponent

VERIFICATION

I, Shri Ashok Kumar Jain S/o. Late Shri Mitthan Lal Jain solemnly affirm that the contents of above para 1,2, and 3 are true and correct to the best of my personal knowledge and belief. Nothing have been concealed. So help me God. Signed and verified this 25th day of March, 2006 at Ghaziabad.

Signature unreadable

Deponent"

(at page 105 of paper book)

10.2. The statement of the donor was recorded on 26-12-2005. This donor is also assessed to income-tax. In his statement he has categorically stated that the gift is being made by him voluntarily and out of natural love and affection. In this regard we would like to reproduce questions and answers from question no. 11 to 14 of his statement, which are as under:

"Q.NO.11: Please explain sources of gifts made by you?

Answer: I am submitting the details thereof separately.

Q.NO.12: What were the circumstances under which the gifts were given by you ?

Answer: Purely out of love and affection towards the Donee.

Q. No. 13: Do you have any correspondence with the donees?

Answer: Personal meetings as well as on telephone.

Q. No. 14: Whether any documentary evidence was created at the time of gift? If yes, the reasons thereof?

Answer: Affidavit & Gift Deed executed."

(at page 110 of paper book)

10.3. On the basis of the above documentary and oral testimony it is our considered view that in the case of this gift also the requirement of law narrated as above is fully satisfied.

10.4. While coming to the above conclusion we find that sufficient evidence was adduced by the assessee before the AO. On going through the assessment order it appears that the AO while drawing adverse inference against the assessee in

relation to these gifts was influenced by several other transactions of gift whereas he should have examined the genuineness and validity of these transaction independently on the facts and circumstances of such transactions. He has not recorded any finding to doubt the identity of the donors. He has not recorded any finding that the gifts were not made voluntarily or that the delivery of the possession of the properties gifted was not given to the donee, He has made absolutely no enquiries which would enable him to conclude that the transaction of gift were sham, false or not genuine. Thus, the validity of each gift remains unsustainable. As the AO has doubted the genuineness of the gifts and creditworthiness of the donors we also consider it proper to discuss the relevant aspects regarding these allegations.

10.5. The Assessing Officer has not only conveniently ignored the relevant documentary evidences produced by the assessee, but has based his conclusions on extraneous considerations. On going through the assessment order it is found that he has been unduly influenced by the fact that so many persons had made several gifts to the assessee and to her family members not only during the assessment year under consideration but also in preceding years and subsequent years. In this regard reference may be made to the details of gifts given on pages 4 to 6 of the assessment order wherein he has considered the details of gifts made to the assessee and to her family members. It was submitted on behalf of the assessee that the family members of the assessee are independently assessed to tax. The contention of the assessee living separately for last several years, and being assessed regularly on her independent Incomes has not been controverted. In view of the above facts the gifts received by the family members cannot be taken into account while making the assessment in the case of the assessee and the same cannot be treated as Income of the Assessee, particularly when the Assessing Officer has not brought out any material on record to demonstrate that the financial transactions of the family members of the assessee were inter mixed or interconnected with the financial transactions of the asses see.

There is also no evidence to substantiate the fact that the assessee was directly or indirectly benefited by such gifts, which were received by her family members nor has the assessing officer added the gifts received by family members as the income of the assessee from undisclosed sources, while framing the assessment of the assessee for the year under consideration.

10.6. It may also be pointed out here that gifts received in A.Y. 1998-99 and 1999-2000 have also been mentioned by the Assessing Officer. Shri Ashok Kumar Jain and Smt. Veena Jain have also shown to have given gifts to the assessee and her family members hi those years. It was pointed out by the learned counsel for the assessee that in those years gifts were not doubted as non-genuine and no addition had been made to the income of the assessee in the years. This factual position remains uncontroverted. In any case, since the transactions of gifts pertaining to the assessment year under consideration,

received by the assessee alone are to be considered. In our view, the Assessing Officer was not justified in making reference to unrelated transactions like gifts received by the family members. The A.O. has also to be faulted for drawing adverse inference against the assessee on basis of such transactions.

10.7. So far as three gifts received by the assessee in the assessment year under consideration are concerned, on the basis of which additions in this year have been made, it may be pointed out that while examining such gifts, the Assessing Officer has considered various aspects which do not bear any significance or relevance. It appears that he has not appreciated the facts correctly. We may point out the following points: Gifts made by Smt Veena Jain:

11. Smt. Veena Jain made gifts of immovable property namely C-58, Inder Puri, New Delhi worth Rs. 22,03,850/- on 16-11-2002. the Assessing Officer has shown in para 16 of the order that she made following payment to smt. Usha by debiting from S.B. A/c No. 812 with Andhra Bank Navyug Market, Ghaziabad.

14-9-2002	Rs. 7,50,000
14-9-2003	Rs. 2,00,000
6-9-2002	Rs. 5,00,000
6-9-2003	Rs. 5,00,000

11.1. The Assessing Officer has also pointed out that Smt. Veena Jain took loans from various persons for purchasing the property, The Position of loans as shown by the Assessing Officer is as under:

3-5-02	Rs. 5,00,000	Vivek Mangal
3-5-02	Rs. 5,00,000	Sushma Mangal
29-5-02	Rs. 10,00,000	Smt. Sushma Mangal.

11.2. By giving these details the learned Assessing Officer has observed as under:

"It is difficult to believe that she has given gift of money and immovable assets by taking loans from various persons and later on gifted the asset to the assessee with whom she has no relation whatsoever although it is stated that assessee is dharam sister of her husband. The value of gift given by her exceeded the income declared by assessee during last five years.

"As regard the creditworthiness it is seen that she herself had taken loan for purchase of property as she was not having sufficient funds for this purpose. It is seen that she had sold here jewelry for purchase of the house. Therefore, the creditworthiness of the donor is not proved.

"From the return of income for the A.Y. 2003-04 it is seen that total income declared by Mrs. Jain is Rs. 1,30,800/-. Out of the said amount she has paid nearly 35,000/- towards payments u/s. 88 for claiming tax rebates. The donor has also shown sale of jewelry worth Rs. 2,81,608/-. The sale of jewellery by Smt. Veena Jain states the financial status of the assessee. This jewellery was sold for the purchase of a residential house. The said house was purchased but was gifted to the assessee. In view of these facts the genuineness and creditworthiness is not proved.

11.3. On going through the above observations it is clear that the Assessing Officer has been influenced by the fact that donor has taken loans to purchase the property and then gifted the same to the assessee. However, he has not brought out any material on record to show or even to suggest that the loans were given or managed by the assessee or through her resources or that the loans were later repaid by the assessee at any point of time.

11.4. It may also be pointed out that the property was purchased on 16-11-02 and the payments to the seller were made in September 2002 and loans were taken much earlier i.e. in May 2002. It appears that the Assessing Officer has wrongly tried to correlate the borrowings made by the donor in May 2002 to the purchasing of the property which transaction took place in November 2002 i.e. after six months from the dates of borrowing. In our view there is no connection between the borrowings made by Smt. Veena Jain and the purchase of the property by her, and thereafter the gift of the same to the assessee. Thus, the observations which have been reproduced above are found to be based upon totally misplaced reasons and misunderstanding of facts on record.

Gift made by Shri Ashok Jain:

12. As per details recorded by the Assessing Officer the property i.e. C-57, Inder Puri New Delhi worth Rs. 40,68,450/- was gifted to Ms. Mayawati on 24-12-2002. the position of payment made to the seller of the property prior to the date of purchase is as under:

Date	Amount	
------	--------	--

14.11.2002	10,00,000/-	Paid to Shri Jaideep for purchase of Property at C-57, Inderpuri, New Delhi.
09.12.2002	10,00,000/-	Paid to Shri Jaideep for purchase of Property at C-57, Inderpuri, New Delhi.
09.12.2002	13,00,000/-	Paid to Shri Jaideep for purchase of Property at C-57, Inderpuri, New Delhi.

(at page 16 of the Assessment order)

12.1. The Assessing Officer has also shown the position of loan taken by him which is as under:

28.06.2002	2,50,000/-	Ch. From Sh. Mahipal Singh
02.07.2002	10,00,000/-	Ch. From Mrs. Uma Jain W/o. Late Sh. Satish Jain, 78, Puranakia, Lucknow
12.07.2002	5,00,000/-	Sh. From Sh. Dhirendra Kumar Bharadwaj, Patpar Ganj, New Delhi.
19.09.2002	4,50,000/-	Ch. From Krishan Jain W/o. Shri D.K. Jain, Patpar Ganj, New Delhi.
19.09.2002	5,50,000/-	D.K. Jain, A-107, Unesco Apartment Patparganj, Delhi, Ch. No. 361054 Bank of Baroda
26.09.2002	1,00,000/-	Ch. From Kanta Jain

(at page 17-18 of the Assessment order)

12.2. On the basis of the above details, the Assessing Officer has concluded that the assessee took loans of more than Rs. 32 lacs from different persons to purchase the house which was later gifted to the assessee. Here again, the inference drawn by the Assessing Officer is factually incorrect. Firstly, because most of the loans were taken in June, July and September 02. Thus, there is no nexus between the borrowings of the loans and the purchase of the property. The donor is also a businessman and as per practice he was taking loans and repaying the same. In any case, the borrowings of the loans have not been made through the assessee nor the repayment of the loans has been done by her. Here, we may make refer to the assertion made by the assessee herself before

the AO himself via letter dated 28-3-2006 available at page 57. A relevant portion of the said letter relating to this aspect is as under:

"The question of borrowing by Sh. Ashok Jain and Smt. Veena Jain has also been explained in length. The donors have stated before you also that they had taken temporary loans to buy the said property from friends. At the time of purchase of the gifted property there was no intent to gift the said properties. The loans were also raised temporarily and were supposed to be repaid by the donor, however due to the bank account being seized by CBI, the loans could not be repaid. (Copy of the evidence enclosed). Moreover the property gifted to the assessee is free from all encumbrances as per the gift deed also and the assessee is not required to repay any of the loans raised by the donors. Nor there is any evidence nor is it the case of the department that the assessee was the owner of the funds and no addition can be made on suspicion."

12.3. The submission of the assessee that while deciding the genuineness of the transaction of purchases of the property and subsequent gift of the same to the assessee is concerned, the fact of the donor having incurred loan has no relevance. We find much force in this submission.

Gift made by Shri Pankaj Jain:

13. The Assessing Officer has observed that Shri Pankaj Jain made a gift of Rs. 2,00,000/- after borrowing the amount from Blue Bells Finance Co. Ltd. The observations of the Assessing Officer in this regard are as under:

"It is seen that the entire gift made by him is out of amount received from M/s. Blue Bell Finance Co. It is surprising that the assessee has gifted the amount out of loan taken from this concern. Since there was no occasion for making the gift, the gifted amount is more than the income of the assessee, there is no relation between the donor and the donee. I hold that it is only an arranged gift and an accommodation entry.

(at page 22 of the Assessment order)

13.1. This finding of the Assessing Officer has been found to be incorrect by the learned CIT(A) who has observed that the gift made by Shri Pankaj Jain was not out of money borrowed. He has also observed that the gift was by a/c payee cheque no. 171816 dated 17-12-2002 drawn on Andhra Pradesh for Rs. 2,00,000/-.

14. The above discussion goes to show that the Assessing Officer has collected irrelevant details and has based his finding regarding genuineness of the transactions of gifts on these irrelevant and unconnected material 12.2. On the basis of the above details, the Assessing Officer has concluded that the assessee took loans of more than Rs. 32 lacs from different persons to purchase the house which was later gifted to the assessee. Here again, the inference drawn by the Assessing Officer is factually incorrect. Firstly, because most of the loans were taken in June, July and September 02. Thus, there is no nexus between the borrowings of the loans and the purchase of the property. The donor is also a businessman and as per practice he was taking loans and repaying the same. In any case, the borrowings of the loans have not been made through the assessee nor the repayment of the loans has been done by her. Here, we may make refer to the assertion made by the assessee herself before the AO himself via letter dated 28-3-2006 available at page 57. A relevant portion of the said letter relating to this aspect is as under:

"The question of borrowing by Sh. Ashok Jain and Smt. Veena Jain has also been explained in length. The donors have stated before you also that they had taken temporary loans to buy the said property from friends. At the time of purchase of the gifted property there was no intent to gift the said properties. The loans were also raised temporarily and were supposed to be repaid by the donor, however due to the bank account being seized by CBI, the loans could not be repaid. (Copy of the evidence enclosed). Moreover the property gifted to the assessee is free from all encumbrances as per the gift deed also and the assessee is not required to repay any of the loans raised by the donors. Nor there is any evidence nor is it the case of the department that the assessee was the owner of the funds and no addition can be made on suspicion,"

which has little bearing to the transactions. Hence, the findings of the Assessing Officer cannot be sustained on the basis of inference drawn by him in the context of such unconnected material.

14.1. To conclude, the transactions of loan have no connection with the gifts made. Secondly, the assessee was in no way involved in the matter for securing the above mentioned loans, nor has she repaid the same. In such facts and circumstances of the case the genuineness of the gift cannot be suspected or doubted by making reference to the loans as has been done by the Assessing Officer.

15. The Assessing Officer has also made reference to the enquiry conducted by the Addl. DIT (Inv.) and to the statements of donors which were recorded by him. The statement of Smt. Veena Jain was recorded by the Addl. DIT on 4-12-2003. This statement has been reproduced by the Assessing Officer at pages 7

to 13 of the assessment order. After reproducing the statement the Assessing Officer has drawn certain adverse inferences at page 13. These inferences are as under:

"Her attention was drawn to the statement recorded by Addl. DI(Inv.), New Delhi and her comments were sought. She stated that she had taken a loan of Rs. 5,00,000/- from Sh. Vivek Mangal and a sum of Rs. 10 lacs from Smt Sushma Mongol for purchase of residential house. The loan could not be repaid due to seizure of bank account. It is thus clear that the amount has been gifted out of loans taken by her from different persons in the garb of purchase of residential house although she purchased the house and gifted the same to the assessee. This fact itself creates doubts to genuineness of the gift. The total amount of gifts gifted by her is 40,03,850/- in different years out of which 22,03,850/- has been given in the year under consideration."

(at page 14 of the Assessment order)

15.1. Similarly he has made reference to the statement of Shri Pankaj Jain recorded by the Addl. DIT. This statement has been reproduced on page 19 & 20 of the assessment order. On the strength of this statement certain similar adverse inferences have been drawn by the Assessing Officer.

15.2. It would not be out of place to point out that the Addl. DIT recorded the statement behind the back of the assessee. Vide letters dated 14-3-06, 25-3-06 and 18-4-06, addressed to the Assessing Officer, the assessee demanded copies of these statements recorded. However these statements were never supplied to her despite repeated requests. Since the assessee was not confronted with the statement recorded by the Addl. DIT, the assessee also took specific grounds to that effect before the learned CIT(A). In the written submission dated 10-10-06 this request has been repeated which is as under:

"The appellant thereafter immediately asked the assessing officer vide letter dated 18-04-06, to supply the documents/statements on the basis of which the A O had drawn such inference but the assessing officer did not confront the appellant with any such evidence/statement of Donors in complete violation of the principles of natural justice."

(at page 119-120 of the paper book)

"The appellant on various occasions asked the assessing officer to supply the copies of the statements given by the donors, however the same were not supplied to the appellant in clear violations of the principles of natural justice."

(at page 137 of the paper book)

15.3. Thus, it is clear that the Assessing Officer has considered the material against the assessee to which she was never confronted nor she was given copies thereof to meet out the adverse material, if any, being used against her. This is against the sound canons of natural justice.

15.4 In the case of M.S. Asarwal Vs. D.C.I.T., 2004 83 TTJ (Del) 692 it was held that the evidence utilized by the department against the assessee, without confronting the assessee was held to be inadmissible for justifying the addition.

15.5. Apart from the above, a perusal of the relevant portion of such statement, as reproduced by the Assessing Officer in the assessment order clearly shows that even before the Addl. DIT the donors had categorically verified the factum of making gift to the assessee. The Assessing Officer has himself considered the statement by picking up certain portions of these statements out of context. This approach is also not justified. The statement has to be read as a whole and only one sentence or two cannot be read out of context, to present totally unwarranted inference. Nextly, when the Assessing Officer had himself recorded the statement of these donors, then again they confirmed the making of the gift to the assessee and gave all the details required. All the three donors had categorically stated that the gifts were given by them voluntarily and out of natural love and affection.

15.6. It may be pointed out that the Assessing Officer did not conduct any independent inquiry to controvert these statements and to support his conclusion that the gifts were arranged by the assessee. There is no direct or indirect documentary, oral or circumstantial evidence to show that the investment of any kind before or after the gifts was made by the assessee for obtaining the gifts. The Assessing Officer has not been able to bring out any tangible material on record to demonstrate the fact that the gifts were made by the donors out of some ulterior motive or design or for some benefit or consideration. The Assessing Officer has not been able to show that the gifts were not voluntary or that the same were obtained by the donee, by exercising some undue influence, coercion or temptation. The facts that these gifts are made out of natural love and affection by the donors thus remains unquestioned and uncontroverted.

15.7. The Assessing Officer, as pointed out above, has tried to stretch the facts and circumstances for justifying the unwarranted conclusion regarding genuineness of the gifts without bringing any cogent material on record to show that the gifts were not genuine or were managed by the assessee herself. The basic elements that the gifts were without any consideration, it were made voluntarily and out of natural love and affection have not been demolished by the Assessing Officer. The aspect of voluntariness depends upon the mental state. The element of love and affection relate to emotions of a man. One may be

impelled by his conscience or may be moved by emotions to part away with his wealth or property and to give the same to a particular person for whom he has developed love and affection. Such a desire can be developed at any time and on any ground. The factors which weigh for executing such desire are best known to the donor. It is not easy to make probe into such human psychology or human emotions which one may carry at the time of making such sacrifices. It has been stated by some of the donors that the assessee was engaged in the welfare of downtrodden and dalit in the society. May be the prompting motive were such appreciable deeds of social welfare of the problem of the weaker sections of the society, which made the donors to make gifts to her. Smt Veena Jain has gone on record to say that the assessee was making a Sangrahalya and therefore she gifted the house property to enable her to achieve her mission. The Assessing Officer has only gone by surmises and conjectures and guess work in drawing his inference and in recording his conclusions. In the absence of any cogent material to support his findings, the same being based on conjectures and surmises cannot be upheld.

15.8. The assessing officer has also highlighted the fact that there is no relationship between the donor and donee and therefore the genuineness of the transaction of gifts are not proved, this finding is recorded on page 19 of the assessment order wherein he has discussed the gift made by Sh. Ashok Jain. Similar observations has been made on page 22 where he has discussed the gift made by Sh. Pankaj Jain. Here it may be pointed out that a gift may be made to a stranger. Section 123 of T.P. Act referenced which has been made above does not require that gift should be made to a relation only. Thus the Ld. A.O. has taken an incorrect view of law.

16. In the case of CIT Vs. Ms. Sunita Vachani 84 CTR Delhi/184 ITR 121 Delhi the assessee had received gifts from abroad, the commissioner of Income tax by invoking the provisions of section 263 set a side order of ITO and directed him to pass fresh assessment order. In that case the CIT was of the view that the order of ITO was prejudicial to the interest of revenue as the ITO had not examined sources of the gifts to satisfy himself about the genuineness thereof. The assessee filed appeal before ITAT which quashed the order of CIT. In appeal against the order of ITAT, the Hon'ble Delhi High Court upholding the order of ITAT, by observing as under:

17. The A.O. has highlighted another point which is regarding lack of "occasion" for making gifts. He has observed that there was no occasion for the donors to make the gifts to the donee. For giving gift no specific occasion is required, although the gifts are normally given on many occasions like birthday, marriage anniversary and other events. However, gift may be given at any time as per the wishes of the donor and the donee. Thus it can not be said that if a gift is not made on particular occasions on any event then such gift is not a genuine gift. Hence in our view occasion is not a relevant criteria.

17.1. The Ld. A.O., after making observations regarding creditworthiness of the donors and genuineness of the transaction of the gift has held the impugned gifts to be non acceptable and non genuine. We have already dealt with various objections raised by the A.O. for treating the gifts as non-genuine and have held that such objections are either irrelevant or extraneous to the basic ingredients of the gifts.

17.2. It is a settled legal position that for claiming the benefits of gifts, the assessee is required to satisfy the following conditions :

1. Identity of the donors.
2. Creditworthiness of the donors.
3. Genuineness of the transactions of the gifts.

18. We shall deal with each ingredient separately.

18.1. identity of the donors: In the instant case all the three donors appeared before the A.O. and their statements were recorded. Two of them appeared before the A.D.I. (Inv). All the three are assessed to tax. Donors appeared before three different authorities which confirms their identity namely:

- (1) Before Registrar,
- (2) Before A.D.I.T.
- (3) Before the A.O.

18.1.1. And therefore the A.O. has also not rightly doubted their identity Ld. CIT (A) has also recorded a positive finding about their identity. On examination of the relevant material we do not have any doubt of any type regarding the identity of the donors. As there identity is fully proved on record.

18.1.2. It has also to be kept in mind that these donors had appeared before the Registrar for Registry of the documents and two independent witnesses have also validated their identity.

18.1.3. Keeping in view the totality of facts we are of the considered opinion that identity of the donors stands fully proved and established.

18.2. Creditworthiness of the donors: All the three donors who made the gifts are men of means. They belong to rich background and own huge moveable and immovable properties. The evidence of their earnings has been brought on record. On the direction of Ld. CIT Appeals, the A.O. made enquiry about their

net worth and then reported the same to the CIT (Appeal), The figures of net worth as made available by A.O. have been reproduced by CIT Appeal in the order which have not been doubted either in the appeal or by the Senior A.R.. Each of them had net worth more than of a crore. The department has not brought out any adverse material against their creditworthiness. The A.O. has held them to be non-creditworthiness only on the basis of surmises or guesswork. In fact, at the time of making assessment he made no enquiry about their wealth and net worth, which he subsequently made while submitting the Remand Report to CIT and in which he found them to be creditworthy. Thus, in absence of any enquiry or any material about their creditworthiness, the AO was not justified in holding that the donors creditworthiness was in doubt.

18.2.1. It has been held by various courts that for rejecting the explanation of the assessee department has to be in possession of sufficient and adequate material. And that there has to be tangible material which should be brought on record. It is also trite law that the assessee can not be presumed to have knowledge of sources of the donor or from where he brought the money or the property. In the case of Shreelekha Banerji Vs. CIT, 49 ITR 112, it was held that if the evidence of the assessee was convincing then rejection of the same cannot be done by the department without bringing some new and cogent evidence. We have also gone through the material on record and find that the CIT(Appeal) was correct in holding the donors had full creditworthiness and were capable of making the gifts from their own sources.

18.3. Genuineness of the transaction of gifts: Once the identity of the donor is established and his capacity is also proved then the only question to be seen is as to whether the transactions of gift was genuine or not. For examining this aspect, the conduct of parties, that is the donor and the donee, and the appreciation of attending circumstances becomes necessary. The conduct can be seen from various angles. If the donee makes his or her own investments for arranging the gift or purchasing the gift or directly or indirectly manages such gifts then such conduct will definitely render the transactions as a colourable one or of dubious nature. Similarly, if the donor makes a gift in lieu of some valuable consideration or for any tangible benefit or for past or future consideration, in terms of money or monies worth, then such gift may not be treated to be genuine. Likewise, if the circumstances under which the gift is being made show that the gift was made to cover up or conceal other transactions or to convert black money into white money by taking recourse to such mode then the transaction of gift may be treated to be non-genuine. There may be several other circumstances to create suspicion to the genuineness of the gift. The financial position of donor or that of donee may also be relevant factors to judge the genuineness of the gift. However, such conduct of the donor or the donee, or such circumstances which create doubt in the genuineness of the transaction of the gift have to be brought on record. Mere guesswork will not be sufficient. Similarly the mere fact that the gift was made of huge amount or of valuable property in absence of any other material to doubt the

genuineness of the gift, will not be sufficient to treat the gift as non-genuine. Lack of blood relationship or family relationship or absence of occasion for making gift are again not the only considerations for treating the gift as non-genuine. Although these may, at times, be relevant corroborative considerations to establish the non-genuineness of the transactions, but by itself none of such factors can be sufficient considerations for treating the gift as non-genuine.

18.3.1. In the instant case there is no evidence on record to show that the assessee had in any way at any time financially or otherwise helped the donors to gain in any manner by misusing her position as a public servant. There is no proof that the donee made any investment in the property gifted to her before the same was gifted. Smt. Veena Jain and Sh. Ashok Jain borrowed funds for purchasing the property gifted to the donee. There is no evidence that the donee had made arrangement of the loan or paid any part of them or interest thereon either prior to the purchase of the property or subsequently. In all the three gifts in question the entire investment made was from the source of donors and not from the donee.

18.3.2. The A.O. has not collected any evidence to disprove the genuineness of the gift by bringing material on record to show that the gifts were arranged by the assessee from her resources or that donors made gift in lieu of some tangible benefit derived by them from the assessee by misusing her office of public servant. On the contrary the assessee adduced sufficient evidence to show that the gifts were made voluntarily by the donors without any consideration and out of natural love and affection. All the three donors have repeatedly confirmed the fact that the properties were gifted by them to the donee out of natural love and affection. The aspect of voluntarily giving of gifts has been fully proved in all the three cases. The delivery of possession was given at the time of making gift. The gifts of immovable property in the instant case prove the genuineness of the transactions beyond any shadow of doubt because of the procedure adopted for transferring such properties by way of gift through registered deeds.

18.3.3. It is not uncommon that people give donations and charities to persons in whom they place faith or for whom they have limitless regards. Similarly gifts are also made of invaluable properties for furtherance of noble objects executed by personages of high eminence. As stated by the donors in their statements recorded by the A.O., the donee is a public and political figure who was working for the welfare of the downtrodden in a missionary manner and on account of this social work, the donors decided to part away with their properties by giving the same as gift to her. The element of reverence, veneration or personal esteem and faith all depend upon personal feelings and desire. No probe can easily be made into such aspects of human psychology and the best persons to explain such feelings and desires are those who advance and execute the same.

18.3.4. In this regard reference may be made to the case of CIT Vs. Abdul Gani Gurdeji of Rajasthan High Court reported in ITR 213 at vase 798. The brief facts of the case were that the assessee was Khadim at the Dargah of Khwaja Moinuddin Chisti, Ajmer, and derived income by exercise of such profession. He received a sum of Rs. 1,05,000 on June 19, 1978, from a non-resident pilgrim called Abu Suflan, who was coming to the Dargah for a number of years. The assessing officer treated this gift to be a genuine gift made on account of love and affection towards the donee, while the CIT reversed the order holding that the payment was camouflaged as a gift. On appeal the Tribunal set aside order of CIT and confirmed the order of assessing officer. This order was challenged by CIT by making a reference u/s. 256 (1). In the reference the High Court upheld the decisions of the Tribunal and held as follows:-

"The finding which the Tribunal has recorded in this case is that it is not a case where the donor was benefited from any preaching or discourse or any special service of the assessee, but it is a case where the donor on his own noticed some supernatural power in the assessee and being influenced by that he decided to earmark the pounds equivalent to the amount for making the payment to the assessee. It was observed that it is a clear case of voluntary payment made to the assessee for his personal qualities or as a mark of the high esteem and regard in which the assessee was held by the donor. There is not an iota of evidence to link the impugned payment with the routine and ordinary services rendered by the assessee as Khadim to the donor. The finding which has been recorded is one of fact and has not been challenged. It was open to the Revenue even to challenge the finding which has been recorded by the Tribunal on any ground including that they are perverse. No such steps were taken to challenge the finding of fact recorded by the Tribunal. It has nowhere been established that the gift had any relation with the service rendered. It may be the basis of acquaintance but cannot be considered as having any link or reference, traceable to the vocation which the assessee was performing as Khadim.

In these circumstances, we are of the view that the Tribunal was justified in holding that the sum of Rs. 1,05,000 received by the assessee from Abu Sufian under gift deed dated June 22, 1978, was not taxable as the assessee's income from his profession/vocation.

The reference is answered in favour of the assessee and against the Revenue. No order as to costs."

18.3.5. In the instant case the department has not brought any material to question such feelings and desires of the donees and therefore the assessing officer was not justified in holding that the gifts were not genuine.

19. Keeping in view of the totality of the facts and circumstances of the case and after considering the entire material available on record we are of the opinion that all the three gifts or not only genuine but also the identity and capacity of the donor to make the gift stands duly and fully established. Hence we uphold the findings of the Ld. CIT (Appeals) in holding that the assessee has fully discharged not only her onus but also the burden cast on her by proving the identity of the donors and their creditworthiness, as well as the genuineness of the gift. Accordingly we uphold the findings of the Ld. CIT (Appeals) deleting the additions made on account of the said gifts by the A.O.

20. APPLICABILITY OF SECTION 68: We are also of the opinion that Section 68 has no applicability to the facts of present case as the assessee is not maintaining any books of account. If that be so section 68 does not apply in her case for the simple reasons that the cheque received from Sh. Pankaj Jain has been deposited in her bank account. In this regard we are also of the opinion that Balance Sheet/Statements of Affairs can not be equated to books of accounts because "in traditional terms books means a collection of sheets of paper bound together with the intention that such binding shall be permanent and papers used are kept collectively in one volume. It can also be assumed that it connotes the contention that it should serve as a permanent record." This is the finding of the Hon'ble Judges of the Bombay High Court in 256 ITR 20 (Bom.)

20.1. Further in P Ram Nath Aiyars Law Lexicon 2002 edition vase 233/234 a book has been defined as under.

"A treatise, written or printed on any material and put together in any convenient form. Any printed literary compilation; a collection of sheets bound together containing manuscript entries or intended to contain such entries; the name of several important papers prepared in the progress of a cause, although entirely written and not at all in the book form."

20.2. Further the Hon'ble High Court in the case of CIT VS Bhaichand H Gandhi (1983) 141 ITR 67 held that bank pass Book is not a book maintained by the assessee or under his instructions by the bank. Where Cash credits for previous years are shown in assessee's bank passbook then they cannot be treated as income of the assessee within the meaning of section 68.

20.3 Similar is the decision in the case of M/s SAMPA T AUTOMOBILES v. INCOME TAX OFFICER. 2005-(096)-TTJ -0368 -TJOD.

20.4 Therefore a pass book of the bank cannot be treated as a book of account of the assessee because this is provided by the banker, which is given to its customer and is only a copy of the customer's account in the books maintained by the bank. The bank does not act as an agent of the customer nor can it be said that the banker maintains the pass book under the instructions of the customer (the assessee).

20.5. The relationship between the banker and customer is one of debtor and creditor only. Therefore, a cash credit appearing in assessee's pass book relevant to a particular previous year, in a case where the assessee does not maintain books of accounts, does not attract the provisions of s.68.

20.6. In the instant case, in view of the above, the gifts relating to immovable properties can be covered u/s 68 nor the gift of Rs. 2,00,000/-received by the assessee can be covered under that provision. Nextly, in view of our findings, recorded above, all the gifts satisfied the requirement of a valid and genuine gift. The assessee has fully explained the same and therefore it cannot be said that the addition can be sustained even u/s 69 of the I.T. Act, as held by the AO, because the source of investment in the properties in question stand fully explained by the assessee in the form of gifts which are found to be genuine by us for the reasons given above. Consequently, the grounds taken by the revenue are rejected.

20.7. In the result, revenue's appeal is dismissed.

ITA no. 279/Del/2007 (Assessee's appeal):

21. The assessee has raised as many as three grounds to challenge the disallowance of standard deduction.

22. Claim u/s 16 (1): As regards the assessee's appeal relating to claim of standard deduction u/s. 16(1) amounting to Rs. 30000/- we are of the view that the assessee is not entitled to claim deduction u/s. 16 (1). We hold so because there is no relationship of "Employer" and "Employee" existing in the facts of the recent case. The position has also been further clarified by CBDT in Circular No. 40/29/67/ ITA-1 dated 22/05/1967. The mistake of claiming this standard deduction may not be intentional or deliberate as submitted by assessee's counsel but in our opinion since it is not legally admissible, it cannot be allowed as a deduction. Keeping in view the same we uphold the finding of the CIT (Appeal) that the assessee is not entitle to standard deduction u/s. 16(1) amounting to Rs. 30000/-. The assessee fails on this ground. Hence the grounds taken by the assessee in her appeal stand rejected. Consequently, this appeal is also dismissed.

23. In the result, both the appeals, filed by the assessee as well as the revenue stand dismissed.

Order pronounced in open court on 30.11.2007.

(Shri P N Parshar)
Judicial Member

(Shri P M Jagtap)
Accountant Member

Copy to:

1. Appellant
2. Respondent
3. CIT
4. CIT (A)
5. DR